The FTC in 2011

Federal Trade Commission Annual Report, April 2011





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

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Federal Trade Commission

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

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Cover photo by Carrie Gelula.



At the Federal Trade Commission, we work to make a difference for consumers and competition. We challenge unscrupulous business practices and anticompetitive mergers, shut down shady operations and deceptive marketing campaigns, and protect consumers' privacy and their pocketbooks. The agency's law enforcement actions and policy initiatives over the past year have had far-reaching effects in protecting consumers and competition in critical sectors of our economy – from high tech to health care, financial services to online commerce.

This year's Annual Report describes the FTC's activities and accomplishments since last April. The FTC staff has displayed remarkable talent, dedication, and creativity in meeting the nation's unprecedented economic and technological challenges, especially in the following areas.

"Last Dollar" Frauds. The Commission's top consumer protection priority remains stopping scammers who prey on consumers made vulnerable by the economic downturn. During the past year, the agency has taken action against some of the worst abusers trying to pick the last dollar out of the pockets of financially distressed consumers with false promises of jobs, debt relief, mortgage modification, and health insurance. In June, the FTC settled with Countrywide and an affiliated mortgage servicing company, which paid $108 million to reimburse struggling homeowners who were charged excessive fees for default-related services or had their loans mishandled in bankruptcy. The FTC also is part of the interagency review of mortgage servicers that was sparked by reports of "robo-signing" and other questionable practices. In the year ahead, the FTC will coordinate with the new Consumer Financial Protection Bureau as well as maintain our aggressive law enforcement against financial frauds.

"Pay-for-Delay" Pharmaceutical Settlements. Also at the top of the Commission's agenda is stopping anticompetitive "pay-for-delay" patent settlements between brand-name drug companies and their generic competitors. These sweetheart deals delay the availability of lower cost generic drugs by 17 months on average, costing consumers an estimated $3.5 billion a year. Looking ahead, the FTC will continue efforts to end the pernicious practice of pay-for-delay by challenging these agreements in court and supporting legislation to end them, as part of the agency's overall effort to promote competition to help improve quality and reduce costs of health care for American patients.

High Tech Competition and Innovation. Actions taken in the past year demonstrate that the Commission is not afraid to challenge anticompetitive conduct or mergers in fast-moving industries, but also considers marketplace realities in selecting targets. In August 2010, after eight months of litigation, the

Letter from Chairman Jon Leibowitz

FTC reached a settlement with Intel Corp., the world's largest computer chip manufacturer. The settlement is designed to restore competition and innovation in the market for CPUs and graphics chips that was lost as a result of Intel's alleged anticompetitive actions, while leaving room for the company to innovate and offer competitive pricing going forward. On the other hand, the FTC closed its investigation of Google's proposed acquisition of mobile advertising network company AdMob, after thoroughly reviewing the deal and concluding that it was unlikely to harm competition in the emerging market for mobile advertising. As in other industries, the Commission uses a fact-driven analysis of market conditions when applying time-tested antitrust principles in the face of rapidly changing technology and business models.

Consumer Privacy and "Do Not Track." In December 2010, the FTC staff issued a preliminary privacy report, proposing a framework that promotes privacy by design, transparency, consumer choice, and business innovation. The report is intended to inform policymakers, including Congress, as they develop solutions, policies, and potential laws governing privacy, and to guide and motivate industry as it develops more robust and effective best practices and self-regulatory guidelines. The report suggests implementation of a "Do Not Track" mechanism, so consumers can control the collection of data about their online searching and browsing activities. We're starting to see industry support for Do Not Track. In the few months since the release of the report, self-regulatory efforts have progressed and several companies have come forward with ideas and innovations to enhance consumer choice and online privacy.

On top of all the great work that we do, the FTC continues to be a great place to work. The Commission enjoys a sense of continuity, collegiality, and bipartisanship, year after year. In the U.S. Office of Personnel Management's 2010 Federal Employee Viewpoint Survey, the FTC ranked second out of 37 other Departments and agencies with more than 1,000 full-time employees in leadership, talent, and results-oriented performance culture, and fourth place in job satisfaction.

Looking back at the past year, all of us on the Commission couldn't be prouder of the outstanding accomplishments of the FTC's hardworking staff. We all look forward to continuing to work effectively with our law enforcement partners, Congress, consumer advocates, industry members, and our counterpart agencies around the world to protect consumers and promote competition.





The Commission had an active year in federal court, working to stop costly anticompetitive pay-for-delay patent settlements and consolidation among health care facilities. The FTC is also part of an interagency effort to develop new health care policies that rely on competition to help control the costs of health care.

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To settle charges that it illegally used its dominant position for a decade to stifle competition and strengthen its computer chip monopoly, Intel agreed to no longer retaliate against computer manufacturers who do business with its rivals. The FTC's consent order clears the way for competition unfettered by Intel's exclusionary conduct.

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Based on more than 40 years of enforcing privacy law, FTC staff proposed a framework to balance consumer privacy with industry innovation in the 21st century. FTC staff proposes (1) "privacy by design;" (2) simplified consumer choice; and (3) increased transparency of data practices.

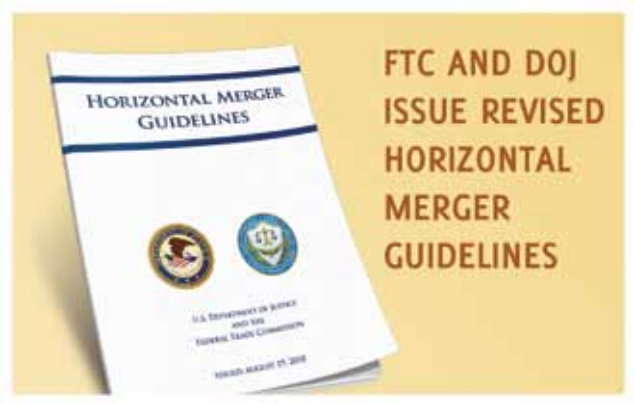
MORE ON PAGE 34



This year, the FTC challenged health claims made by several national food advertisers, including Dannon Company, Kellogg Company, Nestlé HealthCare Nutrition, Inc., and POM Wonderful, and strengthened order language. These actions make clear that no advertiser can make disease prevention and health benefit claims without real substantiation.

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FTC in 2011 Highlights



The first major update in 18 years, the 2010 Horizontal Merger Guidelines more accurately reflect how the federal antitrust agencies identify and evaluate mergers that are likely to harm competition. The revised Guidelines provide more clarity and predictability for businesses.

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The FTC continued stepped up efforts to protect consumers struggling to make ends meet, with major enforcement sweeps to stop job scams, business opportunity fraud, medical discount fraud, and debt and mortgage relief schemes. The FTC also finalized two Rules to prohibit companies from charging advance fees for debt relief and mortgage assistance services.

MORE ON PAGE 22



The FTC has information that tech-savvy consumers need to make informed choices, manage their finances, stay safe online, and avoid fraud. Consumers looking for up-to-date information on how to avoid the latest scams and schemes can now "like" the FTC on Facebook, "follow us" on Twitter, or check out educational videos on the FTC's YouTube channel.

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Using a key information sharing provision of the U.S. SAFE WEB Act of 2006, the Commission and Canadian authorities worked together to preserve for consumer redress the assets of an international robocall ring that allegedly conned nearly 13,000 consumers out of $995 each with false promises that it would reduce their credit card interest rates.

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PROTECTING
AMERICA'S
CONSUMERS

SECTION ONE: COMPETITION MISSION

Effective and efficient antitrust enforcement promotes competitive prices and spurs innovation. The FTC works hard to fulfill its mission to promote competition and protect consumers from anticompetitive mergers and business conduct that can throttle our economy and slow our economic recovery. Merger filings have begun to rebound from historic lows, and the Commission's competition work continues to support reinvigorated markets. Through enforcement, study, advocacy, and education, the FTC protects consumers by ensuring that markets work well, providing lower prices, more choices, and more innovation for the future.

The FTC maintained an active litigation workload this year of competition matters. The Commission successfully concluded its monopolization case against Intel Corporation, clearing the way for new and dynamic competition in the important market for computer chips. To settle the FTC's charges, Intel agreed to stop using a variety of exclusionary and deceptive practices that had insulated it from real competitive forces for more than a decade. The Commission's action was necessary to put competition among innovative chip companies on a path for future success, unencumbered by marketing arrangements that shored up Intel's monopoly by penalizing customers who bought from rivals.

The Commission also initiated two federal court injunction actions to block potentially harmful mergers and an administrative proceeding challenging a professional board's allegedly unfair and restrictive actions

HSR Transactions, Second Requests, and Merger Enforcement Actions

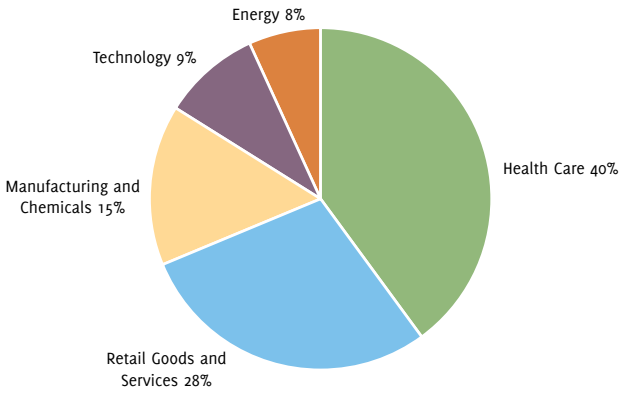
Fiscal Year	HSR Transactions	Second Request	Merger Enforcement Actions			
			Total	Consents	Authorized Complaints and PIs	Abandoned
2007	2,108	31	22	14	3†	5
2008	1,656	21	21	13	2†	6
2009	684	15	19	9	7†	3
2010	1,128	20	22	18	1	3
2011*	595	7	7	3	2†	2

* Represents Fiscal Year 2011, October 1, 2010 through February 28, 2011.
† In fiscal years 2007, 2008, 2009, and 2011 the Commission authorized staff to file both an administrative complaint and a federal court action in multiple matters. To avoid double counting, these cases are included only once.

to stave off competition from low-cost providers. The Commission continues to pursue other federal court proceedings that could end harmful "pay-for-delay" agreements by ultimately attaining Supreme Court review of patent settlements that include payments by patent holders to potential generic competitors in exchange for delaying market entry. The Commission also went to court several times to compel compliance with its subpoenas and investigative demands. And, the Commission issued a decision in ***Polypore***, finding that Polypore's consummated merger with Microporous harmed competition and ordering the reversal of the merger-to-monopoly in the market for battery components.

In addition to an increasing workload of merger review and enforcement, the Commission led the way in the development of merger policy that is based on demonstrated harm to competition and consumers. In August 2010, the FTC and the Department of Justice issued revised Horizontal Merger Guidelines for the first time in more than 18 years. The revised Guidelines, which reflect analytical tools currently in use at the agencies, incorporate new economic learning to help implement the mandate of the Clayton Act: to prevent mergers that can lead to long-lasting competitive harm. The revised Guidelines also provide more transparency so that businesses and their counsel may better understand the merger review process. The extensive and transparent process of revising the Guidelines included consultation with the public, the business community, and scholars, as well as antitrust enforcement officials in other countries. As a result, the revised Guidelines accurately synthesize the agencies' approach to quickly identify and remedy potentially harmful mergers.

ENFORCEMENT ACTIONS BY SECTOR
FY 2007 THROUGH FY 2011*



*Represents Fiscal Year 2011 through February 28, 2011.

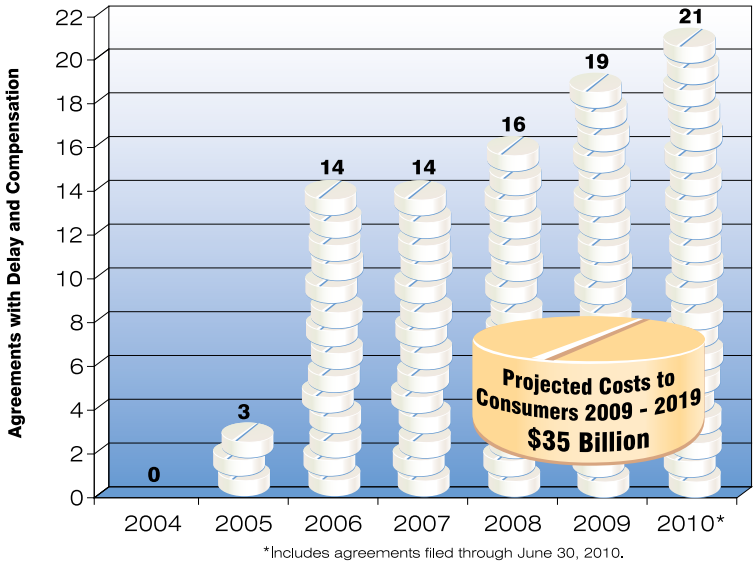
To leverage its limited resources, the Commission focuses on industries that most directly affect consumers, such as health care, technology, energy, and retail goods and services, and works to prevent the kinds of harmful mergers and conduct that undermine our economy and affect competition for goods and services consumers buy every day.

CHAPTER 1: HEALTH CARE MARKETS

Stopping Anticompetitive Pay-for-Delay Agreements

The Commission's top competition priority continues to be stopping pay-for-delay agreements, in which a branded drug company pays its potential generic competitor to abandon a patent challenge and delay offering a generic version to patients. The Hatch-Waxman Act, enacted more than two decades ago, was designed to hasten generic drug entry, while giving brand-name manufacturers the patent protection they

THE GROWING PROBLEM WITH PAY-FOR-DELAY SETTLEMENTS



"Hopefully, the courts will put an end to these deals. In the meantime, the FTC will continue to explain, in court and in the halls of Congress, why these sweet-heart deals for drug companies are such a bad deal for American consumers and taxpayers."

– Chairman Leibowitz, news release, April 29, 2010

need to encourage lifesaving research. For some years, the law worked as intended, bringing generic drugs to market faster and resulting in significantly lower prices for consumers. Over time, however, drug companies have been able to delay generic competition by raising patent disputes and entering into pay-for-delay agreements to settle patent claims.

The Commission has a two-pronged approach to ending anticompetitive pay-for-delay agreements: active support for a legislative ban and federal court challenges to invalidate individual agreements. The need to find a solution is greater now than ever. According to data released by the agency in July 2010, the number of harmful pay-for-delay agreements is increasing each year. On average, these agreements have delayed generic entry nearly 17 months longer than patent settlements without such payments. The FTC projects that over the next 10 years, pay-for-delay agreements will cost American consumers an estimated $35 billion or $3.5 billion per year.

For many years, the Commission has actively supported legislation that would put a stop to harmful pay-for-delay agreements. In the 111th Congress, proposed legislation to stop these agreements advanced in both chambers of Congress, passing the House twice, as well as the Senate Appropriations and Judiciary Committees. The President's budget for 2012 proposes giving the FTC the authority to stop harmful pay-for-delay agreements, which the budget assumes would generate savings for the government of $540 million in 2012, and a total savings of almost $8.8 billion through 2021.

The Commission continues to prosecute two federal court challenges to pay-for-delay agreements, and filed an *amicus* brief with the Second Circuit in a private action. Throughout the year, the staff also reviews new agreements that are reported to the FTC pursuant to the Medicare Modernization Act.

- **Provigil.** The Commission's case charging ***Cephalon, Inc.*** with an illegal pay-for-delay agreement for its branded drug, Provigil, is in active discovery after the court in the Eastern District of Pennsylvania denied



COMMISSIONER EDITH RAMIREZ

"Accounting for more than 17.6 percent of annual GDP, the health care industry impacts the lives and pocketbooks of all American consumers, which is why the Commission should continue its vigilance in this sector. In 2010, the Commission challenged anticompetitive mergers of health care providers, pharmaceutical firms, and medical device manufacturers, as well as agreements to restrain competition in health care markets. The Commission also has challenged unlawful health claims, protected the privacy of sensitive health information, and fought fraudulent medical discount programs. As the Affordable Care Act is implemented, the Commission will continue to encourage procompetitive collaboration that may reduce costs and improve quality."

the defendants' motions to dismiss the complaint, finding that the agreements may violate the antitrust laws. Provigil is an FDA-approved treatment for patients with sleep apnea, narcolepsy, and shift-work sleep disorder, with annual U.S. sales of over $800 million.

- **AndroGel.** In 2009, the Commission and the California Attorney General challenged an agreement between ***Solvay Pharmaceuticals, Inc.***, maker of AndroGel, and two generic drug manufacturers to abandon their patent challenges and delay marketing a generic formulation until 2015. AndroGel is Solvay's branded testosterone-replacement drug, a prescription pharmaceutical with sales of more than $400 million a year. Currently, the case is before the Eleventh Circuit Court of Appeals.

- **Cipro *Amicus* Brief.** In a rare move, in April 2010 the U.S. Court of Appeals for the Second Circuit invited the plaintiffs in the private Ciprofloxacin drug patent settlement case (*Arkansas Carpenters Health and Welfare Fund v. Bayer AG*) to seek further review by the full Court of Appeals because of the "exceptional importance" of the antitrust implications of pay-for-delay settlements. In May, the Commission filed an *amicus* brief in support of plaintiffs-appellants petition for rehearing *en banc*. The Commission argued that an earlier decision, *In re Tamoxifen Citrate Antitrust Litig.*, was based on mistaken assumptions about the pharmaceutical industry, and that the decision did not properly consider the Hatch-Waxman Act. The Second Circuit denied the petition for rehearing *en banc*, and the private plaintiffs petitioned for Supreme Court review, which was recently denied.

Preserving Competition in Pharmaceuticals and Medical Devices

The Commission reviewed a number of proposed acquisitions in the pharmaceutical and medical device industry, mergers that threatened to reduce the number of firms working on innovative treatment options and cost-saving drugs. In total, the Commission reviewed 32 acquisitions valued in excess of $130 billion.

- **Injectable Eye Care Drugs.** To settle Commission charges that its ***proposed acquisition of Alcon, Inc.*** from Nestlé, S.A. would be anticompetitive, ***Novartis AG*** agreed to sell rights and assets related to injectable miotics, an eye care drug used in cataract surgery to constrict the pupil and check for ruptures in the eye. Novartis and Alcon are the only two U.S. providers of injectable miotics, a market with annual sales of over $12 million. The Commission alleged that the acquisition would have created a monopoly for these drugs; the settlement requires Novartis to sell its drug Miochol-E to Bausch & Lomb, Inc.

- **Drug Treatment for Heart Defects in Premature Babies.** In federal court in Minneapolis, the FTC and the State of Minnesota sought to remedy the harmful effects from ***Ovation Pharmeceutical's 2006 acquisition of the rights to NeoProfin***, a drug used to treat congenital heart disease in approximately 30,000 babies each year in the United States. At a December 2009 trial, the Commission argued that Ovation's purchase gave it a monopoly over the only two drugs used to treat patent ductus arteriosus, a life-threatening heart defect, and allowed Ovation (now Lundbeck) to raise prices more than 1300 percent. In August 2010, the district court dismissed the complaint, finding that the two drugs were in separate product markets. The Commission, along with the State of Minnesota, has appealed the court's ruling to the Eighth Circuit.

HOSPITAL MERGER RETROSPECTIVES

To better understand the competitive impact of hospital mergers on prices and quality of care, the Bureau of Economics has examined post-merger economic data from a number of completed transactions. This research, which has resulted in a series of published hospital merger retrospectives, informs the Commission's analysis of proposed hospital mergers. This year, economists studied the impact on clinical quality of the 2000 acquisition of Highland Park Hospital by Evanston Northwestern Healthcare in Evanston, Illinois, finding little evidence that the merger caused quality to improve at Highland Park.

Promoting Competition Among Health Care Facilities

Competition among health care facilities, such as hospitals, clinics, and clinical laboratories, helps control health care costs and provides vital incentives to improve services. This year, the Commission brought two preliminary injunction actions in federal court to challenge allegedly harmful mergers of health care facilities, and required divestitures in a third merger between competing chains of psychiatric hospitals.

- **Clinical Labs.** In December, the FTC challenged ***Laboratory Corporation of America's acquisition of rival clinical laboratory testing company, Westcliff Medical Laboratories, Inc.*** The agency alleged that the transaction would harm competition, leaving only two significant labs in Southern California competing to provide critical testing services to most physician groups. A hearing on the FTC's request for a preliminary injunction was held in federal district court in California. In February, the district court ruled that the Commission had not met its burden to enjoin the merger pending an administrative trial, which is scheduled to begin on May 2, 2011.

- **Hospital Services in Lucas County, Ohio.** The Commission and the Ohio Attorney General challenged ***ProMedica Health System's purchase of St. Luke's Hospital***, charging that there are only a few competing hospitals in Lucas County, Ohio, the area surrounding Toledo. The agency alleged that the deal will reduce competition and allow ProMedica to raise prices for general acute-care and inpatient obstetrical services, significantly harming patients as well as local employers and employees, through higher insurance premiums, co-pays, or out-of-pocket expenses. Although ProMedica consummated the acquisition at the end of August, it agreed to refrain from certain actions – for example, renegotiation of St. Luke's health-plan contracts and consolidation of St. Luke's clinical services – while the FTC investigated the potential anticompetitive effects of the transaction. The FTC sought a court-ordered injunction while the administrative trial, which is set to begin in May, is pending.

- **Psychiatric Treatment Facilities.** The FTC required ***Universal Health Services, Inc.*** to sell 15 psychiatric facilities as a condition to completing its ***$3.1 billion acquisition of Psychiatric Solutions, Inc.*** According to the complaint, the proposed merger would have significantly consolidated Universal Health's market power in three areas (Delaware, Puerto Rico, and metropolitan Las Vegas, Nevada), enhancing its ability to impose price increases and reducing incentives to improve services. The settlement preserves competition for these critical services in each of the three local markets and requires divestiture to Commission-approved buyers.

Defining Standards for Collaboration Among Physicians and Physicians Associations

The FTC acts to stop collusion among health care providers that keeps reimbursement rates high without providing benefits for patients. In addition to enforcing antitrust standards, the Commission is working with other federal agencies to develop guidelines for collaboration that is encouraged by the new health care law. Clinical integration by physicians and other health care providers can improve patient care and lower costs, and the Commission actively supports such integration. As described in a speech by Chairman Jon Leibowitz to the American Medical Association's House of Delegates, the antitrust laws pose no barrier to bona fide collaboration among health care providers – doctors, hospitals, clinics and others – to improve care and control costs.

Enforcement

- **Minnesota Rural Health Cooperative.** The Commission charged that the Minnesota Rural Health Cooperative (MRHC), a group of approximately 25 hospitals and 70 doctors, had engaged in anticompetitive tactics to increase health insurance reimbursement rates. The group represented most of the hospitals and half of the primary care physicians in southwest Minnesota. The FTC alleged that the MRHC used coercive tactics, including threats to terminate contracts, to pressure insurers to increase payments for

physician and hospital services. MRHC agreed to settle the charges and can no longer use coercive tactics to extract favorable contract terms from health plans.

- ***In the Matter of the North Carolina State Board of Dental Examiners.*** In June 2010, the Commission charged the North Carolina State Board of Dental Examiners, which is dominated by practicing dentists, with illegally blocking non-dentists from providing teeth-whitening services in the state. Dentists in North Carolina offer whitening services in their offices and sell take-home kits, but consumers can also purchase teeth-whitening services from non-dentist providers at salons, mall kiosks, and retail stores, often at much lower prices. The FTC filed an administrative complaint alleging that the Board's actions, including improperly sending letters ordering these vendors to stop offering teeth-whitening services, made it harder to obtain these services and more expensive for North Carolina consumers. In February, the Commission denied the Board's motion to dismiss the complaint on state action grounds, ruling that the Board had not satisfied the two-pronged requirements of the state action defense because the State did not "actively supervise" the Board's actions so as to ensure that the Board's practices were consistent with state policy. The administrative trial began on February 17, 2011.

> *"[A]llowing the antitrust laws to apply to the unsupervised decisions of self-interested regulators acts as a check to prevent conduct that is not in the public interest."*
>
> *– Commission Decision in North Carolina State Board of Dental Examiners, February 8, 2011*

Standards for Collaboration Under the New Health Care Law

The FTC and the DOJ are working with Centers for Medicare & Medicaid Services (CMS) and the Office of Inspector General of the Department of Health and Human Services (HHS) to implement provisions of the new health care law relating to the formation of Accountable Care Organizations (ACOs). The law encourages providers to create integrated health care delivery systems that can improve the quality of health care services and lower health care costs. In particular, the act establishes a Shared Savings Program to promote the formation of ACOs: an ACO can share in the savings it creates for Medicare if the ACO meets certain quality performance standards, which are to be established by the HHS Secretary. The goal of this interagency project is to develop clear rules for ACOs to achieve integrated and efficient care by different health care providers.

Last October, the Commission co-hosted a public forum to discuss how ACOs would be affected by other laws that will apply to ACO formation – such as the antitrust laws, bans on physician self-referral, and federal anti-kickback rules. The workshop was attended by a wide range of health care industry stakeholders: physicians, physician associations, hospitals, health systems, payers, employers, and consumers, as well as experts in health care policy. Panelists discussed two important issues: (1) clinical integration by ACOs, focusing on the circumstances under which collaboration among independent health care providers in an ACO could permit those providers to engage in joint price negotiations with private payers without running



Peggy Bayer Femenella, Bureau of Competition

An attorney in the Bureau's Anticompetitive Practices Division, Peggy is a stand-out litigator. She has investigated all different types of anticompetitive practices and worked on five administrative trial teams, challenging conduct in the real estate, computer hardware and software, and gasoline industries. Most recently, Peggy was a lead member of the agency's Intel trial team, and helped defend the Commission's decision in Realcomp, which is before the Sixth Circuit Court of Appeals.

the risk of illegally fixing prices; and (2) ways to encourage formation of multiple ACOs among otherwise independent providers so that competition among ACOs in any given geographic market will improve the quality and affordability of health care.

The FTC has since consulted with CMS to help develop its regulations implementing the Medicare Shared Savings Program. In addition, the FTC and the DOJ are working to provide antitrust guidance to those ACOs that participate in the Shared Savings Program and also offer the same ACO services to commercial payers.

Advocacy

The Commission also comments on proposals to regulate health care providers, urging the adoption of policies that promote competition.

- **Optical Goods Regulation.** FTC staff comments to the North Carolina Board of Opticians explained that the Board's proposal to restrict the sale of contact lenses, eyeglasses, and other optical goods in the state would likely raise costs and restrict choices for consumers. The comments also suggested that the proposal appears to conflict with the Fairness to Contact Lens Consumers Act and the FTC's Contact Lens and Eyeglass Rules, which protect consumers' ability to obtain their prescriptions promptly at no charge.

- **Limits on Dental Hygienists.** Commission staff urged the Georgia Board of Dentistry to reject a proposal that would prohibit dental hygienists from providing basic preventive dental services in approved public health settings except under the indirect supervision of a dentist. A letter to the Board explained that, while there is no evidence that such supervision is necessary to prevent harm to dental patients, the proposed rule amendments likely would raise the cost of dental services in Georgia and reduce the number of consumers receiving dental care. The staff comments expressed particular concern that the changes would harm the state's most vulnerable consumers, including children in rural and low-income communities.

CHAPTER 2: TECHNOLOGY AND INFORMATION MARKETS

Technology advances are critically important to growing our economy, creating jobs, and introducing more efficient products and processes into the marketplace. American technology and information companies connect the world, and the efficient production of information helps businesses compete, grow, and cut costs. As a result, the FTC is especially vigilant to promote competition in technology and information sectors of the economy.

Enforcement

- **Computer Chips: the Intel Settlement.** In an administrative action brought in December 2009, the Commission charged that Intel's course of conduct over the last decade stalled the widespread adoption of non-Intel products, limited market adoption of non-Intel Central Processing Units (CPUs) to the detriment of consumers, and kept chip prices high. According to the Commission's complaint, Intel's conduct was designed to maintain its monopoly in the markets for computer chips, and to create a monopoly for Intel in the market for graphics processing units. In June 2010, the Commission announced a settlement with Intel that aims to prevent the recurrence of Intel's exclusionary and deceptive conduct without stifling its ability to innovate and compete fairly. Notably, the proposed settlement does not seek to strip Intel of its chip monopoly; rather, it provides relief designed to restore the competition lost as a result of Intel's past conduct, such as requiring Intel to maintain an open interface on certain CPU platforms for six years. Coupled with provisions that prevent Intel from engaging in similar conduct in the future, these requirements open the door to fair and vigorous competition in chip markets in the coming years.

> **Bloomberg.com**
>
> AUGUST 4, 2010
>
> **Intel Can't Use Threats, Bundled Prices Under Accord, FTC Says**
>
> By Jeff Bliss & Ian King
>
> "This case demonstrates that the FTC is willing to challenge anticompetitive conduct by even the most powerful companies in the fastest-moving industries," FTC Chairman Jon Leibowitz said in a statement today.

- **High-Performance Measurement Instruments.** To settle FTC charges, ***Agilent Technologies, Inc.*** and ***Varian, Inc.***, two leading global suppliers of high-performance scientific measurement instruments, agreed to sell three of their product lines in order to proceed with their proposed $1.5 billion merger. The parties agreed to sell assets related to the manufacture and sale of Micro Gas Chromatography instruments, Triple Quadrupole Gas Chromatography-Mass Spectrometry instruments, and Inductively Coupled Plasma-Mass Spectrometry instruments to a Commission-approved buyer.

- **Educational Marketing Databases.** The Commission issued an administrative complaint challenging ***The Dun & Bradstreet Corporation's February 2009 acquisition of Quality Education Data (QED)***,

alleging that the deal hurt customers by eliminating nearly all competition in the market for kindergarten through 12th-grade educational marketing databases. The data sold by these companies is used to sell books, education materials, and other products to teachers and other educators nationwide. Dun & Bradstreet settled the charges by agreeing to sell an updated database, the QED name, and associated intellectual property to a third company, MCH Inc., so that it can replace the lost competition.

- **Title Insurance Databases.** To settle Commission charges that its 2008 acquisition of three LandAmerica Financial, Inc. subsidiaries was anticompetitive, ***Fidelity National Financial, Inc.*** agreed to sell several title plants and related assets in the Detroit, Michigan and Portland, Oregon metropolitan areas, and in four other Oregon counties. Title plants are databases used by abstractors, title insurers, title insurance agents, and others to determine real property interests when underwriting and issuing title insurance polices.

- **Closing Statement in Google Inc./AdMob.** The Commission issued a detailed statement when it closed its investigation of Google Inc.'s proposed acquisition of mobile advertising network company AdMob. After thoroughly reviewing the deal, the FTC concluded that the merger was unlikely to harm competition in the emerging market for mobile advertising networks. Mobile ad networks, such as those provided by Google and AdMob, sell advertising space for mobile publishers, who create applications and websites configured for mobile devices, primarily Apple's iPhone and devices that run Google's Android operating system. The Commission said that although the combination of the two leading mobile advertising networks raised serious antitrust issues, the agency's concerns ultimately were overshadowed by developments in the market, most notably a move by Apple Computer Inc. to launch its own, competing mobile ad network. In addition, a number of firms appeared to be developing smartphone platforms to better compete against Apple's iPhone and Google's Android, and these firms would have a strong incentive to facilitate competition among mobile advertising networks.

> *"Our competition laws have served America well. They have proven adaptable to changes in markets and business models across a span of more than 100 years. The Commission's work enforcing the antitrust laws will continue to be an important part of our national success in preventing competitive harm in new and dynamic markets while fostering and rewarding innovation and entrepreneurship."*
>
> *— Richard Feinstein, Director, Bureau of Competition, testimony before the House Committee on the Judiciary, Subcommittee on Courts and Competition Policy, September 16, 2010*

Reports

Recently, the Commission issued the report, *The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition,* which recommends ways to improve policies governing patent notice (how well a patent informs the public of what technology is protected) and remedies for patent infringement





Suzanne Michel, Office of Policy Planning

As Deputy Director of the Office of Policy Planning, Suzanne Michel led the FTC's project on the Evolving IP Marketplace, including organizing hearings held during 2009 and drafting the recently released report. Before joining the FTC in 2000, Suzanne was a patent litigator for the Department of Justice and a Federal Circuit law clerk. She has been an integral part of many agency initiatives involving patent law and the IP/antitrust interface, including enforcement actions challenging pay-for-delay patent settlements and deception of a standard setting organization.

(damages and injunctions). The recommended changes would improve how patent law and competition policy further their common goals of enhancing consumer welfare and promoting innovation.

Patent notice affects innovation and competition in multiple ways. Clear notice of what a patent covers can increase innovation by encouraging collaboration, technology transfer, and "design-arounds." Poor notice will undermine these benefits if potential licensees cannot find relevant patents, or if they hesitate to invest in technology when the scope of patent protection is unclear. Poor patent notice can also distort competition by forcing firms to design products and make investments with incomplete information on the cost and availability of different technologies. The report makes recommendations for improving areas of patent law that impact the notice function, including claim interpretation, specification requirements, and examination practice.

Effective patent remedies are critical to incentives to innovate, but they also have a significant impact on competition among technologies. Patent remedies protect the ability of patentees to earn returns by deterring infringement, and making patentees whole when infringement does occur. Damages that under-compensate patentees and weak injunctions can deter investment in research and development and result in fewer innovative products and services. Over-compensation and injunctions that cause patent "hold up," however, can lead to higher prices and encourage speculation in patent rights, which deters innovation. The report recommends that courts adopt an economically grounded approach to calculating patent damages that recognizes competition from non-infringing alternatives, and that courts take into account the ability of injunctions to cause patent hold up based on an infringer's sunk costs.

CHAPTER 3: ENERGY INDUSTRY

The energy industry plays a crucial role in our economy. Few issues are as important to consumers and businesses as the prices they pay for gasoline and for energy to heat and light their homes and businesses. Accordingly, the Commission devotes significant resources to monitoring energy markets. For example, the FTC monitors retail and wholesale prices of gasoline and diesel fuel in 20 wholesale regions and approximately 360 retail areas in the United States. The Commission also monitors compliance with the Petroleum Market Manipulation Rule, which prohibits manipulation in wholesale markets for crude oil, gasoline, or petroleum distillates, including reviewing information received from the public. Complaints that evidence

a serious possibility of a Rule violation are referred to FTC litigation units that specialize in maintaining competition in energy industries. Complaints that concern activity in futures markets are shared with the Commodity Futures Trading Commission to ensure that consumers are protected against fraud and deception in those markets.

On the merger front, the Commission received premerger notices for 79 proposed acquisitions involving products in energy markets during 2010. The agency reviewed each of these transactions and tracked the industry for non-reportable transactions that may raise competitive concerns. This year, the Commission investigated acquisitions involving crude oil and natural gas exploration, production, and transportation; refined products pipelines and terminals; refined products wholesaling; retail gasoline and diesel fuel sales; liquefied petroleum gas (propane); natural gas storage facilities and pipelines; and natural gas liquids processing plants, fractionation plants, pipelines, and wholesaling.

Enforcement

- **Travel Center Networks.** ***Pilot Corporation***, owner of the largest travel center network in the United States, agreed to sell 26 travel centers, which provide diesel, food, parking, and other amenities for truckers, to replace the competition that would have been lost due to its ***proposed $1.8 billion acquisition of Flying J Inc.*** The FTC charged that the deal between Pilot and Flying J would have reduced competition for certain long-haul trucking fleets for which Pilot and Flying J were the first and second best choices to fulfill their diesel needs. Pilot agreed to sell the travel centers to Love's Travel Stops and Country Stores, the smallest national travel center operator, whose locations, prior to the divestiture, were primarily concentrated in the South.

Reports and Studies

- **Ethanol Report.** As required by the Energy Policy Act of 2005, the Commission released its sixth annual report on ethanol market concentration, concluding that the U.S. ethanol market is still unconcentrated. The report finds that there are 160 firms in the United States either producing ethanol or likely to be in production within the next 18 months.

- **Petroleum Refinery Merger Retrospective.** The Bureau of Economics staff studied the effects of two refinery acquisitions in the Northeast to see if they were associated with post-merger price increases in either gasoline or diesel at retail and wholesale levels. The results indicated that the transactions did not significantly raise prices.

- **Gasoline Pricing Studies.** The Bureau of Economics continues to conduct research into gasoline pricing, and this year released two working papers on the subject of asymmetric pricing cycles in U.S. gasoline markets. The first looks at retail pricing behavior in response to cost shocks and finds that upward cost shocks are passed through to U.S. gasoline prices more quickly than downward cost shocks. The second

examines data on average daily city-level retail gasoline and diesel prices for 355 cities in the United States from 2001-2007 to identify price cycles.

Advocacy

- **Below-cost Gasoline Prices.** Commission staff submitted comments to the New Jersey State Senate expressing support for a bill that would modify current law to allow gasoline retailers to set their prices below cost to meet competition, so long as such prices are not set with intent to injure competition. The comments explained that because the proposed legislation would allow New Jersey gasoline retailers to compete more aggressively on price, New Jersey consumers will likely benefit from the proposed legislation.

- **Comments to the FERC.** This year, the FTC submitted a number of comments to the Federal Energy Regulatory Commission on several topics: (1) how alternative sources of energy – such as wind farms, solar cells, and solar thermal installations – can best be integrated into the nation's electric power grid; (2) a proposal to set compensation levels for retail electricity customers that support demand response programs offering incentives for customers to reduce power consumption during peak times; and (3) procompetitive and efficient ways for public utilities to plan for new electricity transmission lines and allocate the costs of paying for them.

CHAPTER 4: CONSUMER GOODS AND SERVICES

The Commission also focuses its enforcement resources on mergers and anticompetitive business conduct that threaten competition for goods and services that consumers buy every day. Over the years this has resulted in Commission actions involving a variety of products, from groceries and health care products, to soft drinks and sports equipment. The impact on consumers is direct, and the Commission has a special obligation to enforce the rules of competition in these markets. This year the Commission took action to preserve or promote competition in the following consumer goods markets.

- **Carbonated Soft Drinks.** The ***Coca-Cola Company*** agreed to restrict its access to confidential competitive business information of rival Dr Pepper Snapple Group as a condition for completing its ***proposed $12.3 billion acquisition of its largest North American bottler***, which also distributes Dr Pepper Snapple carbonated soft drinks. Under the settlement, Coca-Cola will set up a firewall to ensure that its ownership of the bottling company does not give certain Coca-Cola employees access to commercially sensitive confidential Dr Pepper Snapple marketing information and brand plans. In a complaint filed with the settlement, the Commission charged that access to this information likely would have harmed competition in the U.S. markets for carbonated soft drinks.



Joe Lipinsky, Northwest Region

Since joining the FTC in 1992, Joe has investigated mergers in a variety of industries, ranging from casinos and caskets to wholesale automobile auctions and title insurance plants. Most recently, he led the investigation of a merger of outlet malls, the FTC's first foray into an acquisition by a Real Estate Investment Trust, that resulted in divestitures and lease modifications to preserve competition. Joe also has worked on mergers between technology companies, such as the combination of Flow and Omax, in which he negotiated order provisions requiring Flow to grant royalty-free patent licenses to spur competition in the sale of high-tech waterjet cutting systems.

- **Northeastern Grocery Stores.** The Commission reached a settlement agreement with ***Tops Markets LLC*** to protect shoppers from the potential anticompetitive effects of Tops' ***recent acquisition of the bankrupt Penn Traffic Company*** supermarket chain. The Commission adopted a flexible process for reviewing this acquisition in order to prevent the liquidation of the 79 Penn Traffic stores in the bankruptcy proceeding. Given the tight timelines of the bankruptcy process, the FTC agreed to let Tops proceed with the purchase of the Penn Traffic stores on condition that Tops would keep the stores operating during the Commission investigation and divest any Penn Traffic stores in local geographic markets where the FTC determined that competition was likely to be harmed by the combination. The Commission ultimately concluded that competitive concerns existed in five geographic markets and required Tops to divest seven stores.

- **One-way Truck Rentals.** The Commission charged that ***U-Haul*** issued an illegal invitation to collude to its closest competitor, Avis Budget Group, in violation of Section 5 of the FTC Act. The FTC alleged that U-Haul's CEO told his local U-Haul dealers to talk to their counterparts at both Budget and Penske – truck rental competitors – to tell them that U-Haul had raised its one-way rates, and encourage them to match U-Haul's higher rates. If successful, U-Haul's suggestion to raise prices on rental trucks would have had a significant impact on consumers, inflating the cost of truck rentals that consumers across the country rely on every day. In settling the charges, the Commission has prohibited U-Haul from colluding or inviting collusion on prices, and imposed monitoring and compliance programs to prevent a recurrence.

The New York Times

JUNE 9, 2010

U-Haul to Settle With Trade Agency in Case on Truck Rental Price-Fixing

By Edward Wyatt

"It's a bedrock principle that you can't conspire with your competitors to fix prices, and shouldn't even try," Mr. Leibowitz said. "Consumers deserve better. The order announced today will ensure that U-Haul will not try it again."

- **Outlet Malls.** The Commission challenged ***Simon Property Group's $2.3 billion acquisition of 22 outlet centers owned by Prime Outlets Acquisition Company***, two nationwide owners of retail space in outlet malls. To settle the charges, Simon agreed to divest certain property in Ohio and to remove radius

restrictions in its leases for tenants with stores in its outlet malls serving the Chicago and Orlando markets. This change in Simon leases allows competing outlet centers or outlet mall developers wanting to enter those markets to sign up current Simon tenants that were affected by the radius restrictions.

CHAPTER 5: INDUSTRIAL AND MANUFACTURING SECTORS

Mergers and anticompetitive practices involving industrial products and intermediate goods can have a significant impact on the manufacturing sector of the U.S. economy, which is home to many jobs. The agency looks closely at mergers and conduct in these vital sectors to keep business costs down and promote competition that will help maintain a vigorous manufacturing base in the United States.

Enforcement

- **Battery Separators.** This year the Commission ruled that ***Polypore International, Inc.'s 2008 acquisition of Microporous Products***, a rival manufacturer of battery components, violated Section 7 of the Clayton Act and led to higher prices for flooded lead-acid battery separators – membranes that are placed between the positive and negative plates of flooded lead-acid batteries. Last spring, an administrative law judge found that the Polypore/Microporous combination decreased competition and raised prices for battery separators sold to customers in North America. On appeal, the FTC rejected arguments that any anticompetitive effects of the deal would be offset by entry from another U.S. battery separator maker or Asian suppliers, or that large, powerful buyers would prevent Polypore from exercising market power. The Commission ordered Polypore to divest Microporous's former plants in Piney Flats, Tennessee, and Feistritz, Austria, along with assets, technology, and intellectual property that Microporous owned at the time of the acquisition. Polypore has appealed the Commission's decision to the Eleventh Circuit.

  With its November decision in Polypore, the Commission met new expedited deadlines for administrative trials under its revised Part III Rules. The Commission applied the new rules retroactively in this proceeding, issuing its decision within 100 days of oral argument.

- **Advanced Ceramics.** To settle charges that its proposed acquisition would harm competition, ***Keystone*** agreed to divestitures demanded by the FTC to proceed with its ***$245 million purchase of Compagnie de Saint-Gobain's advanced ceramics business***. The companies both produce alumina wear tile used to line industrial equipment and protect it from abrasive wear. Keystone and Saint-Gobain are two of only a few significant suppliers in North America for these types of tile. Under the settlement, Saint-Gobain will retain an alumina wear facility in the United States, and Keystone will obtain prior approval from the Commission before acquiring any of Saint-Gobain's North American alumina wear tile assets for a period of ten years. Additionally, for a period of five years, Saint-Gobain must notify the FTC before selling its North American alumina wear tile assets or halting operations at the U.S. facility.

The U.S. antitrust agencies routinely cooperate with competition agencies in other countries when investigating mergers between companies with global operations. This cooperation promotes transparency and predictability for businesses subject to simultaneous merger review, and reduces the risk of inconsistent outcomes and remedies. For instance, the Australian Competition and Consumer Commission, the Canadian Competition Bureau, and the United Kingdom's Office of Fair Trading and Competition Commission reviewed the merger of Nufarm and A.H. Marks; the FTC worked particularly closely with Canadian antitrust investigators, arriving at a settlement that restored competition in both the U.S. and Canadian markets for certain herbicides. In many instances, international cooperation is aided by the parties' waivers of certain confidentiality rights so the agencies can have more meaningful discussions regarding their analyses of the merger and can, if enforcement action is warranted, seek compatible remedies.

- **Hot Rolling Oil.** To resolve concerns over the merger of two leading North American providers of hot rolling oil used to process aluminum, ***Houghton International*** agreed to sell some of the assets it acquired in 2008 when it purchased ***D.A. Stuart GmbH***. The Commission's investigation found that the acquisition combined the two largest suppliers of aluminum hot rolling oil in North America, giving the combined firm control of almost 75 percent of the market. The Commission's complaint alleges that the merger would likely lead to higher prices and reduced innovation for this vital input into aluminum manufacturing. Under the order settling the Commission's charges, Houghton will sell Stuart's hot rolling oil business to Quaker Chemical Corporation.

- **Herbicides.** Australian chemical company ***Nufarm Limited*** agreed to sell certain assets and modify some of its business agreements to settle charges that its 2008 acquisition of rival ***A.H. Marks Holding Limited*** hurt competition in the U.S. markets for three herbicides that are used by farmers, landscapers, and consumers. According to the complaint, Nufarm's acquisition gave it monopolies in the U.S. markets for two phenoxy herbicides, and left only two competitors in the market for a third phenoxy herbicide. These products are widely used in the turf, lawn care, and agriculture industries to eliminate certain weeds safely and inexpensively. Under the settlement, Nufarm agreed to sell rights and assets associated with two of the herbicides to competitors and to modify agreements with two other companies to allow them to fully compete in the market for the other herbicide.

- **Liquid Industrial Gases.** Industrial gas supplier ***Air Products and Chemicals, Inc.*** reached an agreement with the Commission requiring the company to sell certain liquid gas assets in the event that it completed its cash tender offer acquisition of Airgas, a competing industrial gas supplier. The FTC alleged that the takeover would likely harm competition in five regional markets for bulk liquid oxygen and bulk liquid nitrogen, which are used in a range of applications from hospital patient care to the manufacture of frozen foods. The Commission order preserves this competition should the acquisition proceed.

CHAPTER 6: OTHER COMPETITION INITIATIVES

Subpoena Compliance

The FTC brought two new subpoena enforcement actions and continued existing litigation challenging tactics that delayed agency investigations.

- ***FTC v. Boehringer Ingelheim Pharmaceuticals, Inc.*** The Commission filed a petition to enforce a *subpoena duces tecum* issued to Boehringer in an investigation seeking to determine whether Boehringer and Barr Pharmaceuticals, Inc. used unfair methods of competition with respect to the sale of Boehringer's patented drugs, Mirapex and Aggrenox, or their generic equivalents. The matter was reassigned to a magistrate on November 29, 2010.

- ***FTC v. Church & Dwight Co., Inc.*** The Commission filed a petition to enforce a *subpoena duces tecum* and civil investigative demand issued to Church & Dwight in an investigation to determine whether Church & Dwight used unfair methods of competition when selling condoms, such as conditioning discounts or rebates to retailers on shelf space devoted to Trojan brand condoms and other products. On December 23, 2010, the district court granted the Commission's petition. Church & Dwight filed a notice of appeal and asked the district court to stay its enforcement order. The district court denied the motion, and on January 27, 2011, the D.C. Circuit denied Church & Dwight's request for a stay pending appeal.

- ***FTC v. Bisaro.*** The Commission filed a petition to enforce a *subpoena ad testificandum* issued to the CEO of Watson Pharmaceuticals in an investigation to determine whether Watson or other pharmaceutical companies have entered into unlawful agreements to prevent generic competition to Watson's branded sleep-disorder drug, Provigil. On December 2, 2010, the district court granted the Commission's petition and directed Watson's CEO to appear and testify.

- ***FTC v. ProMedica Health System, Inc.*** The Commission filed an emergency petition to enforce subpoenas and civil investigative demands issued to ProMedica, Paramount Health Care, and St. Luke's Hospital seeking documents and information needed by the Commission to assess ProMedica's acquisition of St. Luke's Hospital. On January 12, 2011, after the parties provided the Commission with the responsive materials and certified their substantial compliance with the process, the Commission dismissed its enforcement proceeding.

Business Guidance

- **Ethical Rules for Accounting Firms.** Staff of the Bureau of Competition issued an advisory opinion letter covering a change in the professional code of conduct being proposed by a trade group representing accountants nationwide that would assure the public that audits by associated firms are conducted objectively. In the letter sent to the American Institute of Certified Public Accountants, staff said it would not



COMMISSIONER J. THOMAS ROSCH

"A significant development in 2010 was the issuance of updated Horizontal Merger Guidelines by the federal antitrust agencies. The 2010 Guidelines advance merger analysis by eliminating the need to define a relevant market and determine industry concentration at the outset. In addition, the 2010 Guidelines provide greater transparency to the business community by identifying the types of evidence the agency considers in assessing the competitive effects of a transaction. To be sure, the 2010 Guidelines are not perfect – there is insufficient attention paid to non-price effects and too much emphasis on economic models – but they are nevertheless a significant advancement."

recommend blocking a proposed expansion of the group's "independence rule," because it appears likely to enable small and medium-sized accounting firms to increase their effective size and scope to compete for additional accounting work.

Amicus Briefs

- ***Tivo, Inc. v. EchoStar Corporation.*** The FTC's *amicus* brief supports neither of the parties, but urges the Federal Circuit, when crafting the standards for triggering contempt rather than requiring a new infringement trial, to consider how making summary contempt proceedings and sanctions too easily available could dampen incentives for follow-on innovation, while at the same time, enforceable injunctions can also be an important prerequisite to innovation and entry.

- ***E.I. Du Pont De Nemours and Co. v. Kolon Industries, Inc.*** In their joint brief, the FTC and the Department of Justice urged the Fourth Circuit to vacate the district court's ruling and remand the case for further consideration of the sufficiency of defendant's geographic market allegations under the proper legal standard.

- ***INEOS Americas LLC v. The Dow Chemical Company.*** Filed at the invitation of the Second Circuit, the Commission's brief states that, to the extent the Court examines the public interest, that interest would be served by a contract remedy that will ensure that INEOS has access to supplies of ethylene oxide that will promote its ability to remain an active and dynamic competitor. The brief takes no position on the ultimate disposition of the contract law issues before the Court.

Congressional Testimony

- ***Trinko* and *Credit Suisse.*** The Commission testified before the House Judiciary Committee's Subcommittee on Courts and Competition Policy to describe the impact of two recent Supreme Court cases – *Verizon v. Trinko* and *Credit Suisse v. Billing* – on antitrust enforcement in regulated industries. The Commission argued that federal courts should not be able to use the Trinko and Credit Suisse decisions to limit public antitrust enforcement actions brought by the FTC or DOJ in regulated industries.

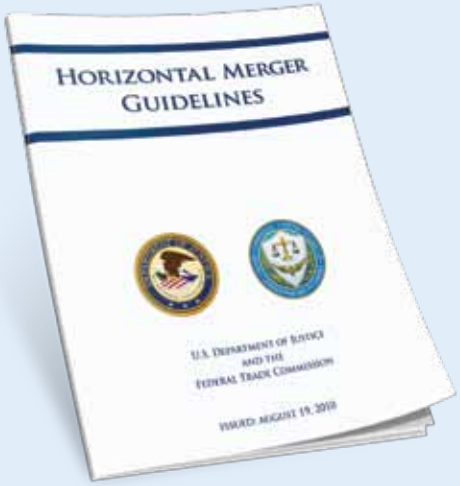
REVISED HORIZONTAL MERGER GUIDELINES

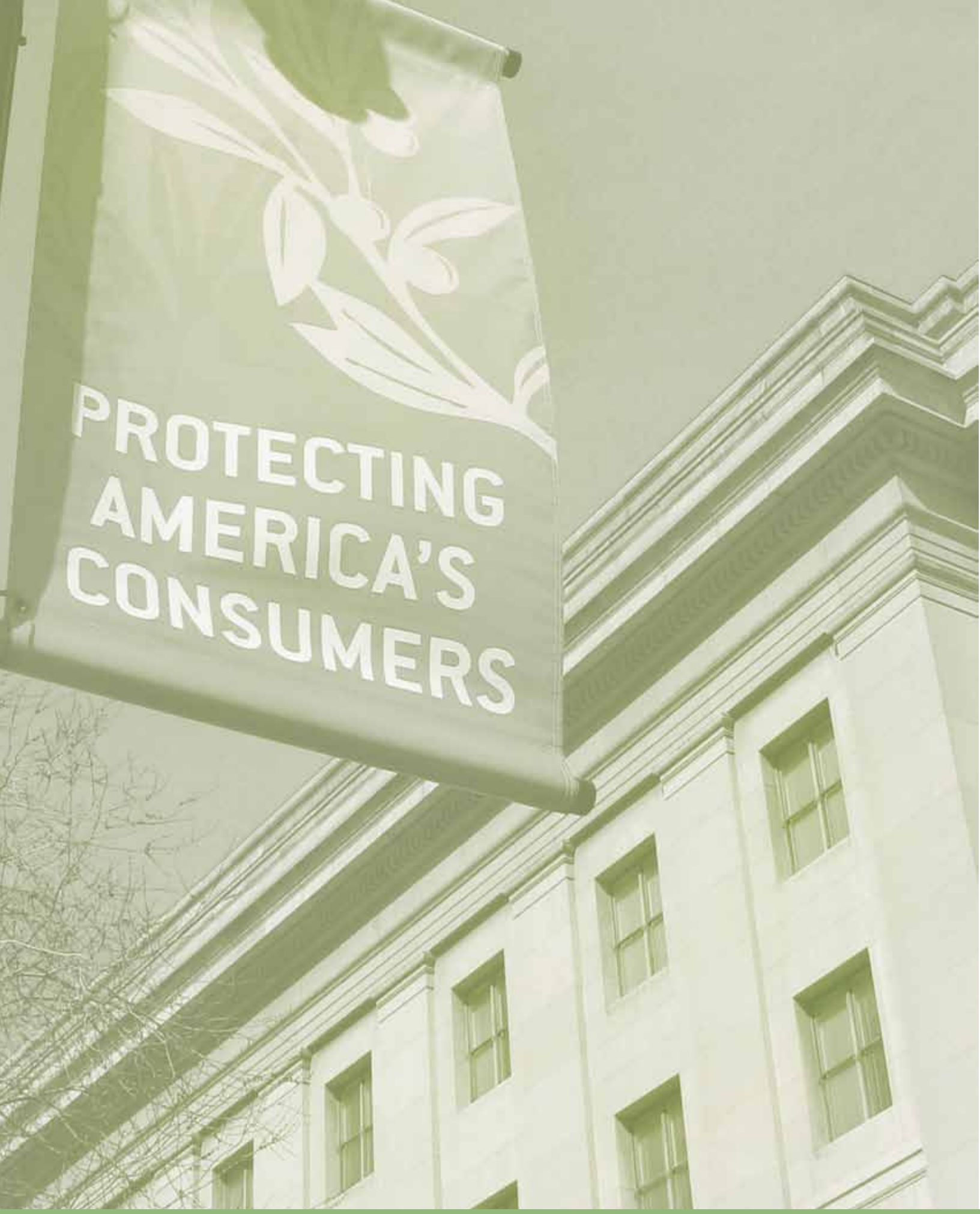
In August 2010, the Commission and the Department of Justice released an update of their joint Horizontal Merger Guidelines to outline how the federal antitrust agencies currently assess the likely competitive impact of a merger to determine if it complies with U.S. antitrust law. Advances in economic understanding and additional experience led to this effort to ensure that the Guidelines accurately reflect the way the FTC and DOJ conduct merger reviews.

The revised Guidelines underscore that merger analysis does not consist of uniform application of a single methodology. Rather, it is a fact-specific process through which the agencies apply a range of analytical tools to the reasonably available and reliable evidence to evaluate competitive concerns in a limited period of time. Moreover, the agencies' analysis need not start with defining a relevant market, and the agencies may conclude that a merger is anticompetitive without precisely defining a relevant market, especially when there is direct evidence of competitive effects.

Other notable changes include:

- Further explanation of the types of evidence used to demonstrate adverse competitive effects
- Higher concentration thresholds to assess whether further scrutiny by the agencies is advisable
- Expanded discussion of unilateral competitive effects, including effects on innovation
- Restructured framework for predicting coordinated effects
- Simplified entry analysis
- New sections on powerful buyers, mergers between competing buyers, and partial acquisitions




PROTECTING
AMERICA'S
CONSUMERS

SECTION TWO: CONSUMER PROTECTION MISSION

The FTC engaged considerable resources over the last year working to protect consumers from fraud, deception, and unfair practices in the marketplace. From April 2010 through March 15, 2011, the Commission filed 38 actions in federal district court and obtained 82 judgments and orders requiring the defendants to pay nearly $368 million in consumer redress or disgorgement of ill-gotten gains. Cases referred to the Department of Justice resulted in eight civil penalty orders and over $5 million in assessed civil penalties. In addition, the Commission gave final approval to 14 administrative orders.

The Commission worked with particular purpose and a sense of urgency to tackle scams targeting financially strapped consumers. As consumers continued to reel from the economic downturn, they reached out for help, but many of the entities they thought might save them from foreclosure, fix bad credit reports, lower their credit card interest rates, or help them find a job, charged them substantial upfront fees for empty promises of salvation. Throughout the year, the FTC worked diligently to protect consumers from these fraudulent operators, often partnering with other law enforcement authorities – local, state, federal, and foreign – to achieve the best results for consumers. To prevent future scams, the FTC issued both the debt settlement and the mortgage relief rules that ban advance fees for debt relief services.

For the Commission this also has been an incredible year of reports, proposals, and litigation protecting consumers' privacy, ensuring advertising claims are substantiated, strengthening order language, and focusing on health care-related fraud. FTC staff released a preliminary Privacy Report with bold proposals such as a new "Do Not Track" option to protect the privacy of consumers. The FTC entered its largest FTC-multistate privacy settlement to date, with 35 state attorneys general, and entered its first settlement with a social networking site that failed to honor its commitment to keep certain consumer communications private. The Commission challenged national food advertisers like Kellogg Company, Nestlé HealthCare Nutrition, Inc., the Dannon Company, and POM Wonderful LLC, charging the companies made disease prevention and health benefit claims without real substantiation. The FTC also approved order language prohibiting companies that have made unsubstantiated disease prevention or treatment claims from making such claims in the future unless the Food and Drug Administration has approved the claims for use in labeling; and, for certain other health claims, specifying the quality and quantity of scientific evidence the company must have to substantiate those claims in the future. With extensive effort from its regional offices, the FTC orchestrated over 50 actions by multiple agencies against companies that sold "medical discount plans" to uninsured or uninsurable consumers and then failed to deliver the promised discounts.

The FTC also worked to educate consumers with the intent that each educational tool will help stop a fraud from occurring. The FTC produced educational materials in a variety of formats – print, video, online – about job scams, negative options, interest rate reduction, as well as debt and tax scams. Finally, the FTC continued its outreach to grassroots and community organizations to get those educational materials in the hands of those who likely may be targeted during difficult times.

CHAPTER 7: PROTECTING CONSUMERS IN A TROUBLED ECONOMY

Deceptive Mortgage Practices

Enforcement

- **Foreclosure Rescue and Loan Modification Scams.** In response to numerous mortgage relief scams that have sprung up during the mortgage crisis, the FTC continued its aggressive campaign to protect distressed homeowners. The FTC targeted operations that falsely claimed that, for an up-front fee, they would negotiate with the consumer's mortgage lender or servicer to obtain a loan modification, short sale, or other foreclosure relief. The Commission announced several enforcement actions last June as part of a sweep in conjunction with the multi-agency Financial Fraud Enforcement Task Force. Examples of these cases include:

  - ***Home Assure.*** According to the FTC's complaint, Home Assure charged consumers an up-front fee of $1,500 to $2,500 and promised them it could save their homes from foreclosure. Consumers, however, received little or no help in exchange for their payments. Home Assure agreed to pay $2.4 million; the FTC has set up a redress fund and anticipates returning approximately $2.3 million to over 1,400 consumers.

  - ***Residential Relief Foundation.*** The Commission charged the defendants with falsely promising consumers who were behind on their mortgage payments that they would negotiate with the consumers' lenders to obtain more affordable payments. In promoting their services, the defendants also falsely claimed that Residential Relief Foundation was affiliated with the U.S. government and that it would implement appropriate measures to protect consumers' personal information. The court granted a temporary restraining order and asset freeze against the defendants to prevent any further harm to consumers.

  - ***Dinamica Financiera.*** The FTC charged that two corporate defendants, a law firm, and several principals falsely promised Spanish-speaking consumers that they would stop foreclosure or obtain mortgage loan modifications. The defendants charged up-front fees, but often failed to live up to

their promises, leading many consumers who paid those fees to lose their homes. In November, the court entered summary judgment of more than $5 million.

- **Mortgage Servicing.** The FTC also continued to actively police the mortgage servicing industry. The Commission settled a major case against one of the country's largest mortgage servicers, ***Countrywide*** (now ***Bank of America***), and obtained $108 million that will be returned to harmed consumers. The FTC charged Countrywide and an affiliated company with unlawfully charging excessive fees for default-related services such as property inspections and mortgage trustee services, making false or unsubstantiated claims about the amounts owed by homeowners in bankruptcy, and failing to inform homeowners in bankruptcy that new fees or charges were being added to their loans. As part of the settlement, Countrywide agreed to stop its challenged servicing practices and make significant changes to its business practices.

Rulemaking, Workshops, & Comments

As required by the Omnibus Appropriations Act of 2009, as amended by the Credit CARD Act of 2009, the FTC initiated rulemaking proceedings regarding mortgage assistance relief services and unfair or deceptive mortgage practices. Commission staff also filed comments with the Federal Reserve on the Home Mortgage Disclosure Act. Each initiative requires industry members to give consumers the information they need and to ensure that information is understandable.

- **Mortgage Assistance Relief Services Rule.** Issued in December 2010, the final rule aims to stop scammers before they harm consumers by banning mortgage relief companies from collecting any fees before providing mortgage relief. Under the rule, such companies may not collect a fee from a consumer until the consumer's lender or servicer has delivered, and the consumer has accepted, an offer of mortgage relief. The rule also requires mortgage relief companies to disclose that (1) they are not associated with the government and their services have not been approved by the government or the consumer's lender; (2) there is no guarantee that the lender will change the consumer's loan; and (3) if the consumer stops making mortgage payments, the consumer could lose her home and damage her credit rating. The rule prohibits companies from making misrepresentations about the likelihood of favorable results, the amount of money consumers will save by using their services, or the cost of the services.



- **Mortgage Acts and Practices Rulemaking.** Continuing efforts to assist consumers in receiving information about mortgage loans that is truthful and non-misleading, the FTC proposed a Mortgage Acts and Practices Rule in September 2010. The proposed rule would ban misrepresentations in the marketing of mortgages, and would be enforceable by the FTC and the states. The Commission is currently reviewing public comments.

- **Staff Comments on Home Mortgage Disclosure Act.** In response to a request for comments by the Federal Reserve Board, in December 2010, FTC staff recommended changes to the Home Mortgage Disclosure Act's Regulation C. The FTC staff recommended that the Board (1) expand the number of mortgage lenders required to report loan data; (2) require lenders to report on additional types of loans, such as reverse mortgages and home equity lines of credit; (3) report additional data fields for all reported loans; and (4) make the mortgage data available to the public and useful to researchers while still protecting mortgage applicants' privacy.

Consumer Education

To help consumers pick a mortgage that suits their needs, the Commission created consumer guides on mortgage and foreclosure issues. These are important resources for consumers hoping to protect themselves from scams. The guides appear to be valued by consumers as there were more than 43,000 web accesses since April 2010. In 2010, the FTC launched a new publication, *Defaulting on Your Mortgage Can Have Costly Consequences*, which explains to homeowners the implications of not making their mortgage payments. The Commission also updated its mortgage materials: *Mortgage Servicing: Making Sure Your Payments Count*, *Mortgage Payments Sending You Reeling? Here's What to Do*, and *Mortgage Assistance Relief Scams: Another Potential Stress for Homeowners in Distress*.

Deceptive Work-at-Home, Get-Rich-Quick, and Related Schemes

Enforcement

As high unemployment continued, consumers looked for money-making opportunities but often found themselves seduced by fraudulent offers to make easy money. During the last year, the FTC brought a total of 43 law enforcement actions, including several targeting schemes that prey upon consumers – bogus government grants and business and job scams – and others that pushed back against a pervasive practice in which online marketers use "negative option continuity plans" that are not adequately disclosed.

- **"Trial" Memberships.** In December, the FTC filed suit against ***The iWorks Enterprise***, a far-reaching Internet enterprise involving 61 corporations, that allegedly lured consumers into "trial" memberships for bogus government-grant and money-making schemes, and then repeatedly charged consumers high monthly fees for those and other memberships consumers never signed up for, causing more than $275 million in injury. At the request of the Commission, a federal court has frozen the assets of all of the involved corporations and of their alleged leader, Jeremy Johnson. The defendants' assets are under the control of a court-supervised receiver to help ensure that funds are available for consumer restitution when the case is concluded.

- **Work-at-Home Opportunities.** In October, the marketers behind ***Google Money Tree*** entered into a settlement agreement with the FTC. The FTC alleged that the defendants operated a bogus



Valerie M. Verduce, Southeast Region

Valerie is a leader in advancing BCP's 13(b) litigation program. She successfully investigates and litigates complex cases including, most recently, Moneyworks, a large credit card interest-rate-reduction and auto warranty robocall case which resulted in multiple bans and a $25 million judgment, and SureTouch, an unauthorized billing case which resulted in a $15.6 million judgment, a ban, and a $5 million bond against the defendants. Valerie shares her expertise through various committees, and in outreach programs such as the "Timeshare Resale Project," a task force of local, state, and federal enforcers formed to combat timeshare resale fraud.

work-at-home scheme, charging hidden monthly fees to consumers' credit card and bank accounts, misrepresenting that their products were affiliated with Google, Inc., and falsely promising consumers that they could make $100,000 in six months. The final order halts the defendants' business, requires they surrender more than $3.5 million in assets, and bars the defendants from using "negative option" marketing.

- **Economic Downturn Sweep.** In March 2011, the Commission announced *Operation Empty Promises*, a multi-agency initiative targeting job scams, business opportunity fraud, and bogus work-at-home opportunities. The sweep involved 90 enforcement actions, including 48 criminal actions by the DOJ (assisted in large part by the U.S. Postal Inspection Service), seven additional civil actions by the U.S. Postal Inspection Service, 28 actions by 11 state law enforcement agencies, and several new actions by the FTC.

  - In its complaint against ***Ivy Capital, Inc.***, the Commission alleged that the defendants obtained over $40 million by selling through outbound telemarketing, fraudulent products, and services purported to help consumers start their own Internet business. According to the FTC complaint, the defendants convinced consumers to authorize thousands of dollars of charges to their credit cards by telling consumers that they would recoup their expenditures in a few months, or by promising monthly earnings as high as $10,000. The FTC also filed a complaint against ***National Sales Group***, alleging that the defendants deceived consumers into paying for their employment goods and services by creating a false impression that the defendants either were themselves hiring workers, or were recruiters affiliated with potential employers. According to the FTC's complaint, the defendants often charged nearly $100 in fees when consumers agreed to pay only about $30, causing at least $8 million in consumer injury. In both of these actions, the FTC alleged violations of the FTC Act and the Telemarketing Sales Rule (TSR).

  - The FTC also referred a civil penalty matter to the DOJ to enforce alleged violations of the TSR. The complaint alleged that ***Business Recovery Services, LLC*** and its principal engaged in an outbound telemarketing scheme to sell products and services purported to help consumers recover sums that they previously had lost to business opportunity scams. According to the complaint, in numerous instances consumers were unable to recover any of their prior losses; in addition, the defendants

routinely charged advance fees to consumers, in violation of the TSR. Consumers allegedly lost an estimated total of $1.5 million in this scheme.

- **Timeshare Resales.** Over the last three years, the number of complaints related to fraudulent timeshare resales has more than tripled. In October, the FTC sued and obtained preliminary relief against ***Timeshare Mega Media and Marketing Group, Inc.***, a telemarketing operation that allegedly scammed millions of dollars from property owners who were hoping to sell their timeshares. The FTC alleged that the Florida-based operation conned consumers by promising that it had buyers ready and waiting to purchase their timeshares. Only after making a hefty up-front payment did consumers learn that there were no buyers and that it was nearly impossible to get a refund. Preliminary injunctions entered in the case imposed a receivership over the corporate defendants and froze the assets of all of the defendants.

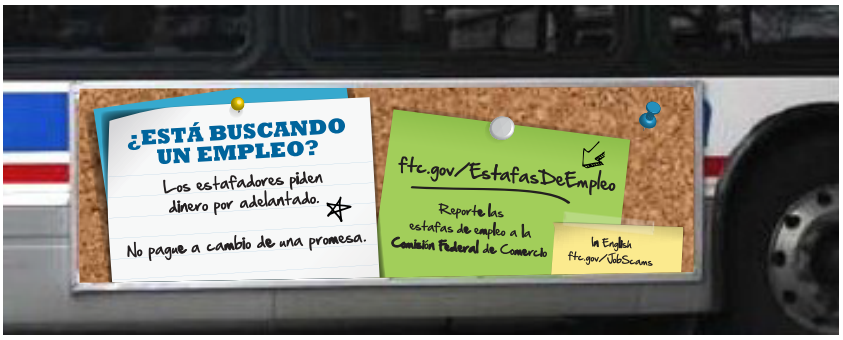
- **Fake Sweepstakes.** In December, the FTC pursued perpetrators offering fake sweepstakes. In ***Prize Information Bureau***, the Commission charged four individuals and eight corporations with misrepresenting that they were affiliated with an official government agency and that consumers would receive a multi-million dollar sweepstakes prize upon remitting a $20 processing fee. The court entered a temporary restraining order freezing the defendants' assets and a preliminary injunction continuing the asset freeze.

Rulemaking & Comment

- **Business Opportunity Rule Staff Report.** In October, Commission staff issued a report on proposed changes to the Business Opportunity Rule. The proposed rule aims to protect consumers from widespread and persistent business opportunity fraud, while making compliance with the rule less burdensome for legitimate business opportunity sellers. The proposed rule would expand the scope of covered entities to include work-at-home opportunities such as envelope stuffing, medical billing, and product assembly, which are routinely associated with empty promises. In addition, the proposed Business Opportunity Rule would require that sellers of business opportunities make important disclosures to consumers regarding earnings claims, litigation history, refund or cancellation policies, and references, in one simple, easy-to-read document. The proposed rule would replace the 2007 interim rule.

Consumer Education

The Commission continues to find ways to alert consumers to scams. This year the FTC created Spanish-language transit posters to educate passengers on how to spot and avoid job scams. In November, the ads ran on the interior and exterior of buses in four markets: New York, Chicago, Los Angeles, and



Miami. The FTC also produced job scam videos, available in English and Spanish, which logged nearly 6,000 views since April 2010.

Other Unfair or Deceptive Consumer Credit and Financial Services Practices

Throughout the year, the FTC committed substantial resources to protect consumers in areas where consumers may be the most vulnerable when economically distressed – debt collection, credit repair, tax relief, lending, and debt relief.

Enforcement

- **Debt Collection.** During the past year, the FTC reached separate settlement agreements that imposed record civil penalties against two of the nations' largest debt collectors – ***Allied Interstate, Inc.*** and ***West Asset Management, Inc.*** The Commission alleged that Allied continued collection efforts even after consumers told the company that they did not owe the debts, without verifying the accuracy of the disputed information or otherwise having a reasonable basis for representing that the consumers owed the debts. Allied also was charged with violating the Fair Debt Collection Practices Act (FDCPA) and Section 5 of the FTC Act for making harassing phone calls to consumers, making repeat calls to third parties seeking to locate a consumer, revealing alleged debts to third parties without the consumer's consent or court permission, and threatening legal action against consumers that it did not intend to take. Under the settlement agreement, Allied paid a $1.75 million civil penalty and agreed to stop illegal collection efforts. The Commission also filed an action alleging that West Asset Management violated the FTC Act and the FDCPA by falsely misrepresenting the consequences of nonpayment and withdrawing funds from consumers' bank accounts without authorization. To settle this action, West Asset Management agreed to pay a $2.8 million civil penalty, which is the Commission's highest civil penalty in a debt collection case.

SIGNIFICANT CIVIL PENALTY CASES	
West Asset Management	$2,800,000
Allied Interstate	$1,750,000
JAK Productions	$300,000
Central Credit	$150,000
Talbots	$112,000
SmartReply	$49,000

April 2010 - March 15, 2011. These do not include amounts suspended by the court based on inability to pay. Default judgments are included.

- **Credit-Related Offers.** The Commission took action against a number of operators preying on financially distressed consumers, offering "financial solutions" that never materialized. The schemes included deceptive credit card and payday loan offers, fraudulent credit card interest-rate-reduction plans, and credit repair scams. For instance, the FTC obtained a summary judgment ruling against ***USA Financial, LLC***, a telemarketer that defrauded consumers by falsely promising to deliver a credit card for an up-front payment of $200. The court issued a comprehensive injunction, a ban on telemarketing, and a monetary judgment of more than $17.3 million. In ***Swish Marketing, Inc.***, the Commission reached settlements with the principals of a payday loan marketing company. The defendants, through fine-print disclosures



Jackie Johnson, Office of Executive Director

As the Acting Assistant CIO for Infrastructure Operations in the Information Technology Management Office, Jackie leads a team of 43 employees to support the agency's IT systems, including email, telecommunications, applications, and databases. Jackie is a team player whose work in various groups has enhanced IT support for key programs such as the Do Not Call Registry, and led to the rollout of new capabilities for wireless services, BlackBerry devices, and the agency's Voice over IP.

and pre-clicked "yes" options, allegedly deceived consumers who were applying for payday loans into unwittingly paying for unwanted pre-paid debit cards. In ***Economic Relief Technologies, LLC***, the defendants allegedly initiated robocalls to consumers offering credit card interest rate reduction services and automobile service contracts. The final order includes several bans and could recover approximately $3 million from the defendants' assets to apply toward consumer redress. Shortly after filing the FTC's case, the three individual defendants were indicted by a federal grand jury. In ***United Credit Adjusters, Inc.***, a court banned eight companies and three of their four principals from selling credit repair and mortgage relief services, and ordered them to pay more than $7.5 million for deceiving consumers. The court also entered a stipulated permanent injunction against the fourth principal with similar injunctive relief. The FTC alleged that the defendants had charged consumers up to $2,000 in fees in exchange for false promises to improve credit scores by removing negative information – such as late payments, charge-offs, collections, inquiries, delinquencies, judgments, and accounts discharged in bankruptcy – from credit reports.

- **Debt and Tax Relief Services.** Over the last several years, the FTC has filed 27 actions against advertisers and providers of phony debt relief services, entities that offer to help consumers renegotiate, settle, or change the terms of their debt to an unsecured creditor or debt collector. These actions allege violations of the FTC Act and, in some cases, the TSR. In 2010, the FTC filed complaints against debt relief providers ***Financial Freedom Processing, Inc.*** and ***Debt Consultants of America, Inc.*** for allegedly making unsubstantiated claims that consumers who enrolled in their programs could eliminate 30 to 60 percent of their credit card debt and be out of debt in 18 to 36 months. Also, the Commission entered a settlement with a debt settlement lead generation company, ***Debt.com Marketing LLC***. The Commission's complaint alleged the defendants disseminated ads claiming that it could "eliminate your debt by up to 60%." Consumers who called were immediately routed to a third-party debt settlement company that attempted to sell their services. The defendants' claims were unsubstantiated because they neither provided the debt relief services, nor verified the third parties who bought their leads could deliver what the ads promised. The settlement bans three corporate defendants and one principal from the debt relief business and imposes a $28.2 million judgment on the company. The judgment will be suspended once the defendants surrender all funds in their corporate bank accounts, as well as the proceeds from the sale of the principal's real estate properties in California and the Virgin Islands, and his ownership interests in two overseas investment funds. And, the FTC obtained preliminary relief against ***American Tax Relief LLC***,

a California company that, according to the Commission, cheated consumers out of more than $60 million by advertising that it could substantially reduce consumers' federal and state tax debts. Virtually all consumers who called in response to the ads were told that they "qualified" for a tax relief program that would significantly reduce their tax debts even though such programs are available only in very limited circumstances.

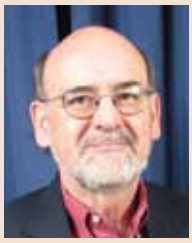
- **Fair Lending.** In its continuing efforts to eliminate unlawful discrimination in mortgage pricing, the FTC settled its action against ***Golden Empire Mortgage*** and its owner. The FTC alleged that the defendants violated the Equal Credit Opportunity Act by charging Hispanic consumers higher prices for mortgage loans than non-Hispanic white consumers with similar credit and risk characteristics. The order imposed a $5.5 million judgment, all but $1.5 million of which is suspended based on the defendants' financial situation. The money is being used to provide redress to the harmed consumers. Additionally, the defendants must limit discretionary pricing, implement a fair lending monitoring program, conduct employee fair lending training, ensure data integrity, and conduct regular compliance reporting.

Rulemaking & Reports

- **Debt Relief Services Amendments to the Telemarketing Sales Rule.** The FTC amended the TSR last July to restrict certain deceptive and abusive practices. The amended TSR expands the coverage of the rule to cover calls made by consumers to debt relief services in response to general advertising and most direct mail promotions. The rule prohibits debt relief services from collecting any fees from consumers until (1) they have actually renegotiated, settled, reduced, or otherwise changed the terms of at least one of the consumer's debts; (2) the consumer has executed an agreement for debt relief with the creditor or debt collector as a result of the service; and (3) the consumer has made a payment to the creditor or debt collector pursuant to that agreement. The amended rule prevents debt relief services from front-loading their fees or making misrepresentations regarding any material aspect of their service, such as the percentage of their debts that consumers will avoid, and it requires the disclosure of key information, such as the amount of time necessary to obtain the claimed results.

- **Debt Collection Litigation and Arbitration Report.** After a series of nationwide roundtable discussions and a review of public comments in July 2010, the Commission issued a report concluding that the system for resolving consumer debt collection disputes is broken, and recommending significant reforms to debt collection litigation and arbitration to improve efficiency and fairness to consumers. The report addressed concerns relating to debt collection litigation identified in a February 2009 report, including collectors failing to properly notify consumers of lawsuits; collectors filing suits based on insufficient evidence; frequent default judgments entered against consumers who do not appear or defend themselves; collectors seeking to recover on





Peter Vander Nat, Bureau of Economics

Peter joined the FTC in 1988 and has worked on a wide variety of consumer protection issues. An expert on pyramid schemes, Peter served as a witness for the FTC, DOJ, SEC, and several states on 15 pyramid cases. He is the lead economist on the Congressionally-mandated study of credit report accuracy and has authored biennial interim Reports to Congress since 2006. Peter designed the FTC's study of credit report accuracy, which asks 1,000 consumers nationwide to review their credit reports with an expert who helps them identify potential errors in order to dispute the errors with credit reporting companies.

debts beyond the statute of limitations; and banks freezing funds in bank accounts that are exempt from garnishment by law. The 2010 report made several recommendations for litigation reform: (1) states should consider adopting measures to make it more likely consumers will defend themselves in litigation (including ensuring consumers receive adequate notice) and to require collectors to include more debt-related information in their complaints; (2) states should consider steps to make it less likely that collectors sue on debt on which the statute of limitations has run; and (3) federal and state laws should be changed to prevent the freezing of funds exempt from garnishment.

The debt collection report also addressed several areas of concern with the current arbitration system identified in the 2009 report, including requiring consumers to resolve debt collection disputes through binding arbitration without meaningful choice; bias or the appearance of bias in arbitration proceedings; and procedural unfairness in arbitration proceedings. To improve the arbitration system, the 2010 report recommended (1) consumers be provided meaningful choice about arbitrating debt collection disputes; (2) arbitrators eliminate bias and the appearance of bias; (3) arbitration proceedings be conducted in a manner likely to increase consumer participation; (4) arbitration awards contain more information about how the case was decided and how the award was calculated; and (5) the process be made more transparent.

Consumer Education

- **Tax and Debt Relief.** The FTC launched a new publication, *Avoiding Tax Relief Scams*, to alert taxpayers about operations that misrepresent their ability to reduce or even eliminate tax debts and stop back-tax collection by applying for IRS hardship programs. The Commission also released a series of audio public service announcements about debt relief services, warning consumers about companies that falsely promise to erase their debts.

- **Credit.** The FTC released a new publication educating consumers facing credit problems: *Credit Card Interest Rate Reduction Scams* cautions consumers who may receive robocalls promoting credit relief services. Consumers continued to turn to the Commission's educational resources on credit, logging more than 5,500 web accesses since April 2010.

The Fair Credit Reporting Act

Consumers are concerned about weathering difficult economic times without damaging their ability to obtain credit in the future. The Fair Credit Reporting Act (FCRA) places obligations on entities reporting, using, and providing information about consumers' credit histories, and the Commission brought cases to ensure the companies were complying with the FCRA.

- The Commission reached a settlement with ***Central Credit LLC***, a nationwide specialty consumer reporting company, barring the defendant from future violations of FCRA. The FTC alleged that Central Credit (1) failed to inform casinos that use its credit reports of their legal obligations under the FCRA, such as providing consumers with adverse-action notices when credit is declined or a check not cashed; (2) failed to inform consumers of their rights under the FCRA, such as the right to obtain a free annual credit report; and (3) failed to have a streamlined process for consumers to request free annual credit reports. In addition to imposing a $150,000 civil penalty, the settlement requires Central Credit to provide FCRA-mandated notices to users and furnishers of consumer report information; provide a "Summary of Rights" to consumers who obtain reports from the defendant; and have a streamlined process for consumers to obtain a free annual credit report.

- The FTC began investigating ***Response Makers, LLC*** to determine whether Response Makers has been violating the FCRA or engaging in unfair or deceptive acts or practices with respect to the sale or marketing of prescreened consumer reports. When Response Makers failed to comply with a subpoena, the FTC filed a petition to enforce the civil investigative demand; on November 19, 2010, the district court granted the Commission's enforcement petition.

Medical Discount Fraud

In its first medical discount card sweep, the FTC announced a crack-down on scammers who take advantage of uninsured, uninsurable, and unemployed consumers by deceptively marketing "medical discount plans" as insurance. The multi-agency effort, dubbed ***Healthcare Hustle***, included a total of 54 lawsuits and regulatory actions by the FTC and state law enforcers in 24 states.

Enforcement

The Commission brought three cases, ***Health Care One***, ***Consumer Health Benefits Association***, and ***United States Benefits, LLC***, alleging the defendants in each case misrepresented the plans they were selling. The FTC alleged each defendant misrepresented that its medical discount plan program was health insurance, was affiliated with the U.S.

twitter

"FTC cracks down on 'medical discount plans' that mislead uninsured consumers with promises of savings on medical care"

– @ConsumerWriter, August 2010

government, would provide substantial savings to consumers, and included healthcare providers that the consumers already used or that were located in the consumers' local communities. In *United States Benefits,* the FTC and the Tennessee Attorney General's Office also alleged the defendants made illegal pre-recorded robocalls and calls to consumers whose phone numbers are listed on the National Do Not Call Registry. In each case, the court initially halted the defendants' business practices pending a final resolution and in *United States Benefits*, shortly after the court enjoined the defendants' scheme, the government plaintiffs filed an emergency contempt motion after learning the defendants had withdrawn over $600,000 from various bank accounts in violation of the court's injunction.

Consumer Education

- **Medical Discount Scams.** In July, the FTC developed resources about medical discount scams to alert consumers looking for health insurance to be sure they are getting insurance and not falling for a medical discount scam. This initiative includes a website, a video, a flyer, and a bookmark.



Donation Fraud

The Commission has long sought to protect generous consumers who respond to appeals to their heart strings by ensuring that donations actually benefit those for whom the money was solicited. Most recently, the Commission pursued scam operators appealing to well-meaning consumers who wanted to help the disabled. The FTC's complaint against ***Helping Hands of Hope*** alleged that the company's telemarketers sold over-priced products by falsely misrepresenting that the proceeds would assist handicapped or disabled individuals and by shipping unordered items. The FTC negotiated a settlement imposing a $26 million suspended judgment, based on ability to pay, after the surrender of cash and an interest in real property located in Mexico.

CHAPTER 8: PRIVACY, DATA SECURITY, AND TECHNOLOGY

Privacy, data security, and protecting consumers online are a focus of the FTC's consumer protection mission. New technologies bring vast benefits to consumers, but at the same time they can provide new threats to sensitive consumer information.

Privacy and Data Security

Consumers value their privacy and the FTC has been working to help them manage their own personal information and the personal information of their children. As consumers disclose more and more information about themselves through social media, searches on the Internet, and shopping habits, many consumers may want to limit how their personal information is collected and used. The FTC also continues to work to ensure that companies have adequate data security in place to protect consumer information that they collect.



"Thank you @FTCgov for using a public forum to talk about privacy with so many interested folks"
- Twitter user, December 2010

Enforcement

- As part of its ongoing work related to online behavioral advertising – the practice of tracking consumers' activities online for advertising purposes – in March 2011, the FTC announced a proposed consent agreement with ***Chitika, Inc.*** to settle allegations that the company had engaged in deceptive conduct in violation of Section 5 of the FTC Act. This is the Commission's first case against a network advertiser and marks an important milestone in its efforts to protect consumer privacy. Chitika offers an online behavioral advertising service in which it acts as an intermediary between website publishers and advertisers that wish to have their ads placed on websites. According to the FTC's complaint, the company made unqualified representations in its privacy policy to consumers that they could opt out of behavioral advertising; in fact, for nearly two years, the opt out expired in ten days. The consent agreement requires Chitika to take a number of steps to improve the transparency of, and consumers' ability to control, its collection of consumer data for online behavioral advertising. These steps include posting a clear and prominent notice on Chitika's website stating that the company engages in targeted advertising and giving consumers the opportunity to opt out for a minimum of five years. In addition, Chitika must include an easy-to-use opt-out mechanism embedded in any behaviorally targeted ad it delivers.

- The FTC settled claims against ***EchoMetrix, Inc.***, which sells a software program that enables parents to monitor their children's online activities. The FTC alleged that for several months in 2009, the company also sold a market research service called Pulse that purported to sell marketers access to consumer opinions from social media, such as blogs and chats. The FTC's complaint charged that EchoMetrix made information collected from children via its monitoring software available to users of Pulse and did not adequately disclose this to parents who bought the monitoring software. The settlement prohibits EchoMetrix from using the information from its parental monitoring service for any other purpose.

- Last June, the Commission alleged that ***Twitter, Inc.*** deceived consumers about its data protection policy, failed to honor privacy choices exercised by users, and put consumers' data at risk by failing to safeguard their personal information. The FTC also charged that serious lapses in security allowed hackers to access

THE FUTURE OF PRIVACY

Following a comprehensive series of privacy roundtables to explore the challenges posed by 21st century technology and business practices that collect and use consumer data, such as social networking, cloud computing, online behavioral advertising, and mobile marketing, FTC staff issued and sought public comment on its preliminary privacy report: *Protecting Consumer Privacy in an Era of Rapid Change – A Proposed Framework for Businesses and Policymakers*. This report is intended to inform policymakers, including Congress, as they consider policies and proposals governing privacy, as well as to guide and motivate industry as it develops best practices and self-regulatory guidelines. The report sets forth three main principles:

- The report urges companies to adopt a "**privacy by design**" approach by promoting consumer privacy throughout their organizations and at every stage of the development of their products and services. This includes incorporating substantive privacy protections, such as data security, reasonable data collection limits, sound retention practices, and data accuracy.
- The report urges companies to **simplify consumer choice** by providing key disclosures at a time and in a context when the consumer is making a decision about his or her data.
- Companies should **increase the transparency of their data practices**. Privacy notices should be concise and more standardized. Companies should provide reasonable access to the consumer data they maintain, proportionate to the sensitivity of the data and the nature of its use.

In addition, companies should provide prominent disclosures and obtain affirmative express consent before using consumer data in a materially different manner than claimed when the data were collected. The report also proposed a "Do Not Track" mechanism to increase consumer control over the collection and use of online data. One way to provide universal choice would involve placement of a persistent setting on consumers' web browsers which could signal to visited sites whether the consumer wants to be tracked.





COMMISSIONER JULIE SIMONE BRILL

"I am proud of our draft privacy framework, *Protecting Consumer Privacy in an Era of Rapid Change*, and staff's hard work bringing it to fruition. The report's proposed recommendations have generated a long-overdue discussion about providing meaningful choice to consumers regarding collection, use, and retention of their information. The report is already serving as a catalyst for positive change, with industry taking some good, initial steps to develop tools necessary to protect consumers' privacy. But our work is not complete. I look forward to advancing this discussion during the coming year, and assuring that the Commission's goals for protecting consumers' privacy remain a priority."

nonpublic user information and send out phony tweets from any account. The settlement agreement bars Twitter from misleading consumers about the extent to which it protects the security, privacy, and confidentiality of nonpublic consumer information, and requires the company to establish and maintain a comprehensive information security program.

- The FTC also continued to bring suits against companies that fail to honor their privacy pledges. ***LifeLock, Inc.*** agreed to pay $11 million to the Commission and $1 million to a group of 35 state attorneys general to settle allegations that the company deceptively marketed its identity theft protection services and failed to implement reasonable security measures to protect consumer information. This year the FTC issued redress checks to the nearly one million LifeLock victims.

- The Commission also settled its case with online data broker ***US Search, Inc.*** and a related entity. The settlement bars the companies from misrepresenting the effectiveness of their privacy lock service that purported to allow consumers to remove information about themselves from the company's search results, websites, and advertisements, and requires the company to disclose any limitations on such services. The companies must also provide refunds to consumers who paid for the service.

- In February 2011, the Commission announced three cases against companies that were inadequately protecting consumers' data when they were reselling consumers' credit reports – ***SettlementOne Credit Corporation***, ***ACRAnet, Inc.***, and ***Fajilan and Associates, Inc.*** According to the FTC's administrative complaints, the resellers buy credit reports from the big-three nationwide consumer reporting companies — Equifax, Experian, and TransUnion — and combine them into special reports they sell to mortgage brokers and others to determine consumers' eligibility for credit. The companies allegedly allowed clients without basic security measures, such as firewalls and updated antivirus software, to access their reports. As a result, hackers accessed more than 1,800 credit reports without authorization through their clients' computer networks. Even after becoming aware of the data breaches, the companies did not make reasonable efforts to protect against future breaches. The

From April 2010 to February 2011, the FTC's Redress Administration Office mailed redress checks to 1.2 million consumers for a total of more than $40 million.

companies entered into consent agreements to settle charges that they had violated Section 5 of the FTC Act, the Fair Credit Reporting Act, and the Gramm-Leach-Bliley Safeguards Rule.

Rulemaking & Comment

- **Children's Online Privacy.** The Commission works to make the Internet more secure for children by enforcing the Children's Online Privacy Protection Act (COPPA) and the FTC's COPPA Rule, which requires website operators to obtain parental consent before collecting, using, or disclosing personal information from children under 13. The Commission continues its comprehensive rule review and, last June, hosted a public roundtable to review whether to update the Rule in light of rapidly changing technology.

Consumer & Business Education

- **ID Theft Guidance.** Consumers clearly look to the FTC for guidance on how to protect or reclaim their identity. Since April 2010 the Commission distributed 2.2 million copies of its identity theft materials and logged more than 3.6 million accesses online. The FTC published two new consumer publications addressing identity theft: *Medical Identity Theft* explains how medical identity theft occurs and how it differs from traditional identity theft, and *What's Behind Ads for a New Credit Identity? It Could Be ID Theft Involving Children's Social Security Numbers* explains how applying for credit using social security numbers stolen from children is a federal crime. Also, in response to an ABA resolution urging the creation of programs to help or provide representation for identity theft victims, the FTC developed a *Guide for Assisting Identity Theft Victims*. The Guide helps attorneys and victim service providers chart their way through and resolve legal problems that *pro bono* clients may have after the theft of their identity.

- **OnGuardOnline.gov.** The FTC has continued adding to the resources of OnGuardOnline.gov, an innovative multimedia website, available in English and Spanish, created by the FTC, other federal agencies, and the technology industry. It is designed to educate consumers and businesses about basic computer security practices. In fiscal year 2010, the site attracted more than 1.5 million unique visitors.

- **Children's Online Safety.** Since April 2010, the Commission has distributed 5.2 million copies of *Net Cetera*, a guide for parents and other adults to talk to kids about online safety practices. In September, the FTC launched the *Net Cetera Community Outreach Toolkit* that includes a guide for parents, a brochure for kids, slides, and videos to use in a presentation, and ideas to help spread the word about online safety. It provides guidance on talking to kids about issues like cyberbullying, sexting, using mobile phones wisely, file sharing, and protecting privacy. All the materials in the kit are available on DVD and CD in English and Spanish. Since its launch, over 24,000 copies of the toolkit have gone out to schools, libraries, and other community groups.





Maria Tribble, Bureau of Consumer Protection

Maria Tribble is an aggressive consumer advocate. She is the Program Manager for the Consumer Response Center in the Bureau's Division of Planning and Information. Maria has been with the FTC since July 2001, first as a CRC consumer counselor specializing in identity theft, and gradually increasing her responsibilities to become Program Manager last year. Currently, she oversees an impressive operation that responds to over 35,000 consumer contacts each week that arrive in both English and Spanish via two toll-free telephone numbers, two online complaint forms, and by mail.

Technology

- **Online Threats.** The Commission achieved additional victories in ongoing cases against distributors of malicious online content and "scareware." One such case was brought against ***Innovative Marketing, Inc.*** The FTC settled with another defendant in that case who was allegedly engaged in a massive scareware scheme to trick more than a million consumers into buying unneeded computer security products after displaying fake "system scans" that claimed to have detected viruses, spyware, or other problems on consumers' computers. The products included WinFixer, WinAntivirus, DriveCleaner, ErrorSafe, and XP Antivirus. The final order, issued in January 2011, permanently bans the defendant from marketing or selling any type of software that interferes with consumers' computer use. This defendant and his father – who was charged as a relief defendant who profited from the scam but did not participate in it – will give up more than $8.2 million in ill-gotten gains.

CHAPTER 9: OTHER DECEPTIVE AND UNFAIR ADVERTISING AND MARKETING PRACTICES

The FTC places a high priority on preventing deceptive or unfair health and safety claims, marketing relating to children, product endorsements, and environmental marketing.

Health, Safety, and Efficacy Claims

This year, the FTC brought a number of actions against national advertisers of food and dietary supplements like the Dannon Company, Kellogg Company, Nestlé HealthCare Nutrition, Inc., and POM Wonderful LLC, for allegedly making disease prevention and health benefit claims without real substantiation.

- **More Effective Orders.** In the past year, the Commission has entered into settlement orders in health-related cases that incorporate a number of specific provisions intended to provide greater clarity to the companies and individuals required to comply with the orders, and to improve the Commission's ability to enforce these orders.

- ***The Dannon Company.*** Dannon agreed to settle FTC charges that claims for DanActive (a probiotic dairy drink) and Activia (a probiotic yogurt) were unsubstantiated and false. The administrative consent order prohibits Dannon from claiming that any yogurt, dairy drink, or probiotic food or drink reduces the likelihood of getting a cold or the flu unless that claim is specifically permitted by the FDA. The settlement also prohibits Dannon from representing that eating one serving of Activia yogurt daily relieves temporary irregularity and helps with slow intestinal transit time, unless the claim is not misleading and it conveys that eating three servings a day is required to obtain the benefit, or the company has two adequate and well-controlled human clinical studies that show that the benefit can be achieved from eating fewer than three servings per day.

THE WALL STREET JOURNAL.

NOVEMBER 16, 2010

Dannon Settles Complaints Over Yogurt Ads

By Amy Schatz & Ilan Brat

"Companies like Dannon shouldn't exaggerate the strength of scientific support for their products," said FTC Chairman Jon Leibowitz in a statement.

- ***POM Wonderful.*** Last September, the Commission issued an administrative complaint charging the makers of POM Wonderful 100% Pomegranate Juice and POMx supplements with making false and unsubstantiated claims that their products will prevent or treat heart disease, prostate cancer, and erectile dysfunction. According to the complaint, POM Wonderful LLC, sister corporation Roll International Corp., and principals Stewart Resnick, Lynda Resnick, and Matthew Tupper, made deceptive disease prevention and treatment claims for the pomegranate juice and supplement products, in violation of the FTC Act. Litigation against these defendants continues. Separately, Mark Dreher, Ph.D., the former Vice President of Science and Regulatory Affairs of POM Wonderful LLC, entered into a consent order settling similar charges that he made false and unsubstantiated claims. The order bars Dreher from making any disease treatment or prevention claim in advertising for POM Wonderful unless the claim is not misleading and is approved by the FDA, and prohibits him from making other unsubstantiated health claims for a food, drug, or dietary supplement, including as an expert endorser.

- ***Iovate Health Services USA.*** To settle charges that claims for seven dietary supplement products were false or deceptive, Iovate and related entities agreed to an order that bars the companies from (1) claiming that a product can prevent or treat any disease unless the claim is approved by the FDA; (2) representing that any product causes weight loss unless the claim is supported by at least two adequate and well-controlled human clinical studies of the covered product, or of an essentially equivalent product; and (3) claiming that any product provides any other health-related benefit unless supported by scientific evidence sufficient in quality and quantity, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. The order also requires the companies to pay $5.5 million in consumer redress.

- **Dietary Supplements.** Among other cases challenging the sellers of dietary supplements, the FTC sued and obtained a preliminary injunction against ***Central Coast Nutraceuticals, Inc.***, a large Internet marketer of acai berry weight loss and colon cleansing pills. The FTC charged that this marketer scammed consumers out of $30 million or more in 2009 through deceptive advertising and unfair billing practices. Specifically, the FTC charged that the defendants had deceptively advertised their acai berry pills as a weight-loss product and their colon cleansing product as an aid for preventing cancer; used fake endorsements; and deceived consumers about their purported "free" or "risk free" trial offers. These marketers are currently out of business and their assets are frozen.

  - **Two appellate courts affirmed decisions in favor of the FTC.** The First Circuit affirmed a district court decision that ***Direct Marketing Concepts, Inc.*** and ***ITV Direct, Inc.*** had deceptively advertised two dietary supplements – "Supreme Greens" and "Coral Calcium" – as effective for treating and preventing serious diseases, including cancer and heart disease. Last December, the D.C. Circuit upheld the Commission's order in ***Daniel Chapter One*** (DCO) holding that the FTC properly exercised jurisdiction over DCO. DCO operated as a for-profit entity despite its formal legal status as a religious non-profit, and the FTC did not exceed its statutory authority by requiring DCO to have a reasonable basis for its claims.

- **Caffeinated Alcohol Beverages Warning Letters.** Last November, in response to numerous reports of alcohol poisonings, the FTC, the FDA, and the U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau, simultaneously issued warning letters to four marketers of caffeinated alcohol beverages including *Four Loko, Joose, Core Spiked,* and *El Jefe*. The FTC's letters warned that advertising and marketing of caffeinated alcohol beverages may be unfair or deceptive under the FTC Act. In response to the warning letters, all four companies agreed to stop shipping the products in question immediately and to reformulate their products.



Marketing Related to Kids

Enforcement

- **Children's Immunity Claims.** The FTC also brought charges against Kellogg and Nestlé for making unsubstantiated marketing claims that their products could improve children's health.

  - **Kellogg.** Only a year after settling allegations that it had made false claims about Frosted Mini-Wheats' ability to improve children's attentiveness, ***Kellogg Company*** agreed to modify and expand that settlement agreement to resolve an investigation of claims made by Kellogg that Rice Krispies "now helps support your child's immunity." The expanded 2010 order prohibits the company from

making claims about any health benefit of any food unless the claims are backed by scientific evidence and are not misleading.

- ***Nestlé HealthCare Nutrition, Inc.*** In January, the Commission unanimously approved an order settling allegations that Nestlé made deceptive health claims about BOOST Kids Essentials, a children's nutritionally complete drink with probiotics. Under the settlement, Nestlé may not claim that any probiotic-containing or nutritional drink prevents or reduces the risk of upper respiratory tract infections, including cold and flu viruses, unless the representation is approved by the FDA. The order also specifies the type of evidence Nestlé is required to possess for other types of health claims.

- **Children's Brain Boosters.** A rising tide of dietary supplement companies began claiming that Omega-3 fatty acids in their children's products could improve brain and eye development in young children.

  - After conducting an Internet and retail store sweep, the Commission sent warning letters to 13 companies that made questionable claims when promoting various children's Omega-3 fatty acid supplement products. In response to the Commission's warning letters, all 13 companies voluntarily agreed to modify product packaging, websites, and print ads.

  - Additionally, the Commission filed an administrative complaint against ***NBTY, Inc.*** and two of its subsidiaries. The companies agreed to settle charges that they had disseminated false and unsubstantiated claims that products in their Disney- and Marvel Heroes-licensed lines of children's multivitamin gummies and tablets contained a significant amount of DHA (a type of Omega-3 fatty acid) and that the amount of DHA provided by the multivitamins promotes healthy brain and eye development in children. The companies agreed to pay $2.1 million in consumer redress and are barred from making unsubstantiated health benefit claims.

Studies

- **Food Marketing to Kids.** The Commission launched a study to follow up on its 2008 Report to Congress, *Marketing Food to Children and Adolescents.* In Summer 2010, the FTC sent out compulsory process orders to 48 major food and beverage marketers, requiring them to provide information and documents about their marketing activities targeted to children and adolescents. The 2008 report documented the promotional expenditures and activities directed to children and teenagers by major food and beverage marketers in 2006. The follow-up study will analyze similar data for 2009 to assess the impact of industry self-regulation in this area; the study will include data about the nutritional properties of the foods and beverages most heavily marketed to kids.

Consumer Education

One particular interest of the FTC is teaching kids how to be savvy consumers. The FTC developed Admongo, a multi-media campaign with a game-based website intended to raise advertising literacy among the nation's tweens and equip them with critical thinking skills they can use to figure out who's responsible for ads, what ads are saying, and what ads want them to do. Teachers can incorporate the curriculum (tied to national standards of learning in language arts and social studies) into their lessons, use a library of fictional ads for teaching tools, and send home activities for parents and kids to do together. Admongo reached every public school in the country with a 5th or a 6th grade class, and just six weeks after the site launched, more than 26,000 users had registered for Admongo.gov accounts.



Endorsements & Testimonials

Following its 2009 revision of the *Guides Concerning the Use of Testimonials and Endorsements in Advertising*, the Commission brought several law enforcement actions challenging online testimonials.

- Last August, the FTC brought a case involving a failure to disclose a material connection between an endorser and a seller. ***Reverb Communications, Inc.*** provides public relations, marketing, and sales services to developers of video game applications, including mobile gaming apps. The FTC charged that Reverb and its principal engaged in deceptive advertising by instructing employees to pose as ordinary consumers posting game reviews at the online store without disclosing the material connection between the employees and game developer. The settlement requires the respondents to remove any previously posted endorsements that misrepresent the authors as ordinary consumers, and that fail to disclose the material connection.

- In March 2011, the FTC took action against ***Legacy Learning Systems***, which manufactures and sells "Learn and Master" instructional courses on its website. Legacy advertises its courses through an extensive online affiliate marketing program and pays its affiliates through commissions for each sale that they refer to Legacy. The FTC charged that Legacy engaged in deceptive advertising by misrepresenting that the reviews of instructional courses posted by marketing affiliates reflected the views of independent, ordinary consumers, and by failing to disclose adequately that the affiliate marketers receive financial compensation for the sale of Legacy's products. The settlement prohibits the respondents from misrepresenting the status of any user or endorser and prohibits them from making any representation about any user or endorser of a product or service unless they disclose any material connection. In addition, the settlement requires the respondents to pay $250,000 in disgorgement and maintain a system to review and monitor their affiliates' representations and disclosures.



Philip Runco, Office of Congressional Relations

One of the junior liaisons in Congressional Relations, Phil works on both competition and consumer protection issues, including privacy, advertising disclosures, and resale price maintenance. His role requires coordinating briefings on Capitol Hill, preparing FTC witnesses for Congressional hearings, and keeping the proverbial ear to the ground for upcoming legislative activity. Philip came to OCR from the Bureau of Competition's paralegal program, where he served on the agency task force that developed the Commission's Petroleum Market Manipulation Rule.

Environmental Marketing and Energy Labeling

Consumers are increasingly aware that their purchasing decisions can have an environmental impact. Marketers have responded to consumers and often use green claims to sell their products. This past year, the Commission continued its focus on environmental marketing and ensuring that products are properly labeled.

Enforcement

- **Green Claims.** The FTC negotiated a settlement with ***Nonprofit Management LLC*** and Jeremy Ryan Claeys to put an end to their hollow environmental certifications. The FTC alleged that the respondents issued "Tested Green" certifications to any company that paid a fee, but never actually tested those companies' products or services. The FTC also alleged that they deceived consumers by touting endorsements from the National Green Business Association and the National Association of Government Contractors – implying that these were independent organizations when they were operated by Claeys.

- **Appliance Labeling Sweep.** In its first appliance labeling cases, the Commission moved to ensure that consumers had the energy information necessary to make informed purchasing decisions. Three online retailers – ***P.C. Richard & Son, Inc.***, ***Abt Electronics, Inc.***, and ***Pinnacle Marketing Group, Corp.*** – agreed to pay more than $400,000 in penalties to settle charges that they failed to post EnergyGuide information for the major home appliances they sell on their websites.

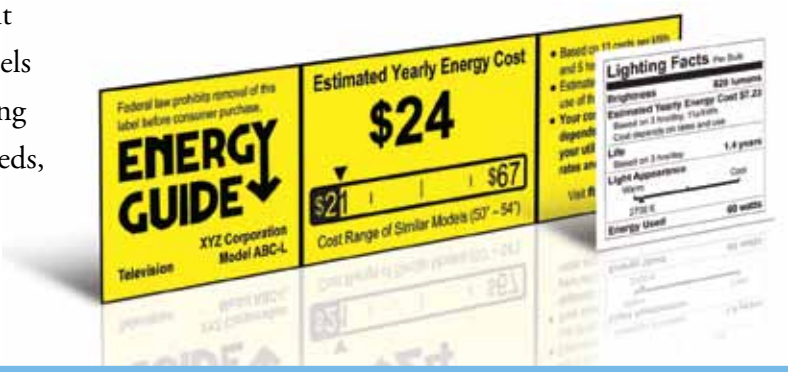
- **LED Bulbs.** Many consumers are turning to Light Emitting Diode (LED) bulbs, which have a higher efficiency and longer life than traditional incandescent bulbs, to reduce their energy use and electricity bills. To protect consumer confidence in these newer products, the FTC filed a complaint charging ***Lights of America*** and its two owners with misrepresenting the light output and life expectancy of their LED bulbs as well as exaggerating the brightness of their LED bulbs compared to incandescent bulbs.

Rulemaking & Comment

- **Green Guides.** In October 2010, the Commission issued a Federal Register notice seeking comment on proposed changes to its *Guides for the Use of Environmental Marketing Claims* (Green Guides). Among

other things, the Commission proposed adding new guidance regarding the use of general "green" claims, certifications and seals, renewable materials claims, renewable energy claims, carbon offset marketing, and claims that a product is "free of" a particular substance. This proposed guidance is based on the FTC's comprehensive review of the Green Guides, including public comments, workshops, and consumer perception research. The comment period closed in December.

- **Energy Labeling.** In response to Congressional directives, the Commission completed two large energy labeling rulemakings over the past year. The first rule will require most new televisions to display an EnergyGuide label starting in May 2011. These labels are particularly useful to consumers because some large screen televisions use as much electricity as refrigerators. The Commission also redesigned its light bulb label to focus on energy cost and light output, expressed in lumens. The new labels will help consumers save money by selecting the most efficient bulbs that meet their needs, and help them choose between traditional incandescent bulbs and higher efficiency compact fluorescent and LED bulbs.



Telemarketing Fraud

Enforcement

- **Targeting Robocalls.** In late 2009, new rules took effect prohibiting the automated delivery of pre-recorded messages referred to as "robocalls." The rules make it illegal to deliver pre-recorded sales messages to consumers without their express written permission. The Commission continues to crack down on illegal robocalls by bringing law enforcement actions against, for example, deceptive telemarketing pitches for extended auto warranties and lower credit card interest rates.

- Last May, the FTC sued ***Asia-Pacific Telecom***, a major Los Angeles-based robodialing operation that allegedly made more than 2.6 billion illegal and deceptive pre-recorded robocalls

SIGNIFICANT MONETARY JUDGMENTS	
Countrywide Home Loans	$108,000,000
Inc21.com Corporation	$37,970,929
American Entertainment Distributors	$19,201,403
USA Financial	$17,300,509
Federal Loan Modification Law Center	$11,526,274
JPM Accelerated Services	$9,135,680
Innovative Marketing	$8,272,962
API Trade	$7,785,980
Loss Mitigation Services	$6,262,509
Lucas Law Center	$6,120,000

April 2010 - March 15, 2011. These do not include amounts suspended by the court based on inability to pay. Default judgments are included.

pitching such things as worthless extended auto warranties and credit card interest-rate-reduction programs. To date, Asia-Pacific is by far the largest robodialer the FTC has sued. The FTC obtained a preliminary injunction against Asia-Pacific shutting down the robodialing operation and freezing its assets, as well as the assets of the operation's owners.

- The Commission also obtained judgments in two prior robocall cases. One such case was ***Voice Touch, Inc.*** The FTC alleged the company called consumers with pre-recorded messages that their auto warranties were about to expire; only after purchasing the supposed warranties did consumers discover the caller was not affiliated with their car manufacturer, and the contracts they had entered into contained many exclusions and limitations. Voice Touch and its principal, James Dunne, turned over approximately $700,000 to be used for consumer redress. Last August, the three remaining defendants in this case agreed to settle the FTC's charges and to be banned from any further telemarketing. Damien Kohlfeld and his two firms, Voice Foundations, LLC and Network Foundations, LLC, agreed to pay the FTC, resulting in a total of more than $3 million to be returned to victims. A $48 million unsuspended judgment remains against Voice Foundations, LLC; however, since that entity neither has assets nor is continuing operations, collection of any portion of that judgment is unlikely.

- **Cramming.** In September, the Commission obtained a $38 million judgment against ***Inc21.com Corporation***, a large telephone cramming scheme that preyed on small businesses. Inc21's telemarketers called businesses claiming to be updating their directory listings. The defendants then used the businesses' responses to doctor "verification" tapes and place unauthorized charges on their telephone bills. A survey showed that at least 96 percent of Inc21's customers had not authorized any charges, and only 5 percent were even aware that they had been billed. In addition to the money judgment, the court banned Inc21 and its owners from telephone billing and enjoined them from telemarketing without prior approval from the court. A relief defendant also was ordered to return the $434,000 he received from the defendants' scheme.

CRAMMING FORUM

In May 2011, the FTC will host a forum exploring ways to reduce cramming through business practices, law enforcement, and possible legislation.

Rulemaking & Comment

- **Strengthening Caller ID Rules.** The Commission recently solicited public comment on whether and how to strengthen the Caller ID provisions of the Telemarketing Sales Rule and how to keep pace with rapidly changing technologies. In its Advanced Notice of Proposed Rulemaking, the Commission noted that deceptive telemarketers often spoof or manipulate their Caller ID names and numbers in order to conceal their identities from consumers. Rather than propose specific changes to the TSR at this time, the FTC solicited comment on a range of Caller ID-related issues to help inform the Commission.

Payment Systems, Prepaid Phone Cards, and Mobile Communications

The FTC's enforcement actions show the Commission will hold payment processors responsible for accepting clients clearly engaged in deceptive activities and will require marketers of prepaid calling cards to properly disclose fees and how long the calling card should last. The FTC's continuing crackdown on fraud in the prepaid calling card industry has yielded, over the past few years, more than $4 million in monetary judgments.

- **Payment Systems.** The Commission obtained a $3.6 million judgment against payment processor ***Your Money Access LLC*** and its subsidiary for debiting consumers' bank accounts on behalf of numerous deceptive telemarketers and Internet-based merchants. The FTC and seven states in 2007 charged the defendants with accepting clients whose applications contained signs of deceptive activity, including sales scripts with statements that were facially false or highly likely to be false. According to the Commission's complaint, in many instances the defendants' clients either failed to deliver the promised products or services or sent consumers relatively worthless items. The Commission also settled charges against both the CEO and the former president of the company, permanently banning each defendant from participating in payment processing.

- **Prepaid Calling Cards**. The Commission reached a $500,000 settlement with ***Diamond Phone Card, Inc.*** and its principals. Diamond Phone Card marketed prepaid phone cards to recent immigrants for calls to a wide range of international locations, including the Dominican Republic, El Salvador, Mexico, India, Pakistan, and Guatemala. According to the FTC complaint, the defendants made false claims, sometimes in both English and Spanish, about the number of calling minutes its cards delivered, and failed to properly disclose maintenance and other hidden fees. The FTC's testing showed that consumers received only about half of the minutes advertised. The settlement order bars the defendants from misleading consumers about the talk time that their calling cards provide, and requires them to clearly disclose – in the same language in which the cards are marketed – all fees associated with their cards.

- **Text Message Spam.** The Commission brought its first case targeting text message spam when it filed a complaint against ***Phil Flora*** in connection with an alleged massive campaign that delivered millions of unsolicited text messages touting loan modification and debt relief services. The FTC's complaint challenges the transmission of unsolicited text messages as an unfair practice under Section 5 of the FTC Act. The complaint also alleges that the defendant misrepresented that his loan modification website was operated by or affiliated with the U.S. government and that the unsolicited email sent by the defendant failed to comply with several provisions of the CAN-SPAM Act.

CHAPTER 10: ORDER ENFORCEMENT, BANKRUPTCY COLLECTIONS, AND SUPPORTING CRIMINAL PROSECUTIONS

The Commission continues to place a high priority on aggressively enforcing its orders against repeat offenders and those who act with them. The FTC's enforcement program is designed to protect consumers from recidivists by identifying them quickly, limiting consumer harm, obtaining compensation for injured consumers, and modifying orders to provide additional protection for consumers. The Commission also refers particularly egregious violators to criminal law enforcement agencies for prosecution.

Order Enforcement

This past year, the Commission successfully litigated a number of order enforcement actions, including:

- ***Kevin Trudeau.*** After remand from the U.S. Court of Appeals for the Seventh Circuit, the FTC secured an order renewing its $37 million contempt judgment against infamous infomercial mogul Kevin Trudeau. For the first time, the order requires Trudeau to post a $2 million performance bond before disseminating any future infomercials in which he makes representations about the benefits of any product, program, or service referenced in a publication. These provisions stem from Trudeau's violation of a 2004 federal court order – specifically, false statements Trudeau made in infomercials for his book *The Weight Loss Cure "They" Don't Want You to Know About*.

- ***Bryan D'Antonio.*** The FTC won an $11 million contempt judgment against Bryan D'Antonio, ***The Rodis Law Group, Inc.***, ***America's Law Group***, and ***The Financial Group, Inc.*** The defendants violated a 2001 federal court order by engaging in a fraudulent mortgage rescue scheme. The defendants promised consumers that they had a "100% successful" track record in negotiating modified mortgages with lower interest rates, payments, and balances. In fact, the defendants obtained few, if any, successful loan modifications for consumers.

- ***Fred Khalilian.*** The FTC negotiated an order imposing a $4.2 million judgment and a telemarketing ban against Fred Khalilian and his company, ***The Dolce Group Worldwide, LLC***. Khalilian allegedly violated a federal court order by using "robocalls" to sell extended car warranties. The defendants sold these warranties by falsely claiming they were affiliated with the customer's auto dealer or manufacturer, the customers' warranties were about to expire, and the warranties provided bumper-to-bumper coverage.

Bankruptcy Collections

In 2010, the Bureau of Consumer Protection's Bankruptcy Unit handled more than 25 bankruptcy cases, and preserved approximately $43 million in FTC judgment claims from discharge in four of those cases. For example, the Commission brought a successful contempt action against ***Blue Hippo*** for violating a court or-

der by deceptively selling home computers to cash-strapped consumers. During the action, Blue Hippo filed for bankruptcy and the trustee attempted to collect monies from consumers even though many had never received any benefit for their payments. The FTC and numerous states objected both to the collections and the proposed debt collector based on the volume of complaints lodged against him. The trustee ultimately agreed to collect only from the very few consumers who actually received a computer and the court denied the trustee's motion to hire the collection attorney against whom many complaints had been lodged.

Supporting Criminal Prosecutions

Since 2002, through partnerships with the DOJ, U.S. Attorneys, and state prosecutors, the Commission's Criminal Liaison Unit (CLU) program has led to more than 400 prosecutions of fraudulent telemarketers, sellers of bogus cancer cures, and sweepstakes scammers. In the last year alone, federal and state criminal authorities charged 50 FTC defendants and their associates with crimes arising from activities investigated or prosecuted by the Commission. During this period, 22 such defendants and their associates were convicted or pled guilty, with sentences totaling more than 178 years.

"To those looking to deceive consumers, know that we are watching . . . In addition to shutting down scams and obtaining money for victims, we have a criminal liaison unit to refer the most egregious violators for prosecution."

— David Vladeck, Director, Bureau of Consumer Protection, remarks before the Promotion Marketing Association, November 18, 2010

- ***Mercury Marketing*** bilked as many as 400,000 small businesses out of tens of millions of dollars by billing them for Internet-related services without authorization. The defendant's intransigence in the face of a federal court order led to a contempt finding and sanctions. To facilitate a criminal prosecution, the Commission detailed the FTC lawyer who handled the Commission's case to the prosecution team.

- ***Preferred Platinum Services Network*** promised consumers high returns for a bogus work-at-home business. The CLU reached out to the U.S. Attorney's Office for the Southern District of New York, which executed search and arrest warrants against the scam's perpetrators, Phillip Pestrichello and Rosalie Florie, at the same time the FTC served a temporary restraining order. Defendant Pestrichello pled guilty to mail fraud and received an eight-year prison term. He also has to pay over $88,000 in restitution.

- In a criminal prosecution filed by the U.S. Attorney's Office for the Northern District of Illinois, ***EDI Healthclaims Network*** and its two principals, Chester J. Mazzoni and Douglas L. Lepo, pled guilty to conspiracy to commit mail fraud for their role in EDI's scheme to defraud consumers. The court sentenced Mr. Mazzoni to 60 months incarceration and ordered him to pay restitution for the more than $27 million in consumer injury caused by the scheme, and sentenced Mr. Lepo to 51 months incarceration.

CHAPTER 11: CONSUMER PROTECTION LAW ENFORCEMENT TOOLS, PARTNERSHIPS, AND CONSUMER OUTREACH EFFORTS

Increased Coordination with Law Enforcement Partners

- ***Common Ground Conferences.*** Last spring, the FTC's regional offices launched a series of Common Ground conferences across the United States. These conferences bring together lawyers from state law enforcement, legal service organizations, and the FTC who work on high-volume, anti-fraud consumer protection issues. The meetings strengthen relationships among state law enforcement, legal service organizations, and the FTC; identify current and emerging consumer protection issues within each region; encourage effective and efficient use of limited resources; and provide a framework for sharing practical experience, technical expertise, and training materials, which includes introducing legal service practitioners to the FTC's free educational materials to use with clients.

TOP CONSUMER COMPLAINTS IN 2010

Category	Number
Identity Theft	250,854
Debt Collection	144,159
Internet Services	65,565
Prizes, Sweepstakes and Lotteries	64,085
Shop-at-Home and Catalog Sales	60,205
Impostor Scams	60,158
Internet Auctions	56,107
Foreign Money Offers and Counterfeit Check Scams	43,866
Telephone and Mobile Services	37,388
Credit Cards	33,258
Advance-Fee Loans and Credit Protection/Repair	31,726
Banks and Lenders	29,967
Credit Bureaus, Information Furnishers, and Report Users	28,724
Mortgage Assistance Relief and Debt Management	28,584
Television and Electronic Media	28,245
Business Opportunities, Employment Agencies, and Work-at-Home Plans	24,123
Health Care	21,710
Computer Equipment and Software	20,833



Nithan Sannappa, Office of General Counsel

As a new attorney in the Office of General Counsel, Nithan has demonstrated wide ranging expertise. Interested in law and technology, Nithan works with the Office of Congressional Relations and Congress on privacy and data security related legislation. He is a member of the agency's Privacy Steering Committee and Social Media Task Force, helping develop policies around the agency's use of new technologies. He handles a variety of rulemakings, including the recent television energy labeling and mortgage assistance relief services rules. Nithan is also the agency expert on the Commission's enforcement authority over the commercial activities of Native American tribes.

- ***Consumer Sentinel.*** The FTC's Consumer Sentinel Network serves as the FTC's primary source for determining where the FTC is most needed. Consumer Sentinel collects consumer complaint information and makes it available through a secure, online database to more than 2,000 federal, state, and local law enforcement organizations in the United States, Canada, and Australia. It currently maintains more than 14.4 million complaints collected during the past five years. The database enables the FTC and its law enforcement partners to spot trends quickly, target the most serious illegal practices reported by consumers, and coordinate law enforcement efforts with its counterparts.

Consumer Outreach

As discussed throughout this report, the Commission develops a myriad of resources – publications, bookmarks, flyers, websites, videos, audio public service announcements, podcasts, blog posts, and tweets – on issues affecting consumers and businesses. In the past 12 months, the FTC has distributed over 20.3 million print publications in English and Spanish, logged over 26.7 million accesses to materials on Commission websites, and the FTC's videos have logged more than 780,000 views. The FTC continued to expand its social media and online outreach by launching the Commission's ***Facebook*** page, Facebook page for ***OnGuardOnline.gov***, ***Twitter*** account, ***Business Center***, and new monthly email newsletter ***Penn Corner***.



The FTC also targets outreach to certain organizations with direct avenues of communicating with their communities. For example, the Commission partners with military organizations to reach out to service members, veterans, and their families by producing blog posts, podcasts, and tweets on avoiding fraud, identity theft, credit, debt, and mortgage issues for DoDLive.mil, a Department of Defense news site and blog, and the Commission partners closely with MilitaryOneSource.com to post FTC publications, podcasts, and webinars on their site.



The Commission continues its Latino community outreach by participating in the conferences of the National Council of La Raza and the League of United Latin American Citizens (LULAC). FTC staff also collaborated with LULAC to reach Hispanic consumers with information about online safety. LULAC has sent the Net Cetera Community Outreach Toolkit to more than 60 of their Technology Centers across the country and will incorporate resources from OnGuardOnline.gov and AlertaenLinea.gov in their summer youth programs and computer literacy classes.

The AARP's Legal Council for the Elderly will distribute 3,000 Deter Detect Defend brochures on identity theft. In addition, the Commission participates in the conferences of the National Association for the Advancement of Colored People and the National Urban League, two of the world's largest grassroots organizations addressing issues of particular relevance to the African-American community, as well as provides materials to churches, community organizations, and historically black colleges and universities to distribute information about job scams, medical discount scams, and money management.


PROTECTING
AMERICA'S
CONSUMERS

SECTION THREE: INTERNATIONAL ACTIVITIES

The FTC's consumer protection and competition law enforcement necessarily engages the rest of the world as American commerce is increasingly integrated with the global economy. With Internet-based technologies and new advertising and marketing platforms in mobile applications and social networking, marketing practices that once remained within national borders now reach around the world. Similarly, because more U.S. businesses and consumers buy products produced abroad, mergers and business practices that originate overseas may affect U.S. customers. These phenomena create unprecedented opportunities for American consumers, but also pose new challenges for the FTC.

To meet these challenges, the Commission coordinates with foreign law enforcement agencies to halt unfair, deceptive, and anticompetitive conduct that affects U.S. consumers wherever it occurs. The FTC engages with competition and consumer protection agencies in other countries bilaterally and through multilateral organizations to provide policy leadership and promote sound approaches to common problems. The FTC also reaches out to competition and consumer protection authorities to help them develop their institutions and train their staff to deal with challenges in evolving to a market-based economy.

Significant consumer protection developments this year include the launch of two new international privacy enforcement networks, the Global Privacy Enforcement Network and the Asia-Pacific Economic Cooperation Cross-border Privacy Enforcement Arrangement, and a new asset recovery initiative with federal and provincial Canadian law enforcers. The Commission was also instrumental in the development of the Organization for Economic Cooperation and Development's new *Consumer Policy Toolkit*, which was released at an event hosted by the FTC featuring Karen Kornbluh, U.S. Ambassador to the OECD.

This year, the Commission actively engaged with its foreign counterparts during the development of the revised Horizontal Merger Guidelines, and is now working with counterparts in Canada and Mexico, who are also reexamining their own merger guidelines. The FTC also led the effort to establish an antitrust enforcement network linking antitrust agencies throughout the Western Hemisphere.

To better protect American consumers, the Commission engages in cross-border enforcement cooperation by working with consumer protection, competition, and other law enforcement authorities worldwide. For example, the Commission uses its information sharing and investigative assistance powers under the U.S. SAFE WEB Act of 2006 to more effectively enforce consumer protection and privacy laws. The FTC also maintains its strong record of working with foreign antitrust agencies to reach consistent outcomes in several high-visibility antitrust cases. The agency expanded its International Fellows Program to facilitate foreign

agency officials coming to Washington to work side-by-side with FTC staff, and FTC staff worked for several months at foreign agencies. Finally, in response to growing demand, the FTC expanded its technical assistance program into new areas and increased the number and range of consumer protection programs.

CHAPTER 12: SEEKING INTERNATIONAL COOPERATION AND CONSISTENT OUTCOMES IN CROSS-BORDER INVESTIGATIONS

Competition Enforcement

Ensuring good results for American consumers requires building and maintaining solid working relationships with competition agencies worldwide. With over 100 jurisdictions enforcing antitrust laws, there are opportunities for the benefits of competition to be realized on a global scale, but also risks of reaching inconsistent results. The Commission remains committed to working with its foreign partners to ensure sound analysis, consistent outcomes, and convergence towards best practices that yield benefits for American consumers. This year, the FTC deepened its engagement with the antitrust authorities of China, India, and Russia and further strengthened its existing relationships with established international enforcement partners. For example, the FTC, the DOJ, and the European Commission are working together on substantive and procedural issues that arise in merger and unilateral conduct investigations. In addition, recognizing increased opportunities for cooperation and coordination of merger policy and reviews following recent changes to the Canadian merger review system, the U.S. antitrust agencies and Canadian Competition Bureau staff are developing approaches to further streamline our systems and approaches.

The FTC benefits from bilateral cooperation agreements with eight jurisdictions (Australia, Brazil, Canada, Germany, the EC, Israel, Japan, and Mexico), and works with other jurisdictions under the OECD's Recommendation for international competition cooperation. Even without a formal agreement, the FTC cooperates on important investigations every year. This type of cooperation enables agencies to identify issues of common concern, share competitive analyses, and seek to avoid conflicting outcomes and inconsistent remedies, as well as making the investigatory and review process more effective and efficient for agencies and business alike. Especially in the area of merger review, the Commission's antitrust work requires nearly daily contact with competition officials outside the United States. Over the past year, the FTC cooperated with foreign counterparts on almost 50 cases, including antitrust agencies in jurisdictions such as Australia, Canada, the European Union, Japan, and Mexico. For example, in the *Agilent/Varian* merger, involving the leading global suppliers of high-performance scientific measurement instruments, FTC staff cooperated with staff at the competition agencies of Australia, the EU, and Japan to coordinate reviews of the merger. This cooperation resulted in coordinated remedies, with the Japan Fair Trade Commission closing its investigation after concluding that remedies the FTC and the EU obtained were sufficient to resolve any competitive concerns in Japan.



COMMISSIONER WILLIAM E. KOVACIC

"In October 2001, the Federal Trade Commission and 13 other antitrust agencies created the International Competition Network (ICN). Today the ICN has more than 110 members and provides a uniquely valuable forum to identify, and encourage widespread adoption of, superior practices regarding the substance, process, and administration of competition law. From the start, the FTC has made vital contributions to the ICN's success, and the agency continues to play a leading role in the design and implementation of the network's programs. By this commitment, the Commission builds a policy infrastructure that will support effective international cooperation for decades to come."

The Commission has also enhanced its coordination in cases of suspected unilateral anticompetitive conduct. In the Intel case, for example, staff of the FTC and the European Commission's Competition Directorate exchanged views on theories of harm and methods of economic analysis during their investigations and leading up to their enforcement decisions.

Consumer Protection Enforcement

The FTC continues to protect American consumers from fraud by making greater use of the tools provided by the U.S. SAFE WEB Act. The FTC has used the Act to cooperate with its foreign law enforcement counterparts in investigations and enforcement actions involving Internet fraud and other technological abuses and deceptive schemes that victimize U.S. consumers. During the past year, the FTC added to its U.S. SAFE WEB scorecard by sharing information in response to nine requests from five foreign law enforcement agencies. It also issued 12 civil investigative demands on behalf of two foreign agencies in three investigations. In many of these cases, the foreign agencies investigated conduct that directly harms U.S. consumers. In others, the FTC's assistance has led to reciprocal assistance in other FTC investigations. Given the success of the U.S. SAFE WEB Act, the Commission continues to recommend that Congress repeal the Act's seven-year sunset provision before it expires in 2013.

The FTC is also developing new asset recovery mechanisms for cross-border fraud cases involving Canada. To improve its ability to collect judgments against Canadian defendants obtained through joint law enforcement efforts, the FTC hosted a roundtable that brought together more than 40 law enforcement representatives from the United States and Canada, including national and provincial prosecutors, to discuss new legal theories and share experiences about the best ways available under current laws to recover funds for consumers.

- For the first time, Commission and Canadian provincial authorities coordinated to use a provincial civil asset forfeiture law concurrently with FTC proceedings to preserve assets for restitution. In ***FTC v. AFL Financial Services***, the FTC obtained preliminary relief against an international robocall ring that alleg-

edly conned consumers out of $995 each with false promises that it would reduce their credit card interest rates. The FTC used its U.S. SAFE WEB Act authority to share information with the Attorney General of Ontario, who concurrently obtained an order from the Ontario Superior Court of Justice to preserve the defendants' assets located in Ontario.

- Reflecting increased emphasis on cross-border asset recovery, the FTC and its Canadian counterparts are cooperating to collect judgments in Canada, such as the default judgments that the FTC obtained in two business directory cases this year – a judgment of $6.6 million against ***6253547 Canada, Inc.*** and a judgment of $2.3 million against ***Integration Media, Inc.*** The orders also prohibit these Montreal-based defendants from selling business directories and prohibits other conduct, such as marketing Internet business directory listings, falsely claiming affiliation with local yellow pages directories, and failing to inform consumers there will be costs associated with the directory listing.

In another matter where Competition Bureau Canada assisted the FTC, ***FTC v. Innovative Marketing***, the FTC successfully repatriated more than $8 million from Canada through a settlement with a Canadian defendant who was a key operator in a global deceptive "scareware" scam.

The FTC continued to litigate cases in the federal courts that have significant international aspects (such as defendants or evidence located abroad) and cooperated with counterparts in Australia, Canada, Costa Rica, the Dominican Republic, El Salvador, Israel, New Zealand, and the United Kingdom. After working with counterparts in New Zealand and the Philippines, the FTC charged four new defendants with engaging in a deceptive government grant scam in ***FTC v. Grant Connect***. In ***FTC v. NHS Systems***, a deceptive telemarketing operation, the FTC worked with the Department of Justice Office of Foreign Litigation to execute two letters rogatory, one in Canada and one in St. Lucia.

The FTC also stepped up its efforts to reduce Internet-related fraud by convening, with the FBI, a roundtable discussion for law enforcement agencies, domain name registrars, and Internet registries to discuss measures to curb malicious Internet conduct. Law enforcement officials from the United States, Brazil, Canada, Switzerland, and the United Kingdom met with U.S.-based and foreign domain name registrars and four Internet registries to discuss measures to curtail domain name abuse.

CHAPTER 13: PROMOTING SOUND POLICIES THROUGH INTERNATIONAL ORGANIZATIONS

With a focus on American consumers and businesses, the Commission participates in international organizations to help to promote the development of sound competition, consumer protection, and privacy laws in jurisdictions around the world. The FTC provides leadership in multilateral policy organizations including the International Competition Network, the consumer, privacy, and competition committees of the Organization for Economic Co-operation and Development, the United Nations Conference on Trade and



Yael Weinman, Office of International Affairs

As Counsel for International Consumer Protection, Yael focuses on international policy and enforcement cooperation relating to privacy and data security. Yael represents the FTC and the United States in international organizations, using her expertise in privacy and technology to inform global policy development. Yael was instrumental in launching the Global Privacy Enforcement Network (GPEN), which fosters international enforcement cooperation. She has organized conferences, worked on international guidelines, and made presentations to U.S. and foreign audiences to advance sound privacy policy. Yael began her FTC career litigating deception cases and ensuring compliance with privacy and data security order provisions.

Development, and Asia-Pacific Economic Cooperation. This year, the FTC also became a member of the International Conference of Data Protection and Privacy Commissioners.

- **Organization for Economic Co-operation and Development (OECD).** Celebrating its 50th year, the OECD is a global organization in which governments can work together to share experiences and seek solutions to common problems and is a key forum for FTC engagement with its counterparts on competition, consumer protection, and privacy policy. The FTC participates in numerous OECD groups, such as:

  - **Committee on Consumer Policy.** In July, the FTC hosted the launch of the new *Consumer Policy Toolkit*, with a roundtable featuring the U.S. Ambassador to the OECD, Karen Kornbluh. The *Toolkit* draws on insights from information and behavioral economics to provide advice for consumer protection authorities and other regulators to help them determine where markets may be failing consumers, and what steps they can take in response. It also outlines a comprehensive process for choosing the best consumer protection policies and describes a range of policy options that government officials can use to address consumer problems. The FTC also played a leadership role in the Committee's ongoing review of emerging consumer protection issues in electronic commerce, including new mobile and online payment systems.



  - **Working Party on Information Security and Privacy.** Last year marked the 30th anniversary of the 1980 OECD Privacy Guidelines, which were commemorated with a series of events laying the groundwork for a more comprehensive review of the Guidelines. As a result of the Working Party's call for enhanced cross-border privacy enforcement cooperation, the FTC and privacy enforcement authorities from eleven countries and the European Union formed the Global Privacy Enforcement Network (GPEN), a new network that promotes information sharing and international assistance in enforcement of privacy laws. GPEN now has 22 members from 17 countries.

THE INTER-AMERICAN COMPETITION ALLIANCE

Recognizing the need for a regular channel for enforcement cooperation among the antitrust agencies in the Americas, the Commission led the effort to establish the Inter-American Competition Alliance. Alliance members hold informal, monthly, web-based teleconferences to share experience and understanding. To date, the Alliance has focused on cartels, leniency, and mergers. In addition to sharing best practices on approaches to antitrust enforcement, the Alliance allows agencies to establish contact regarding current enforcement issues in real time. The Alliance was closely patterned on two ongoing successful FTC consumer protection initiatives, the Informal Latin American Dialogue and the African Dialogue.

- **Competition Committee.** The Committee is an important forum for competition officials to share experiences and promote best practices and this year the FTC participated in significant discussions of procedural due process, standard setting, and information exchanges. In the Global Forum on Competition, which includes member and non-member jurisdictions, the United States submitted papers addressing cross-border merger review and crisis cartels.

- **Asia-Pacific Economic Cooperation (APEC)** is a multinational organization of nations on both sides of the Pacific Rim. The highlight of the year in the privacy area was a new Cross-Border Privacy Enforcement Arrangement to protect consumer data as it flows across borders. Participants in this new multilateral arrangement include the FTC and privacy enforcement authorities in Australia, Canada, Hong Kong, and New Zealand. The FTC also participated in APEC's Competition Policy and Law Group, including through roundtables on competition advocacy and procedural fairness, which were hosted by the United States.

- **International Consumer Protection and Enforcement Network (ICPEN)** is a network of almost 40 governmental consumer protection authorities founded with the help of the FTC over 15 years ago. ICPEN facilitates the exchange of information about cross-border commercial activities affecting consumers, shares best practices in legislative and enforcement approaches to consumer protection, and encourages international enforcement cooperation among its members. In May, the FTC hosted ICPEN in Washington, with more than 100 delegates from 50 countries participating in both the conference and a two-day best practices training, which provided practical tools for dealing with cross-border frauds.

- **International Competition Network (ICN)** is a growing network of 113 antitrust agencies that seeks to promote procedural and substantive convergence through the development of consensual, non-binding recommendations and reports. The Commission was a founding member of the ICN in 2001 and serves on its Steering Group. As co-chair of the ICN's Unilateral Conduct Working Group, the FTC organized a recent workshop

attended by more than 150 delegates from over 55 jurisdictions, and is leading the drafting of a workbook for agencies on investigating and analyzing unilateral conduct. Over the past year, the FTC conducted webinars on differential pricing and the application of unilateral conduct laws in the pharmaceutical sector. The FTC also chairs the Merger Notification and Procedures subgroup, which promotes implementation of the ICN's Recommended Practices, including at a recent merger workshop for agencies around the world. The Commission leads the ICN's new project to create a comprehensive curriculum of video-based training materials that will serve as a virtual university on competition law and practice for competition agency officials and others.

- **United Nations Conference on Trade and Development (UNCTAD).** The FTC participates in the United Nations' Intergovernmental Group of Experts on Competition Law and Policy. At its five-year review session in November, Commissioner Kovacic led a discussion on the foundations of agency effectiveness, and co-led the peer review of competition law and policy in Armenia.

The Commission also participates in Free Trade Agreement negotiations that involve competition, privacy, or consumer protection issues. This year, the FTC participated in negotiations aimed at establishing a Trans-Pacific Partnership, a proposed regional Free Trade Agreement that would include the United States and seven other Asia-Pacific countries. The FTC is working with DOJ and the United States Trade Representative on a competition policy chapter, and with several other agencies to negotiate the electronic commerce chapter of the draft agreement, which covers consumer protection and data transfers.

CHAPTER 14: OUTREACH AND INTERNATIONAL TECHNICAL ASSISTANCE

With approximately 120 jurisdictions enforcing competition or consumer protection laws, the Commission has expanded its long-standing technical assistance program to help both newer and more established agencies apply their laws to support free markets. The FTC works with other U.S. government funders, including the U.S. Agency for International Development (USAID), the U.S. Trade and Development Agency (USTDA), and the U.S. Department of Commerce Commercial Law Development Program (CLDP) to provide this support, and also funds programs in countries and on topics outside the ambit of those covered by other sources.

Technical Assistance

Two of the most significant technical assistance opportunities and challenges involve China and India, both of which will play important roles in global competition and consumer protection enforcement. Several programs were offered in those countries, as well as in Russia and in Latin America.

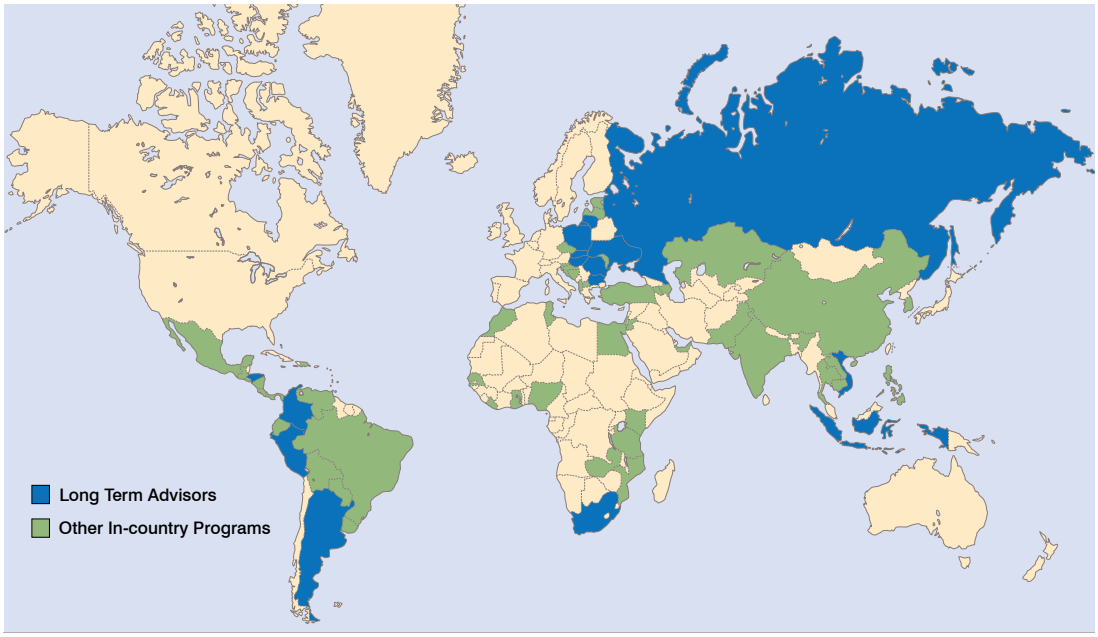
- **China.** The FTC's engagement with China includes participation in an extensive public/private sector technical assistance program for the three Chinese antitrust enforcement agencies. The program this year included training on anticompetitive agreements, the application of antitrust law to intellectual property-related conduct, and theories of anticompetitive harm in merger investigations. This year, the FTC Bureau of Competition is hosting an International Fellow from China's Ministry of Commerce (MOFCOM).

- **India.** The Commission is working with India's Competition Commission on antitrust enforcement and policy as it begins to implement the country's Competition Act. In 2010, the FTC conducted a program of intensive training programs focused on developing investigative skills of new employees of the Indian agency. The FTC and India's competition agency have planned another training session for April 2011.

- **Russia.** Operating in partnership with the Criminal and Antitrust Divisions of the DOJ, the FTC presented an antitrust training program for Russian judges. More than 80 judges from across Russia traveled to Moscow for a two-day program that featured Judges Douglas Ginsburg and Sarah Vance as well as FTC and DOJ attorneys.

- **Central and South America.** To expand consumer protection law awareness in nine Latin American nations that have signed Free Trade Agreements with the United States, the Commission conducted several regional consumer protection seminars, sending consumer protection experts to each country. In addition, the FTC conducted judicial training in the handling of competition cases in Central America, with the assistance of a Florida state appellate judge.

The FTC continues to respond to requests for assistance from around the world. For instance, FTC staff provided USAID-funded work in the ten-nation Association of Southeast Asian Nations (ASEAN) community and in Latin America. In addition, USAID has supported a judicial training mission to the Carib-



bean Common Market (CARICOM) and missions to Morocco and Pakistan. An FTC attorney served as a USAID-funded resident advisor to the competition and consumer protection authority in Vietnam. Other areas served include Hungary, Indonesia, Kenya, Mexico, Peru, Tanzania, and Ukraine.

Staff Exchange Programs

By sharing our experience and expertise with young competition and consumer protection agencies, the FTC promotes convergence and sound policies and enforcement that benefit U.S. businesses and consumers in the global marketplace.

- **The International Fellows Program.** The FTC's International Fellows and Interns program provides opportunities for counterparts from foreign agencies to spend several months working directly with FTC staff on competition and consumer protection investigations, subject to appropriate confidentiality protections. During the past year, the FTC hosted 14 International Fellows and Interns from Canada, China, Colombia, Egypt, France, Kazakhstan, Korea, Peru, South Africa, Switzerland, the United Kingdom, and Vietnam.

- **FTC Placements Abroad.** The Commission occasionally sends staff members to work in foreign competition and consumer protection agencies on short-term assignments. These assignments provide invaluable opportunities for FTC staff to obtain a deep understanding of their international partners' laws and challenges. This knowledge provides critical support for coordinated enforcement and promotes convergence toward sound policy. This year, a consumer protection investigator worked at the United Kingdom's Office of Fair Trading, an economist worked in the UK Competition Commission, and a competition attorney worked with Competition Bureau Canada.

In the first American/Canadian staff exchange, David Harding of the Canadian Competition Bureau spent several months working in Washington, D.C. for the Bureau of Competition, while Matt Tabas, a merger lawyer at the FTC, went to work in Ottawa.



"During my time in Ottawa, I developed ties with colleagues to the north. This familiarity with the Canadian system will foster closer cooperation during merger reviews, leading to more effective enforcement of both countries' antitrust laws." — Matt Tabas (pictured left)

"For antitrust officers from foreign competition agencies, developing a thorough understanding of the laws and processes of other jurisdictions is invaluable. I learned a lot from the experienced staff at the FTC." — Dave Harding (pictured right)

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LEFT TO RIGHT: Eileen Harrington, Joe Farrell, Don Clark, Cecelia Prewett, Jeanne Bumpus, and Susan DeSanti
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