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working to protect consumers from deceptive practices, particularly fraudulent schemes that have proliferated during these challenging economic times.

This testimony first describes some of our work under both our consumer protection mission and our competition mission and then summarizes the FTC's budget request for FY 2011. To meet the challenges of the next fiscal year, the FTC requests \$314 million which will support 1,207 FTE. This request represents an increase of \$22.3 million and 40 FTE over the FY 2010 enacted levels.

## **II. CONSUMER PROTECTION MISSION**

### **A. The FTC Is Protecting Consumers During the Economic Downturn**

With the economic downturn, the Commission has increased its emphasis on protecting consumers in financial distress. In the past year, the FTC has brought almost 40 law enforcement actions to stop scams that prey on consumers suffering from the financial downturn, and the agency is also engaged in rulemaking and consumer education efforts related to financial services. In the financial services area alone, the FTC has filed more than 100 actions against providers of financial services over the past five ye

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<sup>3</sup> See FTC Press Release, Federal and State Agencies Target Mortgage Relief Scams (Nov. 24, 2009),

collection tactics. For example, in September 2008, the FTC settled char

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<sup>7</sup> *FTC v. EMC Mortgage Corp.*, No. 4:08-CV-338 (E.D. Tex. final order Sept. 9, 2008).

<sup>8</sup> Mortgage Acts and Practices Advance Notice of Proposed Rulemaking, 74 Fed. Reg. 26,118 (June 1, 2009).

<sup>9</sup> See FTC Press Release, Three Home Loan Advertisers Settle FTC Charges; Failed to Disclose Key Loan Terms in Ads (Jan. 8, 2009), [www.ftc.gov/opa/2009/01/anm.shtm](http://www.ftc.gov/opa/2009/01/anm.shtm).

<sup>10</sup> See FTC Press Release, FTC Cracks Down on Con Artists Who Target Jobless Americans (Feb. 17, 2010), [www.ftc.gov/opa/2010/02/bottomdollar.shtm](http://www.ftc.gov/opa/2010/02/bottomdollar.shtm).

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<sup>11</sup> See FTC Press Release, FTC Cracks Down on Scammers Trying to Take Advantage of the Economic Downturn (July 1, 2009), [www.ftc.gov/opa/2009/07/shortchange.shtm](http://www.ftc.gov/opa/2009/07/shortchange.shtm).

<sup>12</sup> See FTC Press Release, MoneyGram to Pay \$18 Million to Settle FTC Charges That it Allowed its Money Transfer System To Be Used for Fraud (Oct. 20, 2009), [www.ftc.gov/opa/2009/10/moneygram.shtm](http://www.ftc.gov/opa/2009/10/moneygram.shtm); FTC Press Release, FTC Mails Redress Checks to Fraud Victims Who Lost Money Through MoneyGram's Money Transfer System (Apr. 28, 2010), [www.ftc.gov/opa/2010/04/moneygram.shtm](http://www.ftc.gov/opa/2010/04/moneygram.shtm).

<sup>13</sup> See Prepared Statement of the Federal Trade Commission on *The Debt Settlement Industry: The Consumer's Experience*, before the Senate Committee on Commerce, Science, and Transportation (Apr. 22, 2010), [www.ftc.gov/os/testimony/100422debtsettlement.pdf](http://www.ftc.gov/os/testimony/100422debtsettlement.pdf); Prepared Statement of the Federal Trade Commission on *Financial Services and Products: The Role of the Federal Trade Commission* (2009), [www.ftc.gov/os/testimony/100422debtsettlement.pdf](http://www.ftc.gov/os/testimony/100422debtsettlement.pdf).



The FTC also helps consumers avoid identity theft and responds to 15,000 consumers each week who call the FTC identity theft hotline. Under federal law, consumers have a right to a free credit report to help them detect identity theft and errors in their credit reports, which are used not only to obtain credit but also for employment, housing, and insurance. In recent years, however, companies have offered so-called “free” credit reports that are conditioned on enrollment in a costly plan, often an identity theft protection plan. To protect consumers from this confusing and deceptive marketing, the FTC amended the Free Credit Report Rule to require prominent disclosures for advertising of these supposedly “free” credit reports.<sup>18</sup> Now, consumers will be better able to avoid supposedly “free” offers that actually cost money.

In addition, in one of the largest FTC-state coordinated actions, the FTC and Illinois Attorney General Lisa Madigan jointly announced a settlement with LifeLock, Inc., which advertised its identity theft prevention service, claiming that it was “the first company to prevent identity theft from occurring.”<sup>19</sup> The order requires LifeLock to pay \$11 million to the FTC for consumer redress and \$1 million to 35 state attorneys general co-plaintiffs. The order also bars the company from making deceptive claims that its services offer absolute prevention against identity theft and requires it to take more stringent measures to safeguard the personal information it collects from customers.

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<sup>18</sup> The Credit Card Accountability Responsibility and Disclosure Act of 2009 required the Commission to issue a rule to prevent deceptive marketing of “free credit reports.” The amended rule went into effect on April 2, 2010. *See* Free Annual File Disclosures Final Rule, 75 Fed. Reg. 9,726 (Mar. 3, 2010).

<sup>19</sup> *FTC v. LifeLock, Inc.*, No. 2:10-cv-00530-NVW (D. Ariz. final order Mar. 15, 2010). *See also* State of Illinois Press Release, FTC, 35 States Reach Agreement with LifeLock for Misleading Advertising (Mar. 9, 2010), [www.illinoisattorneygeneral.gov/pressroom/2010\\_03/20100309.html](http://www.illinoisattorneygeneral.gov/pressroom/2010_03/20100309.html).



The FTC also has brought numerous cases to meet the challenges of protecting consumers and their privacy while they are using the Internet. For example, in June 2009, the FTC moved quickly to shut down a rogue Internet Service Provider that knowingly hosted and actively participated in the distribution of illegal spam, child pornography, and other harmful electronic content.<sup>20</sup> The FTC complaint alleged that the defendant actively recruited and colluded with criminals seeking to distribute illegal, malicious, and harmful electronic content.

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<sup>20</sup> *FTC v. Pricewert, LLC*, No. 09-CV-2407 (N.D. Cal. final order issued Apr. 4, 2010).

<sup>21</sup> See Official Google Enterprise Blog, Q2 2009 Spam Trends, <http://googleenterprise.blogspot.com/2009/07/q2-2009-spam-trends.html>.

<sup>22</sup> *Sears Holdings Mgmt. Corp.*, FTC File No. 082-3099 (final order Aug. 31, 2009).

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*See generally*

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the FTC also charged satellite television provider Dish Network with causing telemarketing calls – including robocalls – to be made to numerous consumers whose numbers are on the National Do Not Call Registry. *See U.S. v. Dish Network, LLC*, No. 3:09-cv-03-73-JES-CHE (C.D. Ill. filed Mar. 25, 2009) (action brought jointly with the Attorneys General of California, Illinois, Ohio, and North Carolina).

<sup>26</sup> *FTC v. Diamond Phone Card, Inc.*, No. 09-CV-03257-NGG-VVP (E.D.N.Y. final order May 14, 2010). In 2009, the FTC resolved similar charges in two cases against prepaid

possible voluntary nutrition standards. Experts also presented new research on the impact of food advertising on children's food choices, discussed the legal ramifications of possible restrictions on food advertising to children, and assessed food industry self-regulatory efforts to impose nutritional standards on their advertising to children.<sup>28</sup>

FTC staff is working on a follow-up report to the FTC 2008 Report on Marketing Food to Children and Adolescents. The 2008 report reviewed industry expenditures and activities in marketing foods and beverages, including integrated advertising campaigns that combine traditional media, such as television, with previously unmeasured forms of marketing, including packaging, in-store advertising, sweepstakes, Internet, and cross-promotion with movies.<sup>29</sup> The follow-up report, expected in 2011, will analyze marketing activities and expenditures in 2009 by dozens of food and beverage companies in promoting their products to children and teenagers. It will be an important tool to track the marketplace's response to childhood obesity and identify areas where more action is needed. The report also will examine the nutritional quality of those products and compare them to the nutritional quality of products marketed to children and teenagers in 2006.

## 2. Promoting Children's Internet Safety and Advertising Literacy

During the past year, the FTC developed additional resources for use by children, parents and teachers to stay safe online and learn about how advertising works. In response to the Broadband Data Improvement Act of 2008, the FTC produced the brochure *Net Cetera: Chatting*

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<sup>28</sup> See generally *Sizing Up Food Marketing and Childhood Obesity* web page, [www.ftc.gov/bcp/workshops/sizingup/index.shtml](http://www.ftc.gov/bcp/workshops/sizingup/index.shtml).

<sup>29</sup> *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation* (2008), [www.ftc.gov/os/2008/07/P064504foodmktingreport.pdf](http://www.ftc.gov/os/2008/07/P064504foodmktingreport.pdf).

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<sup>30</sup> See FTC Press Release, OnGuardOnline.gov Off to a Fast Start with Online Child Safety Campaign (Mar. 31, 2010), [www.ftc.gov/opa/2010/03/netcetera.shtm](http://www.ftc.gov/opa/2010/03/netcetera.shtm).

<sup>31</sup> See FTC Press Release, FTC Helps Prepare Kids for a World Where Advertising Is Everywhere (Apr. 28, 2010), [www.ftc.gov/opa/2010/04/admongo1.shtm](http://www.ftc.gov/opa/2010/04/admongo1.shtm).

<sup>32</sup> See Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501-6508 (2009). The FTC's implementing regulations (the "COPPA Rule") are found at 16 C.F.R. Part 312 (2009).

environment, including the explosion of social networking and the proliferation of mobile web technologies and interactive gaming, the Commission recently initiated an accelerated review of COPPA's effectiveness.<sup>33</sup>

#### **F. Using Aggressive Law Enforcement to Combat Health Fraud**

The FTC continues to protect consumers from false and misleading health claims involving products as diverse as cereals and cold remedies and claims as significant as cancer cures.

Last year, the Commission settled a case with Kellogg Company over charges that its advertising falsely claimed that Frosted Mini Wheats was clinically shown to improve children's attentiveness by nearly twenty percent.<sup>34</sup> The Commission also responded to the burgeoning area of immunity-boosting and cold and flu prevention and treatment claims when it investigated and reached a settlement with Airborne, Inc., the leading seller of effervescent tablets that purported to protect against exposure to germs in crowded environments. The Commission then settled similar charges against three major pharmacy retail chains that marketed their own store-brand "copycat" cold and flu products, and the manufacturer of these copycat products, requiring the companies to pay a total of \$9.8 million.<sup>35</sup>

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<sup>33</sup> Although the Commission generally reviews its rules approximately every ten years, the continued rapid-fire pace of technological change led the agency to accelerate its COPPA review by five years, to this year. See FTC Press Release, FTC to Host Public Roundtable to Review Whether Technology Changes Warrant Changes to the Children's Online Privacy Protection Rule (Apr. 19, 2010), [www.ftc.gov/opa/2010/04/coppa.shtm](http://www.ftc.gov/opa/2010/04/coppa.shtm).

<sup>34</sup> *Kellogg Co.*, FTC File No. 082-3245 (final order July 27, 2009).

<sup>35</sup> Walgreens agreed to pay \$5,970,000 in consumer redress, CVS Pharmacy, Inc. agreed to pay \$2,783,047, Rite Aid Corp. agreed to pay \$500,000, and Improvita Health Products, Inc.'s principals agreed to pay \$565,000 to settle these matters. See FTC Press Releases, Walgreens Will Pay Nearly \$6 Million to Settle FTC Deceptive Advertising Charges, Suppliers of

Importantly, the FTC also challenges claims that dietary supplements and devices treat, cure, or prevent cancer and other serious diseases. Last summer, a federal district court ordered Direct Marketing Concepts to pay nearly \$70 million for consumer refunds for dietary supplements it claimed would treat, cure, or prevent cancer and other serious diseases.<sup>36</sup> In *FTC v. Roex, Inc.*, the FTC alleged that the defendants' nationally broadcast, live, call-in radio show made claims that an infrared sauna device could treat cancer and that various dietary supplements would treat, reduce the risk of, or prevent diseases such as cancer, HI ~~11/11/11~~ (ar)Tj17.6400 0.0

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Airborne-like Cold-and-Flu Supplements Reach Separate \$565,000 Settlement (Mar. 23, 2010), [www.ftc.gov/opa/2010/03/walgreens.shtm](http://www.ftc.gov/opa/2010/03/walgreens.shtm); CVS to Pay Nearly \$2.8 Million in Consumer Refunds to Settle FTC Charges of Unsubstantiated Advertising of AirShield 'Immune Boosting' Supplement (Sept. 8, 2009), [www.ftc.gov/opa/2009/09/cvs.shtm](http://www.ftc.gov/opa/2009/09/cvs.shtm); Rite Aid to Pay \$500,000 in Consumer Refunds to Settle FTC Charges of False and Deceptive Advertising (July 13, 2009), [www.ftc.gov/opa/2009/07/riteaide.shtm](http://www.ftc.gov/opa/2009/07/riteaide.shtm).

<sup>36</sup> *FTC v. Direct Marketing Concepts*, No. 04-CV-11136-GAO (D. Mass. final order Aug. 13, 2009).

<sup>37</sup> *FTC v. Roex, Inc.*, No. SACV 09-0266 (C.D. Cal. final order Mar. 4, 2009).

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*See*



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<sup>39</sup> See FTC Competition Enforcement Database, [www.ftc.gov/bc/caselist/index.shtml](http://www.ftc.gov/bc/caselist/index.shtml)

Because these settlements cause enormous consumer harm, the Commission devotes substantial resources to this problem. For example, we are appealing the U.S. District Court for

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<sup>42</sup> *In re Androgel Antitrust Litig.* (No. II), 1:09-MD-2084-TWT (N.D. Ga. Feb. 22, 2010) (granting defendants' motion to dismiss).

<sup>43</sup> *See Ark. Carpenters Health & Welfare Fund v. Bayer AG*, Nos. 05-2851-cv(L), 05-2852-cv(CON) (2d Cir. Apr. 29, 2010) (affirming summary judgment for defendants but inviting plaintiffs to petition for rehearing en banc).

<sup>44</sup> *FTC v. Cephalon, Inc.*, No. 2:08-cv-2141 (E.D. Pa. Mar. 29, 2010) (denying motion to dismiss), [www.ftc.gov/os/caselist/0610182/index.shtm](http://www.ftc.gov/os/caselist/0610182/index.shtm).

! On average, the deals delay the availability of cost-savings

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<sup>45</sup> Pay-for-Delay: How Drug Company Pay-Offs Cost Consumers Billions, *supra* note 40.

<sup>46</sup> *FTC v. Ovation Pharm., Inc.*, No. 08-cv-06379 (D. Minn. complaint filed Dec. 16, 2008).

preserve competition that otherwise would have been lost.<sup>47</sup> In the past year, the Commission also has sued to block Talecris' acquisition of CSL, which the Commission alleged would have raised prices for plasma derivative protein therapies used to treat a variety of illnesses, including immunodeficiency diseases.<sup>48</sup> The parties abandoned the deal in the face of the FTC's challenge.

Merger enforcement also promotes innovation. In medical device markets, the Commission blocked Thoratec's proposed acquisition of Heartware, its only potential competitor for left ventricular assist devices. These devices are surgically implantable blood pumps that provide a life-sustaining treatment for patients with advanced heart failure.<sup>49</sup> Blocking the transaction ensures that the two companies will continue to compete to develop better devices, which will benefit consumers.

Pharmacy Benefit Management (PBM) services are a critical part of the health care industry, and the Commission has allocated substantial resources to enforcement, advocacy, and policy development in this area. PBMs can help health care plans manage the cost and quality of the prescription drug benefits they provide to their enrollees, but many have criticized PBMs for a lack of transparency in their operations, for improper use and inadequate protection of consumer information, and for utilizing their position in the market to undermine competition.

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<sup>47</sup> *Watson Pharm., Inc.*, FTC File No. 091 0116 (final order Jan. 7, 2010); *Schering Plough Corp.*, FTC File No. 091-0075 (proposed order accepted for public comment Oct. 29, 2009); *Pfizer Inc.*, FTC File No. 091-0053 (final order Jan. 25, 2010).

<sup>48</sup> *FTC v. CSL Ltd.*, No. 09-cv-1000 (D.D.C. complaint filed May 28, 2009).

<sup>49</sup> *Thoratec Corp.*, FTC File No. 091-0064 (administrative complaint dismissed Aug. 11, 2009).

Last year, the Commission took action against CVS/Caremark, a leading PBM, in order to protect the personal information of consumers.<sup>50</sup> As CVS/Caremark has acknowledged, the Commission is currently investigating whether certain CVS/Caremark business practices may violate the FTC Act. This investigation is ongoing and has been structured as a joint effort of the Bureau of Consumer Protection and the Bureau of Competition so that the investigation can efficiently and effectively address both antitrust and consumer protection issues.

### **C. Energy**

The petroleum industry plays a crucial role in our economy, and few issues are more important to consumers and businesses than the prices they pay for gasoline and energy to heat and light their homes and businesses. Accordingly, the Commission carefully monitors energy markets and devotes significant resources to maintain and protect competition across a wide range of industry activities. This work is undertaken by a.00 0.00 nmg and dl.0000uu98009.0t-si nu00000 0ie



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<sup>53</sup> Guide to Complying with Petroleum Market Manipulation Regulations, [www.ftc.gov/os/2009/11/091113mmrguide.pdf](http://www.ftc.gov/os/2009/11/091113mmrguide.pdf).

<sup>54</sup> See Comment of the Federal Trade Commission on *Control and Affiliation for Purposes of the Commission's Market-Based Rate Requirements Under Section 205 of the Federal Power Act and the Requirements of Section 203 of the Federal Power Act*, FERC Docket No. RM09-16-000 (Mar. 29, 2010); Comment of the Federal Trade Commission on Control and Af i l i a t i o n f o r P u r p o s e s o f t h e C o m m i s s i o n ' s M a r k e t - B a s e d R a t e R e q u i r e m e n t s U n d e r S e c t i o n 2 0 5 o f t h e F e d e r a l P o w e r A c t a n d t h e R e q u i r e m e n t s o f S e c t i o n 2 0 3 o f t h e F e d e r a l P o w e r A c t

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A home is one of the most important purchases, and usually the most expensive purchase, that Americans make. The Commission therefore has devoted substantial resources to ensure that home buyers benefit from competition. In November 2009, the Commission ruled that Realcomp II, Ltd., a real estate Multiple Listing Service (MLS) in Michigan, could not impede competition from non-traditional and discount brokers by prohibiting them from listing on popular real estate websites.<sup>56</sup> Such hurdles can raise the costs that home buyers pay for real estate services. The Commission has been particularly active in this market and has obtained consent orders with several other Multiple Listing Services throughout the United States (Texas, Pennsylvania, New Jersey, Colorado, Wisconsin, and New Hampshire) to protect the competition that discount brokers provide.<sup>57</sup>

The funeral industry is also important to consumers and a focus of the Commission. In the past year

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<sup>56</sup> *Realcomp II, Ltd.*, FTC Dkt. No. 9320 (Opinion of the Commission Oct. 30, 2009).

<sup>57</sup> See *West Penn MLS*, FTC File No. 081-0167 (final order Feb. 13, 2009); *Multiple Listing Serv., Inc.*, FTC File No. 061-0090 (final order Mar. 13, 2008); *MiRealSource, Inc.*, FTC File No. 061-0266 (final order Mar. 20, 2007); *Info. and Real Estate Servs, LLC.*, FTC File No. 061-0087 (final order Nov. 22, 2006); *N. New England Real Estate Network, Inc.*, FTC File No. 051-0065 (final order Nov. 22, 2006); *Williamsburg Area Ass'n of Realtors, Inc.*, FTC File No. 061-0268 (final order Nov. 22, 2006); *Realtors Ass'n of N. Wisconsin, Inc.*, FTC File No. 061-0267 (final order Nov. 22, 2006); *Monmouth County Ass'n of Realtors*, FTC File No. 051-0217 (final order Nov. 22, 2006); *Austin Bd. of Realtors*, FTC File No. 051-0219 (final order Aug. 29, 2006). Indeed, due to pressure from the Commission and DOJ, the National Association of Realtors eliminated its optional rule that prohibited affiliated Multiple Listing Services from transmitting discount broker listings to public web sites.

Vegas.<sup>58</sup> When SCI proposed to acquire Keystone North America, the Commission ordered SCI to divest 22 funeral homes and four cemeteries in 19 areas throughout the country to preserve competition that otherwise would have been lost.<sup>59</sup>

In another consumer sector, the Commission required PepsiCo, Inc. to restrict its access

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<sup>58</sup> *Serv. Corp. Int'l*, FTC File No. 091-0138 (final order Jan. 6, 2010).

<sup>59</sup> *Serv. Corp. Int'l and Keystone N. Am., Inc.*, FTC File No. 101-0013 (final order Apr. 30, 2010).

<sup>60</sup> *PepsiCo, Inc.* FTC File No. 091-0133 (proposed order accepted for public comment Feb. 26, 2010).

<sup>61</sup> *Polypore Int'l, Inc.*, FTC Dkt. No. 9237 (initial decision Mar. 1, 2010).

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*K+S Aktiengesellschaft*, FTC File No. 091-0086 (final order Nov. 9, 2009).



which concluded that providing the U.S. Food and Drug Administration (FDA) with the authority to approve follow-on biologics would be an efficient way to bring lower-priced drugs to market.<sup>65</sup> Biologics – products manufactured using living tissues and microorganisms – are increasingly used to treat arthritis, cancer, diabetes, and other diseases.<sup>66</sup> The Commission also released a report analyzing the competitive impact of authorized generics, which are drugs approved by the FDA as brand-name drugs but that the brand subsequently chooses to market (or have marketed) as generic.<sup>67</sup>

### **I. International Competition Activities**

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<sup>65</sup> Emerging Health Care Issues: Follow-on Biologic Drug Competition (June 2009), [www.ftc.gov/os/2009/06/P083901biologicsreport.pdf](http://www.ftc.gov/os/2009/06/P083901biologicsreport.pdf).

<sup>66</sup> A follow-on biologic (FOB) is a drug that can be prescribed to treat the same condition as the branded product. To obtain FDA marketing approval the FOB applicant does not have to duplicate the safety and efficacy findings of the branded product; rather, it must show that it is biosimilar to the branded product. i e c a n t

<sup>67</sup> Authorized Generics: An Interim Report (June 2009), [www.ftc.gov/os/2009/06/P062105authorizedgenericsreport.pdf](http://www.ftc.gov/os/2009/06/P062105authorizedgenericsreport.pdf).

investigations, including significant mergers such as Pfizer/Wyeth – a case in which agency staff worked with staff in the Australian, Canadian and EU competition agencies.

The FTC continues to build a strong network of cooperative relationships with our counterparts abroad, ranging from the EU and Canada to China and India. For example, the FTC recently signed a Memorandum of Understanding with the Russian Federal Antimonopoly Service. In addition, with congressional support, the Commission expanded its longstanding technical assistance program to help competition agencies in new market-based economies. More broadly, the Commission is a recognized leader in key multilateral competition fora, such as the International Competition Network, the OECD Global Forum on Competition, and the

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<sup>68</sup> Commissioner Kovacic believes the Commission will need additional resources but he disagrees with certain aspects of the analysis in Section IV of this testimony.



\$129,000,000 in FY 2011. The General Fund in the U.S. Treasury would make a direct appropriation of \$185,000,000 to fund the agency's operations.

**V. CONCLUSION**

The FTC very much appreciates the strong support it has received from Congress. We hope to continue to earn that support by vigorously and aggressively fulfilling our mission to protect American consumers and promote a competitive marketplace.