

Testimony of the
Federal Trade Commission

Presented by

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competition and consumer protection.

II. Background on the FTC

The Commission welcomes the opportunity to provide its perspective on how the evolution of these markets will affect consumers and the need for government enforcement in the areas of competition and consumer protection. The FTC is the sole general jurisdiction federal agency committed to both competition and consumer protection law enforcement.

In this testimony, we first discuss some important competition and consumer protection issues in financial services, followed by a discussion of how increased deregulation will affect the need for government enforcement with respect to both consumer protection and competition. Finally, we comment on the provisions of H.R. 10 which clarify the FTC's jurisdiction. We believe this clarification is important to assure that consumers receive the full benefits of the efforts to deregulate these markets.

As the financial services environment changes, there will be heightened need for vigilant review and enforcement by the FTC of both the antitrust and consumer protection laws. While the Federal Trade Commission Act does not apply directly to banks or savings and loan institutions,⁽²⁾ today's financial services transactions most often involve new combinations of holding companies (bank or otherwise), nonbank companies, or nonbank subsidiaries. In such cases, the Commission has previously played an important role in eliminating unlawful restrictions on competition and in protecting consumers from fraud and deceptive practices in financial services industries. The Commission enforces the Clayton Act and the FTC Act against anticompetitive conduct, both merger and nonmerger. Furthermore, the Commission's Credit Practices Division is almost exclusively devoted to policing unlawful credit practices in the financial services industry. It also enforces a number of federal statutes relating to consumer credit practices of nonbank financial service providers. Finally, the Commission assists the banking agencies in developing consumer protection regulations and addresses related to electronic commerce.

III. Competition and Consumer Protection in the Financial Services Industry

The Commission believes that consumer protection and competition enforcement should work together to help ensure that consumers receive the benefits of effectively functioning markets. In the financial services area -- as in all other areas -- consumers are best served when they are able to make free choices in a free market. There are two functional requirements for a market to be free: that competitors be able to provide a range of options for consumers, and that consumers have the ability to make informed decisions from among those options.

Those two ingredients of a free market define the roles of the Commission's competition and consumer protection functions. The antitrust laws protect the range of options in the market, barring firms from engaging in illegal price fixing, restricting entry, or other

limiting the choices available to consumers. The credit statutes enforced by the Commission, as well as Section 5 of the FTC Act, protect consumers' ability to select among those options, so that their choice is not distorted by deception or by incomplete or inaccurate information. Both sets of laws will play a vital role in the financial services industry.

As in many other markets, there has been a tremendous increase in mergers, acquisitions and strategic alliances in the financial services industry. Although in the past, bank to bank acquisitions were common, a vast number of recent acquisitions and alliances in the financial services market involve holding companies or nonbank firms, including nonbank affiliates of banks. One recent example of FTC merger enforcement in the financial services industry was the Commission's 1995 challenge to First Data Corp.'s acquisition of First Financial Management Corp., which would have combined the only two competitors in the consumer money wire transfer market, Western Union and MoneyGram.

engaged in unfair and deceptive practices in its collection of credit card debts after the filing of consumer bankruptcy.⁽¹¹⁾

In addition to these enforcement actions, the FTC provides consultation to Congress and to the federal banking agencies about consumer protection issues involving financial services. For example, the Commission has recently reported to or testified in Congress regarding the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and electronic commerce. In addition, the Commission periodically provides comments Federal Reserve Board regarding the Fair Credit Reporting Act, and the implementing regulations for the Truth in Lending Act, the Consumer Leasing Act, the Electronic Funds Transfer Act, and the Equal Credit Opportunity Act.⁽¹²⁾

IV. The Evolving Financial Services Industry

As the financial services industry joins other industries in which competition replace extensive regulation due to technological changes and improved understanding of markets, it is important that deregulation should be accompanied by effective antitrust and consumer protection law enforcement, to prevent the anticompetitive accumulation and abuse of private market power and to prevent fraud or deceptive practices.⁽¹³⁾

A. Rethinking How We View Financial Services

Where regulatory barriers are eliminated, competition has the potential to benefit consumers through lower prices, more efficient allocation of resources, and greater innovation. However, these potential savings and innovations will not appear automatically once regulation is reduced. Ensuring the benefits of competition requires vigilant enforcement of antitrust and consumer protection laws with a focus on the products and financial services delivered to consumers -- particularly where banks are permitted to join firms in other markets and industries. As the federal banking agencies have relaxed regulations on nonbank activities by banks and their affiliates, for example, banks have acquired securities firms and formed joint ventures with nonbanks. The proposed merger between Citicorp and the Travelers Group brings together a bank holding company and an insurance and securities company. Joint ventures have been created between banks and nonbanks to provide new products in emerging markets of electronic commerce. If some form of financial reorganization legislation is enacted, firms that include both banks and other entities will proliferate. While many merger joint ventures represent a sound response to such deregulation, others may be likely to preserve or create anticompetitive power. Accordingly, enforcers must undertake careful and sophisticated analyses to ensure that consumer benefits will not be dissipated by the accumulation of private market power or markets that fail to provide adequate consumer protection.

B. Effective Enforcement of Competition Policies

The antitrust laws were designed by Congress to apply to all industries. However, when the FTC Act was enacted in 1914, Congress excluded banks from FTC jurisdiction

apparently because they already were extensively regulated⁽¹⁴⁾ in banking, jurisdiction over competition issues, including mergers, was given to the federal bank regulatory agencies.⁽¹⁵⁾ Competitive review by specialized regulatory agencies may be efficient when the regulatory structure as a whole limits mergers to intraindustry consolidation. In the new environment, however, the antitrust agencies should conduct the appropriate antitrust review.

As one of the two federal agencies responsible for merger enforcement, the FTC has a broad base of experience related to the antitrust analysis of mergers generally. Especially in a period of rapid consolidation and market expansi

to determine if there is any group of consumers who may end up paying higher prices as a result of the merger. This focus on competitive harm derives directly from Section 7 of the Clayton Act, which prohibits anticompetitive mergers "in any line of commerce," and it allows otherwise procompetitive mergers to proceed once their anticompetitive effects have been addressed. For instance, in the FTC's First Data case, one could have argued that many consumers had other alternatives to wire transfers, such as credit or ATM cards. However, our investigation found that for those consumers without banking relationships, who were significant users of these services, credit or ATM cards were not a viable alternative.

Competitive problems can exist in markets even where prices are falling or expanding markets, prices often decrease. When firms in those markets merge, they may claim that antitrust scrutiny is unnecessary because prices are falling. Although such

traditionally been protected by the FTC, it is important that the Commission's ability continue to protect competition and consumers in these nonbank businesses not be restricted. If market forces are to succeed in delivering the benefits of competition and nondeceptive information for consumers, the FTC must continue to bring its expertise to bear in markets in which it is now active. H.R. 10 clarifies the FTC's jurisdiction to ensure that the Commission continues to have the ability to enforce the competition and consumer protection laws with respect to nonbank companies.⁽²⁶⁾

VI. Conclusion

As the financial services industry undergoes great change, it is important that consumers share in the benefits of consolidation. Technological innovations in electronic commerce along with service innovations that combine banking, securities, and insurance elements have increased the potential for competition among industries that were once rigidly separated. Many of the legal and regulatory structures erected over the years are being streamlined or removed. These changes have the potential to increase consumer welfare far into the future.

Our competition enforcement action in First Data and our consumer protection

Endnotes

1. The written testimony represents the views of the Federal Trade Commission. My oral presentation of the testimony and responses to any questions are my own and do not necessarily represent the views of the Commission or any individual Commissioner.
2. 15 U.S.C. §§ 45(a)(2), 46(a).
3. When one bank merges with another bank, jurisdiction is shared by the Antitrust Division of the Justice Department and the federal banking agencies.
4. The FTC retains its general jurisdiction over consolidations involving nonbank firms.

Subcommittee on Finance and Hazardous Materials, House Commerce Committee, July 17, 1997
Comments of the Staff of the Bureau of Economics to the SEC on Regulations Governing Registrar Reporting Disclosures of Small Business Issuers (1992); Bureau of Economics Staff Report, Minimum Quality Versus Disclosure Regulations: State Regulation of Interstate Offered Investment Company and Common Stock Issues (1987).

14. See United States v. Philadelphia National Bank, 374 U.S. 321, 336 n.11 (1963) ("the exclusion of banks from the FTC's jurisdiction appears to have been motivated by the fact that banks were already subject to extensive federal administrative controls").

15. See Bank Merger Act of 1996, 12 U.S.C. § 28(c); Bank Holding Company Act, 12 U.S.C. §§ 42-43; and Home Owners' Loan Act, 12 U.S.C. § 1467a(e).

16. Time Warner Inc., C-3709 (Mar. 11, 1997).

17. Questar Corp., 2:95CV-1127S (C.D. Utah Dec. 27, 1995) (transaction abandoned).

18. A settlement package includes a crown jewel provision when it requires divestiture of a more valuable asset if the agreed upon divestiture is not accomplished within a set time period.

19. See Prepared Statement of the FTC on Home Equity Lending Abuse in the Subprime Mortgage Industry, before the Senate Special Committee on Aging (Mar. 16, 1998).

20. For example, in January 1998, the Commission filed a complaint in the United States District Court for the District of Columbia against Capital City Mortgage Corporation, a Washington, D.C. mortgage lender, and its owner, alleging numerous violations of federal laws resulting in serious injury to borrowers, including the loss of their homes. FTC v. Capital City Mortgage Corp., 1:98CV-00237 (D.D.C. filed Jan. 29, 1998).

21. In 1997, the FTC conducted joint law enforcement sessions on home equity fraud with state regulators and law enforcers in six different cities.

22. See, e.g., FTC Facts for Consumers brochures such as "Home Equity Scams: Borrowers Beware!"; "Home Equity Loans: The Three Day Cancellation Rule"; "Reverse Mortgage Lending In On Home Ownership."

23. For example, the Commission and its staff have issued reports describing various consumer privacy concerns in the electronic marketplace. These include FTC Report to Congress: *Individual Reference Services*, December 1997; FTC Staff Report: *Public Workshop on Consumer Privacy on the Global Information Infrastructure*, December 1996; FTC Staff Report: *Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech, Global Marketplace*, May 1996. In addition, the Commission presented testimony on September 18, 1997, on the Implications of Emerging Electronic Payment on Individual Privacy before the Subcommittee on Financial Institutions and Consumer Credit, House Committee on Banking and Financial Services; on March 26, 1998, on Internet Privacy before the Subcommittee on Courts and Intellectual Property, House Committee on the Judiciary; and on May 20, 1998, on Identity Theft before the Subcommittee on Technology, Terrorism and Government Information, Senate Committee on the Judiciary.

24. Under the FCRA, the transactions or experiences between a consumer and a company may be communicated among affiliated companies without restriction. The communication of other information to

25. This report focuses on the effectiveness of self-regulation as a means of protecting consumer privacy online. The Commission summarizes and assesses the findings from its March 1998 comprehensive survey of commercial Web sites. The report also includes the Commission's analysis of existing industry guidelines and principles on the online collection and use of consumers' personal information.

26. The House passed bill recognizes that continued Commission oversight of mergers and acquisitions in the financial services industries would help to insure that the policies behind the antitrust laws will be effectively applied as those industries undergo sweeping restructuring. Title I, Subtitle E of H.R. 10, titled "Preservation of FTC Authority," is designed to confirm that nonbank companies, even if affiliated with banks, continue to be subject to the FTC's jurisdiction. In particular, Title I, Subtitle E ensures that, in financial holding company mergers, those portions not subject to the antitrust laws will continue to be subject to the FTC's jurisdiction.