

Prepared Statement of
The Federal Trade Commission

Before the
Subcommittee on
Commerce, Justice, State, and the Judiciary
of the
Committee on Appropriations, United States Senate

Washington, D.C.

March 19, 2002

I. INTRODUCTION

Mr. Chairman, I am Timothy J. Muris, Chairman of the Federal Trade Commission. I am pleased to appear before the Subcommittee today to testify in support of the FTC's Fiscal Year 2003 Appropriation request.

Enforcing the Children's Online Privacy Protection Act (COPPA),⁽⁶⁾ which prohibits the

the Commission announced that a group of "buying clubs" had agreed to pay \$9 million to settle charges by the FTC and State Attorneys General. The defendants were charged with misleading consumers into accepting trial buying club memberships and obtaining consumers' credit card account numbers without the consumers' knowledge or authorization from telemarketers pitching the buying clubs. Consumers then were enrolled in the clubs and charged up to \$96 in yearly membership fees.⁽²¹⁾

In addition, last month the FTC obtained a stipulated preliminary injunction in a federal district court action against the promoters of "Miss Cleo" psychic services.⁽²²⁾ The FTC's complaint alleges that the defendants misrepresented the cost of services both in advertising and during the provision of the services, billed for services that were never purchased, and engaged in deceptive collection practices, among other things. The FTC estimates that the defendants billed consumers at least \$360 million in connection with this alleged scheme.

D. Media Violence, Gambling, and Children

The FTC is continuing to monitor violent media directed toward children, and appreciates the leadership of Senators Hollings, McCain, Gregg, and other Subcommittee members on this issue. In a September 2000 report, the agency reported that the entertainment industry targeted advertising and promotion of violent video games, movies, and music to children.⁽²³⁾ We received requests from Congress to take a variety of steps to follow up on this report. In particular, this Subcommittee requested that the FTC continue its efforts in child protection through three related initiatives: consumer research and workshops, an underage shopper retail compliance survey, and marketing and data collection.⁽²⁴⁾

In response to these requests, in April 2001 the FTC released a follow-up report outlining improvements in the movie and electronic game industries but finding no appreciable change in the music industry's target marketing practices.⁽²⁵⁾ The agency released a second follow-up report in December 2001, finding that the movie and electronic game industries had made continued improvements. The December 2001 report also found that the music industry had made some progress in disclosing parental advisory label information in its advertising, but the Commission's review of advertising placement showed that the music industry had not altered its marketing practices since the September 2000 report.⁽²⁶⁾ The December report also described the results of a second underage shopper retail compliance survey. The FTC will release a third follow-up report in June 2002. In addition, as requested by this Subcommittee, the Commission's staff is conducting research on appropriate consumer education messages for parents. The Commission is also working to respond to the language in last year's appropriations bill regarding the marketing of on-line gambling sites to children. We will be reporting our findings and announcing a consumer education initiative in the near future.

E. Globalization

The FTC will continue to respond to the challenges created by the increasingly global marketplace. First, the FTC will participate in international efforts to craft policies and self-regulatory programs to protect consumers. Second, we will build new international partnerships to tackle cross-border fraud through information sharing and coordinated law enforcement. An example is the FTC's participation in the International Marketing Supervision Network (IMSN), a network of consumer protection and fair trade organizations from more than two dozen countries. The IMSN identifies worldwide enforcement issues, facilitates the sharing of information about cross-border commercial activities affecting consumer interests, and encourages international cooperation among law enforcement agencies. Another example is econsumer.gov, a joint effort by the United States and fifteen other countries to gather and share cross-border e-

plans to continue to use its *Consumer Information System*, a consumer complaint database, to identify and target the most serious consumer problems. By sharing fraud complaints with a broad group of law enforcement partners through the secure *Consumer Sentinel* Web site, the FTC enhances the effectiveness of law enforcement agencies across the United States, Canada, and Australia. The FTC also will continue training enforcement officials on how to bring cases involving new technologies. Since FY 2001, the FTC has educated more than 1,750 law enforcement personnel from more than 20 countries, 38 states, 23 U.S. federal agencies, and 19 Canadian agencies on use of the fraud database.

F. Consumer Outreach

Just as consumer outreach is a key component of the FTC's efforts to protect consumers' privacy, the FTC will continue to place great emphasis on consumer outreach involving fraud and deception. Our consumer education programs provide two key benefits. First, they inform consumers of their rights under various consumer protection laws. Second, they give consumers the information they need to identify and avoid fraud and deception in the marketplace. In FY 2002, the FTC will use national and local media, state and local government agencies, business and consumer groups, and the ftc.gov and consumer.gov Web sites to reach millions of consumers across the country. The FTC also will continue to reach consumers through its Consumer Response Center and the hundreds of consumer protection organizations that distribute FTC materials and provide links to the FTC Web site. In FY 2001, the FTC issued 77 publications, distributed more than 5.4 million print publications, and logged more than 9.6 million accesses of its publications on the ftc.gov Web site. The FTC also will continue to host workshops to highlight the FTC's activities and resources for Congressional district office staff. By July of this year, the FTC will have held workshops in each of its regional offices for all Congressional district offices.

III. MAINTAINING COMPETITION MISSION

A. Merger Enforcement

Merger enforcement will continue as a major focus of the competition agenda for FY 2003. Stopping mergers that lessen competition ensures that consumers will have the benefit of lower prices and greater choice in their selections of goods and services. The recently revised Hart-Scott-Rodino Act ("HSR")⁽²⁷⁾ filing threshold, coupled with economic conditions during the last fiscal year, reduced the number of reportable filings by approximately two-thirds from their peak. Reported mergers, however, continue to increase in scope, complexity, and size. In FY 2001 alone, the total value of all reported mergers was over \$1 trillion. Large, multifaceted transactions - the ones still subject to HSR - are the ones most likely to raise antitrust issues, and typically involve a number of separate product and geographic markets, each requiring analysis.⁽²⁸⁾ Further, mergers in high tech markets require careful analysis, because new technical issues continue to emerge. i

settled.⁽³³⁾ The FTC must have the resources and expertise needed to support effective challenges in complex and high-stakes cases to protect consumers from higher prices, limited choices, and thwarted innovation.

B. Streamlining the Merger Review Process

The FTC has been working with the Antitrust Division at the Department of Justice to establish procedures to make the HSR merger review process more efficient and transparent. The FTC has focused on several areas for streamlining, including:

- **Electronic Premerger Filing.** As part of an overall movement to make government more accessible electronically, the FTC, working with DOJ, will accelerate its efforts in FY 2003 to develop an electronic system for filing HSR premerger notifications. E-filing will reduce filing burdens for businesses and government and create a valuable database of information on merger transactions to inform future policy deliberations.
- **Burden Reduction in Investigations.** The agencies have taken steps to reduce the burden in document productions responsive to requests for additional information under the HSR Act ("second requests"). In response to legislation amending the HSR Act,⁽³⁴⁾ the FTC amended its rules of practice to incorporate new procedures. The rule requires Bureau of Competition staff to schedule conferences to discuss the scope of a second request with the parties and also establishes a procedure for the General Counsel to review the request and rule promptly on any remaining unresolved issues.⁽³⁵⁾ Measures adopted include a process for seeking modifications or clarifications of second requests, and expedited senior-level internal review of disagreements between merging parties and agency staff; streamlined internal procedures to eliminate unnecessary burdens and undue delays; and implementation of a systematic management status check on the progress of negotiations on second request modifications. In addition, we recently have announced that agency staff will participate in a series of discussions with the bar and other interested parties to elicit suggestions on further improvements to the second request process, and to provide information on our investigation procedures.
- **Improved FTC/DOJ Clearance Process.** The achievement of an efficient division of work between the two federal antitrust enforcement agencies has occupied the energies of the Department of Justice and the FTC since the Commission began operating in March 1915. For many years, the two agencies have allocated matters mainly on the basis of their relative expertise. For the most part, this arrangement has worked smoothly. In the last decade, however, the convergence of industries increasingly has blurred the lines between the agencies' historical areas of responsibility. Consequently, clearance disputes have become both more common and, in the case of major clearance disputes, more contentious.⁽³⁶⁾ On average, from 1982 through 1989, 10 clearance disputes arose each year. In contrast, between 1990 and 2001, the annual number of contested matters has equaled or exceeded 45, and in three years exceeded 100. On average, 83 clearance disputes occurred annually during this period.
- These disputes result in significant delays. Delays averaging three weeks occurred in 24 percent of the matters on which either agency sought clearance from the beginning of FY 2000 through January 28, 2002. Cumulatively, these investigations were delayed by 4,521 business days - more than 17 years. During this time, neither agency could investigate potentially serious allegations of illegal behavior.⁽³⁷⁾ Recognizing the severity of the problem, FTC Chairman Robert Pitofsky and Assistant Attorney General Joel Klein attempted to negotiate a global clearance agreement for over a year, but could not reach consensus.
- Consistent with his authority,⁽³⁸⁾ Chairman Muris negotiated a new clearance agreement with Assistant Attorney General for Antitrust Charles James.⁽³⁹⁾ The new agreement will allocate matters between the two agencies more efficiently, rationally, and predictably. Th/TT0 ons- Td 45TlId

consumers, and taxpayers.⁽⁴⁰⁾ Moreover, an agreement that allocates primary areas of enforcement responsibility enjoys overwhelming support within the antitrust and business communities.⁽⁴¹⁾ The clearance agreement requires that the agency heads review the allocation of industries in four years to determine whether the goal of efficiently and rationally allocating competition matters is being achieved.

- In response to concerns about the agreement expressed by the Chairman of this Subcommittee, the agencies have provided information on clearance procedures, the historical allocation of matters, and clearance delays. We will, of course, provide any additional information that the Subcommittee desires.

C. Nonmerger Enforcement

The FTC will continue the trend, begun last year, to devote more resources to nonmerger enforcement. In FY 2001, the agency opened 56 nonmerger investigations, more than double the number of such investigations begun in the previous year, when deadline-sensitive HSR merger investigations siphoned away resources allocated for nonmerger work. Thus far in FY 2002, the agency has opened 15 nonmerger investigations. The major focus of our nonmerger work will concern activities among competitors, reflecting the broad consensus in antitrust policy that horizontal arrangements that fix prices or restrict output are the ones most likely to harm consumers.

any other anticompetitive strategies that may exploit certain Hatch-Waxman provisions. The facts obtained through this study may provide a basis for policy recommendations in this area.

D. Targeting Resources for Consumer Impact

In both its merger and nonmerger programs, the FTC will continue to focus competition resources in sectors of the economy that have a substantial impact on consumers' wallets. Because of the important cost implications for consumers, one critical area is health care. Health related products and services account for over 13 percent of gross domestic product, up from 10.9 percent in 1988. [\(46\)](#) In addition to preserving opportunities for generic drugs to compete, the FTC's enforcement agenda also includes agreements among doctors and other health professionals to restrict competition, codes of conduct containing anticompetitive provisions, and mergers of hospitals and suppliers of health care products.

Another critical sector is energy. Representing a significant portion of the total U.S. economic output,

IV. NEEDED RESOURCES - FISCAL YEAR 2003

To accomplish our mission in FY 2003, the FTC requests \$176,509,000 and 1,074 FTE. The increase of \$20,527,000 over FY 2002 includes:

- \$7,352,000 for base expenses (including pay raises, non-pay inflation, increased rental of space, and increased Consumer Response Center contract costs);
- \$5,000,000 for expenses related to generating a National Do-Not-Call List to protect consumers' privacy;
- \$3,265,000 for systems support and the increased physical security for staff; and
- \$4,910,000 to comply with proposed legislation (to require agencies to pay the full Government share of accruing costs of retirement for current CSRS employees and post-retirement health benefits).

The FTC's FY 2003 budget request is calculated based on using two sources of offsetting collections: an estimated \$173,509,000 from HSR Premerger Filing Fees and an estimated \$3,000,000 from a new Do-Not-Call fee. The HSR fee estimate is based on a three-tiered filing rate structure mandated by Congress, with an effective date of February 1, 2001. The new Do-Not-Call fee would be assessed, collected, and used to cover the costs of developing, implementing, and maintaining a national database of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers. This new fee structure will be subject to notice and comment as part of a rulemaking process.

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Mr. Chairman, the FTC appreciates your past support and that of this Subcommittee. I would be happy to answer any questions that you and other Members may have about the FTC's budget request and programs.

Endnotes:

1. The written statement represents the views of the Federal Trade Commission. My oral presentation and responses are my own and do not necessarily reflect the nu2 32456 0 016(ow)38(n Q-24(81 Tge7)-13(t)-89 Tw 7 u4-9(o)-1(f)7()16(t)a.0 78Tt4(d)-16(o)638(6(o)-1r4(

5. *Eli Lilly & Co.*, No. 012-3214 (Jan. 18, 2002) (consent agreement accepted subject to public comment).

6. 15 U.S.C. § 6501 *et seq.*

7. *United States v. American Pop Corn Co.*, No. C02-4008DEO (N.D. Ia., Feb. 28, 2002) (consent decree); *United States v. Lisa Frank, Inc.*, No. 01-1516-A (E.D. Va., Oct. 3, 2001) (consent decree); *United States v. Looksmart, Ltd.*, No. 01-606-A (E.D. Va., Apr. 23, 2001) (consent decree); *United States v. Bigmailbox.com, Inc.*, No. 01-605-A (E.D. Va., Apr. 23, 2001) (consent decree); *United States v. Monarch Servs., Inc.*, No. AMD 01 CV 1165 (D. Md., Apr. 20, 2001) (consent decree).

8. *FTC v. Boivin*, No. 8:02-CV-77-T-26 MSS (M.D. Fla., Jan. 15, 2002) (consent decree); *FTC v. Estenson*, No. A3-02-10 (DND, Feb. 5, 2002) (consent decree); *FTC v. Larsen*, No. 8:02-CV-76-T-26MAP (M.D. Fla., Jan. 16, 2002) (consent decree); *FTC v. Lutheran*, No. 02 CV 0095 K (RAB) (S.D. Cal., Jan. 18, 2002) (consent decree); *FTC v. Va*, No. 02-60062-Civ-Zloch (S.D. Fla., Jan. 18, 2002) (consent decree); *FTC v. Pacheco*, No. 02-CV-31L (D.R.I., Jan. 22, 2002) (consent decree).

9. "Information Brokers Settle FTC Charges," FTC Press Release (Mar. 8, 2002), available at <<<http://www.ftc.gov/opa/2002/03/pretextingsettlements.htm>>>.

10. 15 U.S.C. § 1681 *et seq.*

11. See Telemarketing Sales Rule, 16 C.F.R. Part 310.

12. 67 Fed. Reg. 4492 (Jan. 30, 2002).

13. The Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801(b) and 6805(b), requires the FTC to issue a rule establishing appropriate standard for safeguards to ensure the security, confidentiality, and integrity of customer records and information.

14. See Identity Theft and Assumption Deterrence Act of 1998, 18 U.S.C. § 1028. This Act makes the FTC a central clear(et)-in-16(n) Tw 7.. 7..4(7..)cn.

26. Federal Trade Commission, *Marketing Violent Entertainment to Children: A One-Year Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (Dec. 2001), available at <<<http://www.ftc.gov/os/2001/12/violencereport1.pdf>>>.

27. 15 U.S.C. § 18a, as amended, Pub. L. No. 106-553; 114 Stat. 2762 (2000).

28. For example, the FTC's settlement agreement in *Chevron Corp./Texaco Inc.*, No. C-4023 (Jan. 2, 2002) (consent order), provided for relief in (1) retail gasoline markets in numerous metropolitan areas in various parts of the country, including Alaska and Hawaii, the western United States (including Arizona, Idaho)

<<<http://www.ftc.gov/opa/2002/01/ftcdojostil.htm>>>.

39. See Memorandum of Agreement Between the Federal Trade Commission and the Antitrust Division of the United States Department of Justice Concerning Clearance Procedures for Investigations, available at <<<http://www.ftc.gov/opa/2002/02/clearance/ftcdojagree.pdf>>>.

40. See Statement of Commissioners Orson Swindle and Thomas B. Leary on the Memorandum of Agreement Concerning Clearance Procedures for Investigations (Jan. 18, 2002), *supra* n.38; "FTC Releases Antitrust Clearance Process Documents," FTC Press Release (Feb. 27, 2002), available at <<[http://www.ftc.g26A08 T7uh0 sJTJ\(\)d T7uh0 8.56 00 8.56 00/w](http://www.ftc.g26A08 T7uh0 sJTJ()d T7uh0 8.56 00 8.56 00/w)>>