PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION

The FTC in FY2013:
Protecting Consumers and Competition

Before the

HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
U.S. HOUSE OF REPRESENTATIVES

Washington, D.C.

with state Attorneys General and our federal partners, we have participated in law enforcement sweeps resulting in more than 400 additional actions.[6]

The FTC continues to target operations that falsely claim that, for an upfront fee, they will stop foreclosures or obtain mortgage modifications.[7] Inflated mortgage servicing fees has been another active issue for the Commission. Last year, through a settlement with Countrywide (now Bank of America), we mailed out checks worth nearly $108 million to 450,000 homeowners, or more than one percent of all United States mortgage holders.[8]

Since 2010, the FTC has filed seven actions and obtained more than $8.1 million in civil penalties as part of its program to combat illegal debt collection practices. The FTC has challenged the most egregious tactics, and brought an immediate halt to an operation charged with making threats that consumers would be arrested or harmed – or that their pets would be killed and the bodies of their dead relatives desecrated – if they didn't pay up.[9] In another example of cases the FTC has brought to protect vulnerable consumers, the FTC sued the marketers of prepaid phone cards targeted at immigrants. The FTC alleged that the cards deceptively touted large amounts of talk time, when hidden fees could exhaust the cards in one short call.[10]

B. Privacy

Consumer privacy remains at the top of the FTC's agenda. The agency has brought more than 100 spam and spyware cases and over 30 data security cases, and has exceeded 200 million phone number registrations on the Do Not Call Registry.

The FTC recently proposed a settlement with Facebook to resolve charges that the company deceived its users about the privacy of their information.[11] The proposed settlement would require Facebook to take specific steps to protect privacy, including abiding by its privacy promises, and giving consumers clear and prominent notice and obtaining their express consent before sharing their information beyond existing privacy settings. Under the proposed settlement, Facebook would submit to independent privacy audits every other year.

The relief in the proposed Facebook settlement is similar to that in an earlier settlement with Google.[12] The FTC alleged that Google used deceptive tactics and violated its own privacy promises when it launched its Google Buzz social network by using information users provided for Gmail for another purpose – social networking – without obtaining advance permission. The FTC also resolved charges against Twitter that lax data security allowed hackers to obtain administrative control of the system, giving them access to non-public user information and tweets that consumers had designated private, and enabling them to send out phony tweets from any account.[13]

On the privacy policy front, the FTC released a preliminary staff report to inform Congress and other policymakers as they consider proposals governing privacy, as well as to guide and motivate industry as it develops best practices and self-regulatory guidelines. A final report should be completed shortly.[14] Also, we recently proposed amendments to the FTC's Children's Online Privacy Protection Rule that are intended to ensure that the Rule continues to protect children's privacy, even as online technology evolves.[15]

C. Health Care

Protecting consumers of health care products and services is a high priority for the FTC. Health care expenditures are already nearly 18 percent of GDP and rising faster than the rate of inflation, imposing an increasing burden on families, employers, and governments.[16] The FTC is pushing back against this trend and addressing undue costs that can result from anticompetitive behavior or conduct that is deceptive or unfair.

A number of recent merger enforcement actions have involved companies in health care markets: hospitals, dialysis centers, pharmaceutical manufacturers, and pharmacies. In particular, while allowing procompetitive mergers to proceed, the FTC has redoubled its efforts to prevent hospital mergers that may leave insufficient local options for in-patient hospital services.[17]

With prescription drug prices rising faster than other healthcare costs, the FTC continues to review mergers between pharmaceutical manufacturers. In the past year, the Commission required divestitures to remedy competitive concerns in six proposed mergers between drug makers.[18]

A top FTC competition priority is to restrict anticompetitive “pay-for-delay” settlement agreements. These are settlements of patent litigation in which a branded pharmaceutical manufacturer pays the generic to keep its competing product off the market for a certain period of time. For more than a decade, the FTC has challenged anticompetitive pay-for-delay deals in court. Despite our efforts, beginning in 2005 soof time. ts most notably the Centers for Medicare and Medicaid Services – to provide guidance to healthcare providers interested in forming collaborations such as ACOs without running afoul of the antitrust laws.[20]

The FTC also focuses on a wide range of deceptive health care- and health-related claims. We have cracked down on scammers who take advantage of consumers by deceptively marketing "medical discount plans" as insurance, participating in a coordinated sweep with Attorneys General and Insurance Commissioners in 24 states to bring a total of 54 enforcement actions.[21] The FTC also has sued national advertisers that allegedly made unsubstantiated health-related claims. For example, Reebok paid $25 million to resolve FTC charges that it deceptively claimed its "toning shoes" would tone and strengthen leg and buttock muscles.[22] In addition, NBTY, Inc. paid $2.1 million to settle FTC allegations that it made false and unsupported claims that its Disney and Marvel Heroes line of children's multivitamins contained a significant amount of DHA (an Omega-3 fatty acid) and promoted healthy brain and eye development in children.[23]

D. Technology

Evolving technology brings tremendous benefits to consumers, but it also poses challenges on both the competition and consumer protection fronts.

In recent years, the FTC has investigated potentially anticompetitive conduct by dominant firms in certain high-profile, high-tech industries. The Commission has taken a balanced approach in these fast-paced markets. For instance, the FTC reached a consent agreement with Intel Corporation that prohibited certain types of "exclusive dealing" agreements that effectively punished customers wanting to use or distribute competing products.[24] Yet in an equally important high-tech matter, the Commission decided to close its investigation of the

Google/AdMob merger.[25] There, near the conclusion of a thorough investigation, the Commission evaluated “late breaking news” that Apple was poised to challenge Google in the future in the mobile advertising space. Taking account of the dynamic competition in the market, the Commission determined that future

Mobile technology is another area in which the FTC is actively engaged. The Commission brought its first case involving a mobile application (app) last summer, alleging that the developer of apps directed to children unlawfully collected and maintained thousands of email addresses from users without notifying parents of their information collection practices and without obtaining verifiable parental consent.[29] The FTC also sent letters to the marketers of six apps advising them of the laws protecting the privacy and accuracy of consumer information used for purposes of employment, credit, and insurance.[30]

In addition to enforcement work on mobile technology, the FTC will convene a workshop in April 2012 to examine the consumer protection issues raised by the use and impact of mobile payments. The FTC also issued a staff report that examined, and found wanting, the information available to parents prior to downloading mobile apps for their children in Google's Android Market and Apple's iTunes App Store.[31] The report calls on all members of the kids apps ecosystem to provide greater transparency about their data practices, and we will work collaboratively with industry to ensure that parents have the information they need to protect their children's privacy.

E. Energy

Given the impact of energy prices on consumer budgets, the energy sector continues to be a major focus of FTC rulemaking,[32] law enforcement[33], and study. In November 2009, the FTC's Petroleum Market Manipulation Rule became final.[34] Our staff continues to examine all communications from the public about potential violations of this Rule, which prohibits manipulation in wholesale markets for crude oil, gasoline, and petroleum distillates. Recently, the FTC announced that it is using compulsory process to determine, among other things, whether firms at various stages of the oil industry are engaging in anticompetitive or manipulative conduct. Other activities complement these efforts, including merger enforcement and an agreement with the Commodity Futures Trading Commission to share investigative information.

III. Resources

The FTC's mission to protect consumers and promote competitive markets is critical to the health and vibrancy of the recovering national economy. Through its law enforcement work, the agency collects money that either goes back into the pockets of wronged consumers or into the U.S. Treasury. In FY 2011 – excluding the future savings to consumers realized by preventing anticompetitive conduct and deceptive practices – the FTC distributed more that $116 million in redress to consumers, and returned nearly $142 million to the U.S. Treasury in fee collections, redress, disgorgement, and fines. In sum, the FTC either disbursed to consumers or credited to the U.S. Treasury $258 million – nearly 90 percent of the FY 2011 appropriation, a tremendous return on the taxpayers' investment.

Call Registry, the FTC's Consumer Response Center, and consumer complaint databases; and $1.5 million to support 10 FTE, primarily to protect consumers who are the targets of fraud and in connection with emerging technologies, and to investigate and litigate merger cases raising competitive concerns in the health care, pharmaceutical, and high technology sectors.

IV. Conclusion

The FTC appreciates the opportunity to appear before this Committee, and we would be happy to answer any questions the Members have about our mission, our activities, and the use of our resources.

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[1] The views expressed in this statement represent the views of the Commission. Our oral statements and responses to questions you may have are our own and are not necessarily those of the Commission or any other Commissioner.

[2] To the greatest extent possible, the agency works cooperatively with other enforcers to leverage our resources and eliminate duplication. Of particular importance, we share our database of consumer complaints with over 2,000 other federal, state, and international law enforcement agencies. We also work with other government agencies to collectively deploy resources and to eliminate duplication. Recently, we entered into a Memorandum of Understanding with the Consumer Financial Protection Bureau to ensure that the agencies' work is complementary and that businesses receive consistent guidance and are not "double teamed" by two agencies. We also meet regularly with business groups, consumer advocates, and academ T7rwith ot0ed .5( )5.5(deploy)-7.5(reso1wsj-30.5 TD7 Tw[i)-5.7(m)2.5(portanea)Tjofe