

Prepared Statement of the Federal Trade Commission

presented by
Robert Pitofsky, Chairman⁽¹⁾

Before the

Committee on the Judiciary
United States House of Representatives

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Mr. Chairman and Members of the Committee, I am Robert Pitofsky, Chairman of the Federal Trade Commission. I am pleased to appear before you to present the

from abuses of market power in whatever form. It is the Commission's responsibility to protect consumers from anticompetitive consequences of private agreements, the abuse of monopoly power, or illegal mergers. The Commission also recognizes, however, that government intervention can place a burden on private parties. For this reason, our second guiding principle is to avoid unnecessary intrusions and to minimize, to the extent possible, the burdens placed on businesses by our efforts to protect consumers.

desire to reduce overcapacity in more mature industries. The rapidly evolving world of electronic commerce has a substantial impact on the merger wave because consolidations often quickly follow the emergence of a new marketplace. These factors indicate that the merger wave reflects a dynamic economy, which on the whole is a positive phenomenon. But some mergers, as well as some other forms of potentially anticompetitive conduct, may be designed to stifle competition in important sectors of this dynamic economy.

Out of necessity, our scarce resources are directed at preserving competition in the important areas of the economy. The Commission dedicates the bulk of its antitrust enforcement to sectors that are critical to our everyday lives, such as health care, pharmaceuticals, retailing, information and technology, energy, and other consumer intermediate goods. Rather than recite a long list of cases, I will focus on some cases that underscore the importance of the Commission's antitrust enforcement as we move in this new century.

Merger Enforcement

In the last two fiscal years and fiscal 2000 to date, the Commission has brought 60 enforcement actions in industries ranging from food retailing to basic industrial products.⁽⁶⁾ Retailing, energy, and pharmaceuticals commanded the most enforcement resources.⁽⁷⁾

The Commission has committed considerable resources to addressing the wave of consolidation in the petroleum and gasoline industry. In fiscal years 1999 and 2000 to date, the FTC's Bureau of Competition used a staggering one-third of its enforcement budget to address issues in energy industries. In February of this year, the Commission filed an action in federal district court in San Francisco seeking a preliminary injunction against the proposed merger of BP Amoco p.l.c. and Atlantic Richfield Company ("ARCO").⁽⁸⁾ The complaint alleges that the merger would combine the enforcement budget to a merger would combine

Virginia, and Guam; a pipeline interest in the South; Mobil's interest in the Trans Alaska Pipeline; Exxon's jet turbine oil business; and a volume of paraffinic lubricants base oil equivalent to Mobil's production. The Commission coordinated its investigation with the Attorneys General of several states and the European Commission (about 60% of the merged firm's assets are located outside the United States).

There are several particularly noteworthy aspects of the Exxon/Mobil settlement. First, divestiture requirements eliminated most of the overlaps in areas in which the Commission had evidence of competitive concerns. Second, while several different purchasers are buying divested assets, each will purchase a major group of assets constituting a business unit. This is likely to replicate, as early as possible, the scale of operations and competitive incentives that were present for each of these asset groups prior to the merger. Third, these divestitures, while extensive, represent a small part of the overall transaction. The majority of the transaction did not involve significant competitive overlaps. In sum, we were able to resolve the competitive concerns presented by this massive merger without litigation.

The Commission also required divestitures in the merger between BP and Amoco (11) and (11)

"second request"). The issuance of a second request is not undertaken lightly, and we take in choosing when to issue them is illustrated by the fact that a majority of those transactions that receive second requests result in some form of enforcement. In addition, most second request investigations are resolved without major document production. Over 60% of the investigations result in production of fewer than 20 boxes responsive documents, and over 85% of the second request investigations are resolved without the parties' having to complete their document production, "substantially comply" with the second request.⁽²⁶⁾

Last week the Commission announced a series of procedures to address the concerning HSR burdens. First, all second requests will be reviewed prior to issuance by senior management in the Bureau of Competition. The greater involvement by senior management is intended to provide additional scrutiny of the scope of the second request to assure consistent and focused requests that are narrowly tailored to limit the burden on businesses. Second, staff will convene a conference promptly following the issuance of a second request, to discuss with the parties the competitive issues raised by the proposed transaction. Third, staff will respond to party requests for modification of second requests within five business days. Prompt responses by staff will afford the parties greater opportunities for more focused searches of their records. Finally, parties will have recourse to the Commission's General Counsel for resolution of second request modification issues not resolved after discussions with staff. This new procedure sets short deadlines for completion of the process: 10 business days from appeal to decision.

sell them on less favorable terms. The FTC issued an administrative order to stop these practices, and the matter is now on appeal to the U.S. Court of Appeals for the Second Circuit.⁽³²⁾ Although the products were toys, and the rivalry was between two different kinds of brick-and-mortar firms, the enforcement principles underlying the Commission's action apply with equal and perhaps even greater force to the new world of online

the forefront in bringing enforcement actions to protect the competitive process in :
types of health care markets, including services provided by hospitals and health care
professionals as well as products provided by the pharmaceutical and medical equ

version of the drug off the U.S. market. This agreement also allegedly delayed the other generic versions of Hytrin because of Geneva's 180-day exclusivity rights under the Hatch-Waxman Act. Abbott was charged with monopolization of the market, and both companies were charged with conspiracy to monopolize. The proposed consent order enjoins such practices. Once Abbott and Geneva became aware of our investigation and terminated their agreement, the entry of generic Hytrin may have reduced the price to customers up to 60%. A patient taking one terazosin a day and purchasing at an a discount could save over \$200 a year. We believe the savings to purchasers from this enforcement action alone may exceed \$100 million a year.

generic exclusivity provisions (the regulations at issue in the drug settlement cases)
(2) the citizen petition process.

at E1 (Dec. 31, 1999).

5. *See* Attachment 1.

6. In addition, 19 merger filings were withdrawn before the Commission's investigation was comple

7. Telecommunications, especially in the areas of cable ~~also~~ programming, also has been, and continues to be, an area of substantial ~~aces~~7(t) e, ~~see~~

18. 1992 U.S. Dep't of Justice and Federal Trade Commission Horizontal Merger Guidelines *revised in 4*
Trade Reg. Rep. (CCH) ¶13,104 (April 2, 1992; as amended, April 8, 1997).

19. *Albertson's, Inc.*, FTC File No. 981 0339 (June 21, 1999) (consent agreement accepted for public
comment). The Commission has also challenged a number of other supermarket mergers. *See* *Albertson's,*
Inc., C-

fraudulent practices by the few unscrupulous providers of such services. Since the agency's first In case in 1994, the FTC, primarily through its Bureau of Consumer Protection, has brought over 100 Internet related cases involving over 300 defendants. The Commission has obtained injunctions stopping ill schemes, collected over \$20 million in redress for victims, and obtained orders freezing assets of their in cases that are still in litigation. Most of these cases have involved the migration to the Internet of traditional kinds of fraud, such as business opportunity schemes, credit repair scams, pyramid schemes, false claims for health-related products, to name a few.

31. *Fair Allocation System, Inc.*, C-3832 (Oct. 30, 1998) (consent order).

32. *Toys "R" Us, Inc.*, Docket No. 9278 (1998), *appeal docketed*, No. 98-17 (7th Cir. Apr. 16, 1999).

33. *See* Testimony of Willard K. Tom, Deputy Director, Bureau of Competition, before the House Committee on the k311yu9(i)7R1.is6ommittee2((o)-19(nTm ()Tj 0.006 Tc -Tj 004(to)-19t.0.0032(;