

**Prepared Statement of
The Federal Trade Commission**

**Before the
Subcommittee on
Financial Services and General Government**

**of the Committee on Appropriations
United States House of Representatives**

**Washington, D.C.
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I. Introduction

Chairman Serrano, Ranking Member Regula, and members of the Subcommittee, I am Deborah Platt Majoras, Chairman of the Federal Trade Commission (ACommission@ or AFTC@). I

issues and initiatives for the agency's consumer protection mission in FY 2008, as well as the methods the FTC will use to address them.

A. Consumer Privacy

Protecting the privacy of American consumers has long been a top priority at the Federal Trade Commission, and it remains a crucial consumer protection issue. The explosive growth of the Internet and the development of sophisticated computer systems and databases have made it easier than ever for companies to gather, store, and use information about their customers. These new information systems can provide tremendous benefits to consumers, who can access customer service hotlines 24-hours-a-day, have easier access to credit, and enjoy many marketplace conveniences that they have come to expect. At the same time, if the sensitive information needed to enable these services is not protected adequately, consumers can be harmed and lose confidence in the marketplace. This testimony discusses some examples of the Commission's recent work on privacy issues.

1. Data Security and Identity Theft

In 1998, Congress passed the Identity Theft Assumption and Deterrence Act (The Identity Theft Act³), which assigned the FTC a unique role in combating identity theft and coordinating government efforts.³ This role includes taking consumer complaints; implementing the Identity Theft Data Clearinghouse, a centralized database of victim complaints used by 1,300 law enforcement agencies; assisting victims and consumers by providing information and education; and educating businesses on sound security practices. The FTC continues to focus on combating identity theft primarily through law enforcement, participation in the Presidential

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Identity Theft Task Force, education, and workshops.

a. Law Enforcement

While the FTC, a civil enforcement agency, cannot enforce criminal identity theft laws, it can take law enforcement action against businesses that fail to implement reasonable safeguards to protect sensitive consumer information from identity thieves. Over the past two years, the FTC has brought 14 enforcement actions against businesses, including BJ's Wholesale Club, ChoicePoint, CardSystems Solutions, and DSW, for their failure to provide reasonable data security. These actions include cases against companies that allegedly threw files containing consumer home loan applications into an unsecured dumpster; stored sensitive information in multiple files when there was no longer a business need to keep the information; failed to implement simple, low-cost, and readily available defenses to well-known Web-based hacker attacks; stored sensitive consumer information in unencrypted files that could be easily accessed using commonly known user IDs and passwords; and failed to use readily available security measures to prevent unauthorized wireless connections to their networks.⁴

For example, last fall, the Commission announced a consent agreement with Guidance Software, Inc. settling allegations that the company made misrepresentations about the security it abpto precludip

creditors and credit reporting agencies; and an accelerated review of government

about identity theft, presentation slides, an easy-to-read brochure, and a 10-minute video that organizations can use to educate their employees, customers, and communities about identity theft. The Commission has also formed many partnerships to help us broaden our reach. For

consumers -- that is, verifying that they are who they say they are when they open new accounts or access existing ones -- can make it more difficult for criminals to use stolen information. We hope that the Commission's workshop will help spur the development of more effective techniques, like multifactor authentication and biometrics.

2. Pretexting

Another important issue on the Commission's privacy agenda is the practice of telephone records pretexting. Phone pretexting is the short-hand term used to describe the use of false pretenses to obtain sensitive phone records, including lists of calls made and the dates and duration of such calls, and then sell them to third parties without the knowledge or consent of the actual account holder. In a typical scenario, a pretexter calls the consumer's telephone company, pretends to be the consumer, and asks for his recent phone bill to be faxed to him. Another technique includes opening an online account for the subscriber and accessing the records online. This disturbing practice was made infamous last fall with the well-publicized Hewlett-Packard case.

This past May, well before the Hewlett-Packard pretexting story became national news, the Commission filed five cases against Web-based operations that obtained and sold consumers' confidential telephone records to third parties.¹² The FTC's complaints allege that the

¹² *FTC v. Info. Search, Inc.*, No. 1:06-CV-01099-AMD (D. Md. filed May 1, 2006), available at <http://www.ftc.gov/os/caselist/pretextingsweep/060501informationsearch-cmplt.pdf>; *FTC v. AccuSearch, Inc. d/b/a Abika.com*, No. 06-CV-0105 (D. Wyo. filed May 1, 2006), available at <http://www.ftc.gov/os/caselist/pretextingsweep/060501accusearchcomplaint.pdf>; *FTC v. CEO Group, Inc. d/b/a Check Em Out*, No. 06-60602 (S.D. Fla. filed May 1, 2006), available at <http://www.ftc.gov/os/caselist/pretextingsweep/060501ceogroup-cmplt.pdf>; *FTC v. 77 Investigations, Inc.*, No. EDCV06-0439 VAP (C.D. Cal. filed May 1, 2006), available at <http://www.ftc.gov/os/caselist/pretextingsweep/060501-77investigcmplt.pdf>;

unauthorized sale of phone records is an unfair practice in violation of the FTC Act and seek a permanent halt to the sale of the phone records. To date, the Commission has resolved two of these cases. The settlement orders impose strong remedies against the defendants, including a ban on obtaining or selling phone records and a prohibition against pretexting to obtain other personal information of consumers. Additionally, the defendants must give up the profits made from their sales.

Just this month, the FTC announced its case against Action Research Group, an alleged pretexter who deceptively obtained and sold consumers' confidential phone r

on a consumer's computer that the consumer does not want, the consumer must be able to uninstall or disable it.

The Commission illustrated these principles in a recent spyware settlement with Zango, Inc., formerly known as 180solutions.¹⁴ Zango provides advertising software programs, or adware, that monitor consumers' Internet use in order to display targeted pop-up ads, and the company sent billions of pop-up ads to consumers over several years. The consent order settles allegations that the company installed its advertising software programs on consumers' computers without adequate notice or consent. The complaint alleged that Zango's distributors frequently offered consumers free programs or software, such as screensavers, peer-to-peer file sharing software, and games, without disclosing that downloading them would also result in installation of Zango's adware. In other instances, Zango's third-party distributors allegedly exploited security vulnerabilities in Web browsers to install the adware via "drive-by" downloads. As a result, millions of consumers received pop-up ads without knowing why and had their Internet use monitored without their knowledge.

Moreover, the complaint alleged that the company deliberately made these adware programs difficult for consumers to identify, locate, and remove from their computers. As part of the settlement, Zango agreed to disgorge \$3 million in ill-gotten gains derived from its past actions. The company also agreed to injunctive provisions that will protect consumers against these practices in the future. The Commission will continue to bring law enforcement actions in this area.

¹⁴ *In the Matter of Zango, Inc.*, FTC File No. 052 3130 (Nov. 3, 2006) (consent agreement), available at <http://www.ftc.gov/os/caselist/0523130/0523130agree061103.pdf>.

2. Spam

Since 1997, when the FTC brought its first case involving spam, the Commission has aggressively pursued deceptive and unfair practices in spam through 89 law enforcement actions, 26 of which were filed after Congress enacted the CAN-SPAM Act. In FY 2006, the FTC brought eight new law enforcement actions targeting deceptive and fraudulent spam email. For example, in March 2006, the FTC obtained a \$900,000 civil penalty award in a case against Jumpstart Technologies, which allegedly promised Afree@ movie tickets to consumers, if they divulged the email addresses of several friends. Jumpstart then repeatedly emailed those friends, making the messages appear as if they originated from the consumer's own email address. The FTC alleged that Jumpstart's use of misleading Afrom@ information and subject lines violated the CAN-SPAM Act. The settlement also prohibits the company from engaging in future email campaigns with deceptive sender information or content.¹⁵ The civil penalty is the largest obtained by the Commission for illegal spam.

The FTC continues to devote resources to fighting spam. The Commission is aware of email filtering companies' recent reports that the amount of spam they process is rising and is studying whether this increase has resulted in a change in the amount of spam actuile58 Tmin thstar4nuN0004 T

stability of the Internet. In the coming months, as a follow-up to its initial Spam Forum of 2003, the Commission will host a workshop to examine how spam has evolved and what stakeholders can do to address it.

3. Digital Rights Management (DRM)

DRM technologies generally limit the ability of consumers to use content, such as software, music, and movies. While there are, of course, legitimate uses of DRM technology, such as protecting intellectual property rights and encouraging innovation, DRM also can raise consumer protection concerns. Consumers may be deceived if the content seller makes a false or misleading material claim about how the content may be used or if the seller fails to disclose adequately material limitations on DRM-restricted content.

Just last month, the FTC announced its first action involving DRM, against Sony BMG Music Entertainment.¹⁶ Sony BMG sold CDs that consumers could listen to on any traditional home stereo, portable, car, or computer CD player. Unbeknownst to consumers, however, these CDs contained DRM technology that allowed the music to be played on consumers' computers, but did not permit the music files to be directly transferred to or played on certain portable digital devices, such as an Apple iPod. The DRM technology also limited consumers to making three copies of the music files directly from the original CDs, and installed software that created security vulnerabilities and monitored consumers' listening habits to send them marketing messages.

In its complaint, the FTC alleged that Sony BMG did not adequately disclose that the DRM software would limit the devices on which consumers could play the CDs or the number of

¹⁶ *In the Matter of Sony BMG Music Entm't*, FTC File No. 062 3019 (Jan. 30, 2007) (consent agreement), available at <http://www.ftc.gov/os/caselist/0623019/070130agreement0623019.pdf>.

copies they could make. Because ordinary experience with CDs would not lead consumers to expect these limits, and because these limits likely would affect purchasing decisions, the FTC alleged that Sony BMG's failure to disclose adequately these

unsubstantiated weight-loss or weig

Bureaus, announced a new self-regulatory advertising initiative designed to use advertising to help promote healthy dietary choices and healthy lifestyles among American children.²⁵ Ten leading food manufacturers -- including McDonalds, The Hershey Company, Kraft Foods, and Cadbury Schweppes -- committed to devoting at least 50% of their advertising directed to children under twelve to advertising products that represent healthy dietary choices or that prominently include healthy lifestyle messages that encourage physical activity or good nutrition. They also committed to reducing their use of third-party licensed characters and to incorporating healthy lifestyle messages into their interactive games.

D. Financial Practices

As with health issues, financial issues impact all consumers -- whether they are purchasing a home, trying to establish credit or improve their credit rating, or managing rising debt. Thus, protecting consumers in the financial services marketplace is a critical part of the FTC's consumer protection mission. The FTC has jurisdiction over a wide range of financial service providers other than depository institutions. Last year, the Commission sought to strengthen the Commission's work in the area of core financial services, such as lending and debt collection. This year, the Division of Financial Practices will focus on the "ABCs": Alternative mortgages, Bad debt collection, and Credit-related deception.

1. Alternative Mortgages

A mortgage is often the largest financial obligation many consumers will ever have, and Commission law enforcement actions have targeted deceptive and other illegal practices in the mortgage market, with a focus on the subprime market. FTC actions have targeted deceptive or

²⁵ See Anny's Shin, *Ads Aimed at Children Get Tighter Scrutiny; Firms to Promote More Healthful Diet Choices*, WASH. POST, Nov. 15, 2006, at D1.

Just a few weeks ago, the Commission filed a complaint against Select Management

disgorgement.

In June 2006, the FTC announced the first case to highlight the application of DNC provisions to corporate affiliates.²⁹ The defendants allegedly asserted that they were permitted to call consumers on the DNC Registry on the basis of a purported established business relationship between the consumers and the seller's corporate affiliates, but the FTC contended the relationship did not meet the "consumer expectation" test for allowing such calls. The defendants allegedly violated other Telemarketing Sales Rule ("TSR") provisions, including by not paying the fee to access numbers on the Registry and instead using the access purchased by a separately incorporated affiliate. The FTC obtained \$350,000 in civil penalties.

Just last month, the FTC successfully resolved litigation against The Broadcast Team (ATBT®), a telemarketer that specialized in broadcasting prerecorded calls.³⁰ The Department of Justice filed a civil penalty action on the FTC's behalf in December 2005 alleging that TBT called numbers on the Registry and made "abandoned calls" -- calls which fail to connect consumers to a live operator within two seconds. TBT preemptively filed a separate action against the FTC for declaratory and injunctive relief, arguing, among other things, that the FTC lacked statutory authority and that its application of TSR provisions would violate the First Amendment. In April 2006, a federal district court dismissed TBT's action for failure to state a claim. TBT appealed. In January 2007, TBT and its owners settled the civil penalty action, agreeing to dismiss their appeal, comply with the TSR, and pay a \$1 million civil penalty. The

York, and the Manhattan Hispanic Chamber of Commerce. The workshop was the latest in a series of workshops by the FTC and the USPIS that aimed to identify local problems and discuss ways to address them; facilitate open dialogue with local government, consumer groups, and members of the Hispanic community on issues affecting Hispanic consumers; and share consumer education resources to help local communities conduct outreach about fraud, how to prevent it, and where to report it.

During the workshop, the FTC announced three law enforcement actions against scammers targeting Hispanics with their unlawful business practices,³² as well as the results of an Hispanic Multi-media Surf conducted by the FTC and 60 partners in the United States and Latin America.³³ On the education front, in January 2007, the FTC released *Read Up! How to be an Informed Consumer* -- a compendium of information for Spanish-speakers and Hispanic organizations on consumer rights, managing finances, making major purchases, avoiding scams and rip-offs, and being safe and secure online.³⁴

I. Workshops

In addition to the workshops on *Protecting Consumers in the Next Tech-Ade* and *Protecting Consumers in the Alternative Mortgage Marketplace*, in January 2007, the FTC

hosted a workshop analyzing the marketing of goods and services through offers with negative option features -- *i.e.*, offers where sellers interpret a consumer's failure to take an affirmative action to reject goods or services, or to cancel a sales agreement, as acceptance of the offers.³⁵ Participants discussed the costs and benefits of such offers and ways to make effective disclosures when such offers are made online.

On April 27, 2007, the FTC will host a public workshop in San Francisco, California, to discuss the issues surrounding the use of mail-in rebates by manufacturers and retailers.³⁶ The workshop will gather representatives from consumer groups, industry, academia, and government to debate the costs and benefits of rebates from all perspectives. One goal of the workshop will be to explore best practices in the offering and fulfillment of rebates.

J. Consumer and Business Education

As noted previously, another method the FTC uses to further its consumer protection mission is its production and distribution of plain-language consumer and business education materials that give practical guidance on topics relevant to day-to-day marketplace activities. Between February 2006 and January 2007, the FTC

their daily lives, including abusive lending practices, telemarketing fraud, bogus health claims, and identity theft. Over the years, the FTC has developed a series of publications, launched dedicated Web pages, and worked with numerous federal agencies and private sector partners to develop and disseminate plain-language materials in English and Spanish for this audience. FTC publications that have particular relevance to older Americans include *Getting Credit When You're Over 62*,³⁷ and *Helping Older Consumers Avoid Charity Fraud*.³⁸ In all of its efforts to educate the elderly, the FTC works closely with organizations like AARP. As just one example, AARP has helped enhance the FTC's Identity Theft campaign by co-branding the publication *ID Theft: What's It All About?* and then printing and distributing 750,000 copies in English and 50,000 copies in Spanish through its state offices and at events, forums, fairs, and senior universities.

In an effort to reach consumers who often turn to their elected representatives for help on consumer protection matters, the FTC's Office of Congressional Relations works with congressional offices to encourage them to provide links on their websites to the Commission's extensive education material, and to assist them in organizing consumer education campaigns. During the 109th Congress, for example, FTC experts attended town hall meetings hosted by Members of Congress throughout the country to address such issues as identity theft, safe computing, and financial literacy.

³⁷ *FTC Facts for Consumers: Getting Credit When You're Over 62* (Apr. 2006), available at <http://www.ftc.gov/bcp/online/pubs/credit/over62.pdf>.

K. Criminal Enforcement

Frauds the FTC pursues civilly are also often crimes. Over the past two years, the FTC's Criminal Liaison Unit, or CLU, has stepped up cooperation with criminal authorities -- a dramatic illustration of the FTC's efforts to bring the collective powers of different government agencies to bear upon serious misconduct in many consumer protection areas. As a result of these cooperative efforts, for example, more than 40 business opportunity con artists targeted during the FTC's 2005 business opportunity sweep -- Project Biz Opp Flop -- have been convicted. And in December, the Commission announced Project False Hope\$, another interagency campaign to stamp out business opportunity fraud, in which the FTC, together with the Department of Justice, the United States Postal Inspection Service, and law enforcement agencies in 11 states announced more than 100 business opportunity law enforcement actions.³⁹

During 2006, CLU reported some outstanding developments. Grand juries charged 71 FTC defendants and their close associates with crimes including mail and wire fraud, bank fraud, conspiracy, money laundering, and tax fraud. During the same period, federal prosecutors obtained convictions of 57 FTC defendants and their close associates. And consumer protection-related crimes continued to draw stiff sentences. Thirty-three FTC defendants and their close associates received prison sentences totaling more than 259 years, ranging from one year to more than 17 years in prison. The FTC's criminal referral program continues to be a high priority.

L. Advocacy

Advocacy is another method used by the Commission to advance consumers' interests. The FTC frequently provides comments to legislatures and government agencies on the effect of

³⁹ FTC Press Release, *Federal, State Law Enforcers Complete Bogus Business Opportunity Sweep*, (Dec. 12, 2006), available at <http://www.ftc.gov/opa/2006/12/falsehopes.htm>.

proposed laws and regulations. Although consumers need to be protected from fraud and deception, unduly broad restrictions on the di

additional information issued by the FTC increased by 40% over the same period. The FTC has also facilitated cooperation and voluntary compliance with the law by promoting transparency in enforcement standards, policies, and decision-making processes.

A. Health Care

The health care industry plays a crucial role in the United States economy in terms of the

required to sell its generic antidepressant, trazodone, and its generic blood pressure medication, triamterene/HCTZ. Barr also is required to divest either Pliva's or Barr's generic drug for use in treating ruptured blood vessels in the brain. Finally, Barr is required to divest Pliva's branded organ preservation solution.

Similarly, the FTC has required revisions of mergers to maintain competition in the drug market, including mergers between Watson Pharmaceuticals and Andrx Corporation,⁴² Teva Pharmaceutical Industries and IVAX Corporation,⁴³ and Johnson & Johnson and Pfizer's consumer health division.⁴⁴ In January 2007, the Commission published a consent order for public comment regarding the proposed acquisition of Mayne Pharma Limited by Hospira, Inc. that requires the sale of certain assets to preserve competition.⁴⁵ In each of these merger investigations, the transactions allegedly would have substantially lessened competition and led to increased prices.

Outside of merger review, the FTC continues to be vigilant in the detection and investigation of agreements between drug companies that delay generic entry. In November

⁴² *In the Matter of Watson Pharmaceuticals, Inc., and Andrx Corporation*, FTC Docket No. C-4172 (Dec. 12, 2006) (decision and order), available at http://www.ftc.gov/os/caselist/0610139/061212do_public_ver0610139.pdf.

⁴³ *In the Matter of Teva Pharmaceutical Industries Ltd. and IVAX Corporation*, FTC Docket No. C-4155 (March 2, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510214/0510214.htm>.

⁴⁴ *In the Matter of Johnson & Johnson and Pfizer Inc.*, FTC Docket No. C-4180 (Jan. 19, 2007) (decision and order), available at http://www.ftc.gov/os/caselist/0610220/0610220c4180decisionorder_publicversion.pdf. See also *In the Matter of Allergan, Inc. and Unnamed Corp.*, FTC Docket No. C-4156 (April 17, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0610031/0610031.htm>.

⁴⁵ FTC Press Release, *FTC Challenges Hospira/Mayne Pharma Deal* (Jan. 18, 2007), available at <http://www.ftc.gov/opa/2007/01/hospiramayne.htm>; *In the Matter of Hospira, Inc. and Mayne Pharma Ltd.*, FTC Docket No. C-4182 (Jan. 18, 2007) (decision and order), available at <http://www.ftc.gov/os/caselist/0710002/070118do0710002.pdf>.

2005, in the case of *FTC v. Warner Chilcott Holdings Company III, Ltd.*, the Commission filed a complaint in federal district court seeking to terminate an agreement be

FTC staff has initiated a study on authorized generic drugs.⁴⁹ The study is intended to help the agency understand the circumstances under which innovator companies launch authorized generics; to provide data and analysis of how competition between generics and authorized generics during the Hatch-Waxman Act's 180-day exclusivity period has affected short-run price competition and long-run prospects for generic entry; and to build on the economic literature about the effect of generic drug entry on prescription drug prices. At this time, the Commission has given public notice regarding its proposed methodology, and staff is reviewing the public comments that have been received.

Perhaps more importantly, the FTC also continues to investigate patent settlement agreements between pharmaceutical companies that are required to be filed with the Commission under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. In the "exclusion payment settlements" (or, to some, "reverse payment settlements"), the brand-name drug firm pays its potential generic competitor to abandon the patent challenge and delay entering the market. Such settlements restrict competition at the expense of consumers, whose access to lower-priced generic drugs is delayed, sometimes for many years.

2. Medical Devices and Diagnostic Systems

This past year, the Commission actively enforced the antitrust laws against transactions that allegedly would have reduced competition for several types of medical devices and diagnostic systems. For example, in July 2006, the FTC approved a final consent order

⁴⁹ FTC Press Release, *FTC Proposes Study of Competitive Impacts of Authorized Generic Drugs* (Mar. 29, 2006), available at <http://www.ftc.gov/opa/2006/03/authgenerics.htm>.

regarding the proposed \$27 billion acquisition of Guidant Corporation by Boston Scientific Corporation. These two companies had large market shares in several coronary medical device markets in the United States, together accounting for 90% of the U.S. PTCA balloon catheter market and 85% of the U.S. coronary guidewire market. The consent order required the divestiture of Guidant's vascular business to an FTC-approved buyer.⁵⁰ In 2006, the FTC also obtained final consent orders in mergers affecting markets for biopsy systems and for centrifugal vacuum evaporators, a tool used in the health care industry.⁵¹

4. Price Fixing

During the past year, the FTC continued to investigate and challenge unlawful price fixing by physicians and other health care providers. In the past year, the FTC approved final consent orders in four matters settling such charges. For example, the Commission alleged that:

§ the members of the Puerto Rico Association of Endodontists had agreed on the prices they would charge dental insurance plans and had refused to deal with plans that would not accept the collectively determined prices, leading to higher costs for consumers; and that⁵⁵

§ two independent practice associations and 18 member physician practices in the Kansas City area (New Century Health Quality Alliance) refused to deal with health care plans except on collectively agreed-upon terms, including price.⁵⁶

B. Energy

Few issues are more important to American consumers and businesses than the decisions being made about current and future energy production and use. The FTC plays a key role in

dialysis clinics and required divestiture in 66 markets throughout the United States. *In the Matter of Fresenius AG*, FTC Docket No. C-4159 (June 30, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510154/0510154.htm>.

⁵⁵ *In the Matter of Puerto Rico Ass'n of Endodontists, Corp.*, FTC Docket No. C-4166 (Aug. 24, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510170/>

maintaining competition and protecting consumers in energy markets. In doing so, the FTC has assembled vast competition policy and enforcement expertise in matters affecting the production and distribution of gasoline and natural gas liquids used in heating and other industrial applications. The agency invokes all of the powers at its disposal -- including challenges of antitrust violations, studies and analyses, and advocacy before other government agencies -- to protect consumers from anticompetitive conduct in the industry.

In November 2006, for example, the FTC challenged EPCO's proposed \$1.1 billion acquisition of TEPPCO

or retail level that fit the relevant legislation's definition of evidence of "price gouging." Other factors such as regional or local market trends, however, appeared to explain these firms' prices in nearly all cases.⁵⁹

In December 2006, the Commission issued a report that examined the current state of ethanol production in the United States and measured market concentration using capacity and production data.⁶⁰ The study, which is the second in a series of annual reports, concludes that U.S. ethanol production currently is not highly concentrated. According to FTC staff, however, the results cannot preclude the possibility that future mergers within the industry may raise competitive concerns.⁶¹

C. Real Estate

As noted previously, purchasing or selling a home is one of the most significant financial transactions most consumers will ever make. Given this fact, the FTC has actively investigated restrictive practices in the residential real estate industry. In the past year, the agency has brought eight enforcement actions against associations of realtors or brokers who adopted rules that allegedly withheld the valuable benefits of the multiple listing services they control from consumers who chose to enter into non-traditional, and often less expensive, listing contracts with real estate brokers. These association policies allegedly limited the ability of home sellers

⁵⁹ Federal Trade Commission, *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases* (Spring 2006), available at <http://www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf>.

⁶⁰ FTC Press Release, *FTC Issues 2006 Report to Congress on Ethanol Market Concentration; Commission Approves Filing of Amended Complaint in National Support Services Matter; FTC Approves Final Consent Order in Thermo/Fisher Scientific Matter* (Dec. 5, 2006), available at <http://www.ftc.gov/opa/2006/12/fyi0678.htm>.

⁶¹ Federal Trade Commission, *2006 Report on Ethanol Market Concentration* (Dec. 1, 2006), available at http://www.ftc.gov/reports/ethanol/Ethanol_Report_2006.pdf.

to choose a brokerage agreement that best served their specific needs. In seven of these matters, the Commission agreed to settlements prohibiting multiple listing services from discriminating against non-traditional listing arrangements. The eighth m

In February 2006, the Commission announced the implementation of significant merger process reforms aimed at reducing the costs borne by both the FTC and merging parties.⁷⁰ In June 2006, the FTC and the Department of Justice Antitrust Division announced that they were implementing an electronic filing system that allows merging parties to submit, via the Internet, premerger notification filings required by the Hart-Scott-Rodino (HSR) Act.⁷¹

G. Competition Advocacy

The Commission frequently provides comments to federal and state legislatures and government agencies, sharing its expertise on the competitive impact of proposed laws and regulations when they explicitly or implicitly impact the antitrust laws, and when they alter the competitive environment through restrictions on price, innovation, or entry conditions. Recent FTC advocacy efforts have contributed to several positive consumer outcomes. In the past year, the FTC has sought to persuade regulators to adopt policies that do not unnecessarily restrict competition in the areas of wine distribution,⁷²

policy. This second report follows an initial report issued in 2003 following extensive hearings on this important topic.

In August 2006, the FTC convened the Internet Access Task Force to examine issues raised by converging technologies and regulatory developments, and to inform the enforcement, advocacy, and education initiatives of the Commission. Under the leadership of the Internet Access Task Force, the FTC recently addressed two issues of great interest to policy makers.

First, in October 2006, the FTC released a staff report, *Municipal Provision of Wireless Internet*, which provides a decision-tree framework for policymakers considering whether and how municipalities should provide Internet service. The report identifies the potential benefits and risks to competition and consumers associated with municipal provision of wireless Internet service.

Second, in February 2007, the FTC hosted a two-day workshop to explore the many competition and consumer protection issues relating to broadband Internet access, including so-called “network neutrality.” Among the topics discussed at the workshop were the current and future state of competition in the market for broadband Internet access; the capabilities and incentives of broadband Internet service providers to discriminate against, degrade, block, or charge fees for prioritized delivery of unaffiliated content and applications; and the potential effects of network neutrality regulation on innovation and competition in the market for broadband Internet access. The FTC intends to release a report of this workshop later this year.

In April 2007, the Commission will hold a three-day conference on *Energy Markets in*

leading experts from government, the energy industry, consumer groups, and the academic community to participate on panels to examine such topics as: (1) the relationship between market forces and government policy in energy markets; (2) the dependence of the U.S. transportation sector on petroleum; (3) the effects of the electric power industry restructuring on competition and consumers; (4) what energy producers and consumers may expect in the way of technological developments in the industry; (5) the security of U.S. energy supplies; and (6) the government's role in maintaining competition and protecting energy consumers.

I. Competition Education Initiatives

The FTC is committed to enhancing consumer confidence in the marketplace through enforcement and education. This year, Commission staff launched a multi-dimensional outreach campaign, targeting new and bigger audiences, with the message that antitrust enforcement helps consumers reap the benefits of competitive markets by keeping prices low and services and innovation high, as well as by encouraging more choices in the marketplace. The Commission is building a library of brochures, fact sheets, articles, reports and other products - both in print and online - in its efforts to reach consumers, attorneys, and business people, and is planning to leverage its limited resources through a "wholesale/retail" approach to outreach that involves partnering with other organizations to disseminate information on its behalf.

The Commission's website, www.ftc.gov, continues to grow in size and scope with resources on competition policy in a variety of vital industries. This year, the FTC launched new industry-specific websites for Oil & Gas, Health Care, Real Estate, and Technology. These minisites serve as a one-stop shop for consumers and businesses who want to know what the

10-12, 2007), available at <http://www.ftc.gov/bcp/workshops/energymarkets/index.html>.

FTC is doing to promote competition in these important business sectors. In the past year, the FTC also issued practical tips for consumers on buying and selling real estate, funeral services, and generic drugs, as well as “plain language” columns on oil and gas availability and pricing.

IV. International

The FTC’s Office of International Affairs (OIA), created in January 2007, brings together the international functions formerly handled in the Bureaus of Competition and Consumer Protection and the Office of General Counsel. OIA will bring increased prominence to the FTC’s international work, and will enhance the FTC’s ability to coordinate its enforcement efforts effectively to promote convergence toward best practices with our counterpart agencies around the world.

The FTC has built a strong network of cooperative relationships with its counterparts abroad, and plays a leading role in key multilateral fora. The growth of communication media and electronic commerce presents new challenges to law enforcement -- fraud and deception now know no borders. We work with other nations to protect American consumers who can be harmed by anticompetitive conduct and frauds perpetrated outside the United States. The FTC also actively assists new democracies moving toward market-based economies with developing competition and consumer protection laws and policies.

A. Consumer Protection

Rapid increases in technology and globalization have accelerated the pace of new consumer protection challenges, such as spam, spyware, telemarketing fraud, and data security and privacy, that cross national borders and raise both

fresh privacy concerns. As explained below, the FTC has a comprehensive international consumer protection program of enforcement, networking, and policy initiatives to address these new challenges.

In the coming year, the FTC will implement the U.S. SAFE WEB Act of 2006, which was signed into law in December 2006. Thanks to the action of Congress, the U.S. SAFE WEB Act provides the FTC with updated tools for the 21st century. It allows the FTC to cooperate more fully with foreign law enforcement authorities in the area of cross-border fraud and other practices, such as fraudulent spam, spyware, misleading health and safety advertising, privacy and security breaches, and telemarketing fraud, that are global and that harm consumers. As the FTC begins to take advantage of these new tools, cooperation with foreign law enforcement agencies regarding information sharing and investigative assistance will be greatly improved, diminishing fundamental roadblocks to effective cooperation.

The FTC works directly with consumer protection and other law enforcement officials in foreign countries to achieve its goals. In particular, in response to the amount of fraud across the U.S.-Canadian border, the FTC continues to build its relationship with its Canadian counterparts. We have worked hard to expand partnerships with Canadian regional entities to fight telemarketing fraud by Canadians targeting U.S. and Canadian consumers.

Increased globalization also requires the FTC to participate actively in international policy efforts to develop flexible, market-oriented standards, backed by aggressive enforcement, to address emerging consumer protection issues. In 2006, for example, the FTC, working with its foreign partners through the Organization for Economic Cooperation and Development (OECD) and through the London Action Plan, the international spam enforcement network, called for increased cross-border law enforcement cooperation and increased public/private

establishing important relationships with officials involved in developing the first comprehensive competition law in China, and underscoring the importance of the FTC and Antitrust Division's work to provide input into the drafting process.

The FTC is an active participant in key multilateral fora that provide important opportunities for competition agencies to enhance mutual understanding in order to promote cooperation and convergence, including the International Competition Network (ICN), the OECD, the United Nations Conference on Trade and Development (UNCTAD), and APEC. For example, over the past year, the FTC has served on the ICN's Steering Group, co-chaired its Unilateral Conduct working group and related objectives subgroup, chaired its Merger Notification and Procedures subgroup, and played a lead role in its working group on Competition Policy Implementation. In addition, the FTC also participates in U.S. delegations that negotiate competition chapters of proposed free trade agreements, including in connection with negotiations with Korea, Thailand, and Malaysia during the last year.

C. International Technical Assistance

The FTC assists developing nations as they move toward market-based economies with developing and implementing competition and consumer protection laws and policies. These activities, funded mainly by the United States Agency for International Development and conducted in cooperation with

V. Needed Resources for Fiscal Year 2008

To accomplish the agency's mission in FY 2008, the FTC requests \$240,239,000 and 1,084 FTE. This level of resources is needed to allow the FTC to continue to build on its past record of accomplishments in enhancing consumer protection and protecting competition in the United States and, increasingly, abroad. The FY 2008 request represents an increase of \$17,239,000 over the FTC's FY 2007 budget request before Congress. The increase includes:

- \$ 8,839,000 in mandatory salary and contract expenses;
- \$ 1,400,000 for 10 new FTE for the Consumer Protection Mission's Privacy and Identity Protection Program;
- \$ 4,500,000 for the Consumer Protection Mission's outreach and enforcement efforts including:
 - < \$2,000,000 for the AMedia literacy[®] initiative;
 - < \$1,300,000 for Do Not Call registration renewals and outreach;
 - < \$100,000 to increase enforcement efforts to combat spyware; and,
 - < \$100,000 to support our Congressionally-endorsed efforts to promote industry self-regulation in the marketing of entertainment and food to children;
- \$ 1,600,000 for electronic litigation support and E-Gov and information technology initiatives; and
- \$ 900,000 for facility reconditioning, equipment replacement, records management, and human capital and support needs.

The FTC's FY 2008 budget request is comprised of three funding sources. The majority of the funding will be derived from offsetting collections: HSR filing fees and Do Not Call fees

