

**Prepared Statement of
the Federal Trade Commission**

**Before the
Subcommittee on
Antitrust, Competition Policy and Consumer Rights
of the Committee on the Judiciary
United States Senate**

**Washington, D.C.
March 7, 2007**

¹ This written statement represents the views of the Fede

appropriate, agreements among pharmaceutical companies and physicians.

A. Pharmaceuticals

The Commission was particularly active in enforcing the antitrust laws in the pharmaceutical industry. In March 2006, the FTC ensured continued competition for generic drugs by requiring a consent order to address competitive concerns raised by Teva Pharmaceutical Industries, Ltd.'s \$7.4 billion acquisition of IVAX Corporation. The order required the parties to divest the rights and assets necessary to manufacture and market fifteen different generic pharmaceutical products, including the generic forms of widely-used penicillin antibiotics amoxicillin and amoxicillin clavulanate potassium, maintaining for consumers the benefits of competition in these important products that the merger would otherwise have eliminated.

In April 2006, the FTC challenged Allergan, Inc.'s \$3.2 billion acquisition of Inamed Corporation. The FTC accepted a final consent order that required the parties to divest Inamed's rights to develop and market Reloxin, a potential rival to Allergan's Botox. Botox is the best-selling botulinum toxin in the United States, and the only such product approved by the FDA to treat facial wrinkles. At the time of the order, Reloxin was the only botulinum toxin product in Phase III of clinical trials and the next likely entrant to challenge Botox, with a substantial lead over other potentially-competing products. By requiring the parties to divest the U.S. -competing products. By requiring the parties to divest the

proposed acquisition of Pliva.² In settling the Commission's charges, Barr is required to divest its generic antidepressant, trazodone, and its generic blood pressure medication, triamterene/HCTZ. Barr is also 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.

In December 2006, the FTC approved a final consent order with Watson Pharmaceuticals, Inc. and Andrx Corporation that maintained competition for thirteen generic drug products. This order required that Watson: (1) end its marketing agreements with Interpham Holdings, Inc.; (2) assign and divest the Andrx rights necessary to develop, make, and market generic extended release tablets that correct the effects of type 2 diabetes; and (3) divest Andrx's rights and assets related to the developing and marketing of 11 oral contraceptives.³

In January 2007, the Commission protected competition for non-prescription drugs by entering a consent order regarding Johnson & Johnson's proposed \$16.6 billion dollar acquisition of Pfizer's consumer health division. This order required that Pfizer sell its Zantac, Cortizone, and Unisom divisions as well as Johnson & Johnson's Balmex division. At issue in this matter was competition for non-prescription H-2 Blockers, hydrocortisone anti-itch products, nighttime

² *In the Matter of Barr Pharms., Inc.*, FTC Docket No. C-4171 (Nov. 22, 2006) (decision and order), available at http://www.ftc.gov/os/caselist/0610217/0610217barrdo_final.pdf.

³ *In the Matter of Watson Pharms., Inc., and Andrx Corp.*, FTC Docket No. C-4172 (Dec. 12, 2006) (decision and order), available at http://www.ftc.gov/os/caselist/0610139/061212do_public_ver0610139.pdf.

sleep aids, and diaper rash treatments.⁴

In January 2007, the Commission published a consent order for public comment regarding the proposed acquisition of Mayne Pharma Limited by Hospira, Inc. This order requires the sale of assets used to manufacture and supply five generic injectable pharmaceuticals, and results

Outside of merger review, the Commission continues to be vigilant in the detection and investigation of agreements between drug companies that delay generic entry. The Commission's challenge to an alleged anticompetitive agreement involving Ovcon, a branded oral contraceptive product, has led to

⁴ *In the Matter of Johnson & Johnson and Pfizer Inc.*, FTC Docket No. C-4180 (Jan. 16, 2007) (decision and order), available at http://www.ftc.gov/os/caselist/0610220/0610220c4180decisionorder_publicversion.pdf.

⁵ FTC News 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>.

⁶ *FTC v. Warner-Chilcott Holdings Co. III*, No 1:05-cv-02179-CKK (D.D.C. filed Nov. 7, 2005) (complaint filed), available at <http://www.ftc.gov/os/caselist/0410034/051107comp0410034%20pdf>.

prevented Barr from entering with its generic version of Ovcon. The next day, Barr announced its intention to start selling a generic version of the product.⁷ Under an agreement settling the case, entered in October 2006, Warner Chilcott must: (1) refrain from entering into agreements with generic pharmaceutical companies in which the generic agrees not to compete with Warner Chilcott and there is either a supply agreement between the parties or Warner Chilcott provides the generic with anything of value and the agreement adversely effects competition; (2) notify the FTC whenever it enters into supply or other agreements with generic pharmaceutical companies; and (3) for three months, take interim steps to preserve the market for the tablet form of Ovcon in order to provide Barr the opportunity to compete with its generic version.⁸ Though Warner Chilcott settled, the FTC's case against Barr is ongoing.

Anticompetitive patent settlements between brand and generic companies present one of the greatest threats American consumers face today. The agency has directed significant efforts at antitrust challenges to what have come to be called “exclusion payment settlements” (or, by some, “reverse payments”). In these settlements, a brand-name drug firm pays a generic firm to delay entry of its competing product, effectively sharing the brand's profits that are preserved by an agreement not to compete. Recent court decisions, however, have made it more difficult to bring antitrust cases to stop exclusion payment settlements, and the impact of those court rulings is becoming evident in the marketplace. These developments threaten substantial harm to

⁷ FTC News Release, *Consumers Win as FTC Action Results in Generic Ovcon Launch* (Oct. 23, 2006), available at <http://www.ftc.gov/opa/2006/10/chilcott.htm>.

⁸ *FTC v. Warner-Chilcott Holdings Co. III*, No 1:05-cv-02179-CKK (D.D.C. filed Oct. 23, 2006) (stipulated final permanent injunction and final order), available at <http://www.ftc.gov/os/caselist/0410034/finalorder.pdf>.

B. 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. In July 2006, the FTC preserved competition in the markets for life-saving medical devices by requiring a consent order in the \$27 billion acquisition of Guidant Corporation by Boston Scientific Corporation. These two companies are the largest market share holders in several coronary medical device markets in the U.S., together accounting for 90% of the U.S. PTCA balloon catheter market and 85% of the U.S. coronary guidewire market. The order required the divestiture of Guidant's vascular business to an FTC-approved buyer.¹¹

In August 2006, the Commission ensured the maintenance of competition in the market for breast cancer diagnostics, specifically for Prone Stereotactic Breast Biopsy Systems, in the matter of Hologic, Inc.'s proposed acquisition of Fischer Imaging. The FTC approved a consent order that required the divestiture of the key biopsy system assets to Siemens, a company well-positioned to become a competitor in this market.¹²

In December 2006, the Commissions issued a consent order regarding the proposed \$12.8 billion merger between Thermo Electron and Fisher Scientific. The Commission's order requires that Thermo Electron divest Fisher's Genevac division, and thereby maintains competition in the

¹¹ *In the Matter of Boston Scientific Corp. and Guidant Corp.*, FTC Docket No. C-4164 (July 21, 2006) (decision and order), *available at* <http://www.ftc.gov/os/caselist/0610046/060725do0610046.pdf>.

¹² *In the Matter of Hologic, Inc.*, FTC Docket No. C-4165 (Aug. 9, 2006)(decision and order), *available at* <http://www.ftc.gov/os/caselist/0510263/0510263decisionandorderpubrecver.pdf>.

market for centrifugal vacuum evaporators, a tool used in the health care industry.¹³

C. Hospitals and Other Institutional Providers

The Commission has worked vigorously to preserve competition among the nation's hospitals. In October 2005, an FTC Administrative Law Judge found that Evanston Northwestern Healthcare Corporation's completed acquisition of an important competitor, Highland Park Hospital, resulted in higher prices and a substantial lessening of competition for acute care inpatient services in parts of Chicago's northern suburbs.¹⁴ In May 2006, the Commission heard oral arguments on the appeal in this matter. We are continuing to investigate other hospital mergers.¹⁵

D. Physician Price Fixing

During the past year, the FTC continued to investigate and challenge unlawful price fixing by physician groups. In three separate matters, the FTC challenged agreements between physicians as illegal, and successfully ended price fixing schemes. In August 2006, the FTC approved a final consent order settling charges that agreements among 30 competing members of the Puerto Rico Association of Endodontists were unlawful. The FTC charged that these

¹³ *In the Matter of Thermo Electron Corp.*, FTC Docket No. C-4170 (Nov. 30, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0610187/061205do0610187.pdf>.

¹⁴ *In the Matter of Evanston Northwestern Healthcare Corp.*, FTC Docket No. 9315 (Oct. 20, 2005) (initial decision), available at <http://www.ftc.gov/os/adjpro/d9315/051021idtextversion.pdf>.

¹⁵ The Commission also challenged the merger of two of the top three operators of outpatient kidney dialysis clinics and required divestitures 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/0510154/0510154dopublicversion.pdf>.

members had agreed to set the price

¹⁶ *In the Matter of Puerto Rico Ass'n of Endodontists, Corp.*, FTC Docket No. C-4166 (Aug. 24, 2006) (complaint), available at <http://www.ftc.gov/os/caselist/0510170/0510170c4166praecomplaint.pdf>.

¹⁷ *In the Matter of New Century Health Quality Alliance, Inc.*, FTC Docket No. C-4169 (Sept. 29, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510137/0510137nchqaprimedecisionorder.pdf>.

U.S. ethanol production currently is not highly concentrated, and that market concentration has decreased over the past year by between 21 and 35 percent. The study also examined the possible effect on concentration of agreements between ethanol producers and third-party marketers. By attributing the producers' market shares to marketers when producers make such agreements, FTC staff derived alternative estimates of market concentration. The staff also estimated market concentration using both capacity and production data. The study concluded that the level of concentration in ethanol production would not justify a presumption that a single firm, or a small group of firms, could wield sufficient market power to set or coordinate price or output levels. The report notes, however, that staff cannot rule out the possibility that future mergers within the industry may raise competitive concerns.²²

III. Real Estate

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, including efforts by private associations of brokers to impede competition from brokers who use non-traditional listing arrangements. In the past year alone, 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 listing contracts with real estate brokers. These association policies allegedly limited the ability of home sellers to choose a listing type that best served their specific needs.

²² Federal Trade Commission, *2006 Report on Ethanol Market Concentration* (Dec. 1, 2006), available at http://www.ftc.gov/reports/ethanol/Ethanol_Report_2006.pdf.

²³ FTC News Release, *FTC Charges Austin Board of Realtors With Illegally Restraining Competition* (July 13, 2006), available at <http://www.ftc.gov/opa/2006/07/austinboard.htm>.

²⁴ *In the Matter of Austin Bd. of Realtors*, FTC Docket No. C-4167 (Aug. 29, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510219/0510219c4167AustinBoardofRealtorsDecisionandOrder.pdf>.

²⁵ FTC News Release, *FTC Charges Real Estate Groups with Anticompetitive Conduct in Limiting Consumers' Choice in Real Estate*

²⁸ *In the Matter of MIREALSOURCE, Inc.*, FTC Docket No. 9321 (Oct. 10, 2006) (complaint), available at <http://www.ftc.gov/os/adjpro/d9321/061012admincomplaint.pdf>; *In the Matter of REALCOM9,n7y LTD*

consent order requires the parties to take the following actions: (1) United Launch Alliance must cooperate on equivalent terms with all providers of government space vehicles; (2) Boeing and Lockheed's space vehicle businesses must provide equal consideration and support to all launch services providers when seeking any U.S. government delivery in orbit contract; and (3) Boeing, Lockheed, and United Launch Alliance must safeguard competitively sensitive information obtained from other space vehicle and launch services providers.³⁰

In December 2006, the Commission challenged General Dynamics' proposed \$275 million acquisition of SNC Technologies, Inc. and SNC Technologies, Corp., and entered into a consent order. General Dynamics and SNC were two of only three competitors providing the U.S. military with melt-pour load, assemble, and pack (LAP) services used during the manufacture of ammunition for mortars and artillery. The Commission's consent order alleviated the alleged anticompetitive impact of the proposed acquisition by requiring General Dynamics to divest its interest in American Ordnance to an independent competitor.³¹

V. Other Industries

The FTC ensured continued competition for funeral and cemetery

³⁰ *In the Matter of Lockheed Martin Corp. and The Boeing Co.*, FTC File No. 051 0165 (Oct. 3, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510165/0510165decisionorderpublicv.pdf>; *In the Matter of Lockheed Martin Corp. and The Boeing Co.*, FTC File No. 051 0165 (Oct. 3, 2006) (agreement containing consent order), available at <http://www.ftc.gov/os/caselist/0510165/0510165agreement.pdf>.

³¹ *In the Matter of General Dynamics Corp.*, FTC Docket No. C-4181 (Feb. 7, 2007) (decision and order), available at <http://www.ftc.gov/os/caselist/0610150/0610150decisionorder.pdf>; *In the Matter of General Dynamics Corp.*, FTC Docket No. C-4181 (Dec. 28, 2006) (agreement containing consent orders), available at <http://www.ftc.gov/os/caselist/0610150/0610150agreement.pdf>.

³³ *In the Matter of Linde AG and The BOC Group PLC*, FTC Docket No. C-4163 (Aug. 29, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0610114/0610114c4163LindeBOCDOPubRecV.pdf>.

³⁴ FTC News Release,

VI. Guidance, Transparency, and Merger Review Process Improvements

During the last year, the FTC implemented reforms to the merger review process and electronic filing of Hart-Scott-Rodino pre-merger notification forms, both of which are aimed at streamlining the merger review process. To increase the transparency of the merger review decision-making process, the FTC and the Antitrust Division of the Department of Justice (“DOJ”) jointly released a commentary on the ag

³⁶ FTC News Release, *FTC Chairman Announces Merger Review Process Reforms* (Feb. 16, 2006), available at http://www.ftc.gov/opa/2006/02/merger_process.htm.

³⁷ *Reforms to the Merger Review Process: Announcement by Deborah Platt Majoras, Chairman, Federal Trade Commission* (Feb. 16, 2006), available at <http://www.ftc.gov/os/2006/02/mergerreviewprocess.pdf>.

In January 2007, the Commission published a report showing the trend in merger enforcement investigations for the fiscal years 1996-2005. The report promotes transparency in the Commission's merger enforcement by providing information on the market structures and other features of the investigations that resulted in Commission enforcement actions.⁴⁰

VII. Competition Advocacy

A significant tool for strengthening competition is the FTC's competition advocacy work. The Commission and staff frequently provide comments to federal and state legislatures and government agencies, sharing their expertise on the competitive impact of proposed laws and regulations when they alter the competitive environment through restrictions on price, innovation, or entry conditions. In the past year FTC commissioners and staff have testified before Congress 22 times, including ten times on antitrust-related matters including legislative proposals to prohibit gasoline price gouging,⁴¹ real estate brokerage services,⁴² contact lens sales

⁴⁰ Federal Trade Commission, *Horizontal Merger Investigation Data, Fiscal Years 1996-2005* (Jan. 25, 2007), available at <http://www.ftc.gov/os/2007/01/P035603horizmergerinvestigationdata1996-2005.pdf>.

⁴¹ *FTC Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases: Hearing Before the Senate Committee on Commerce, Science and Transportation* (2006) (Prepared Statement of the FTC, Presented by Deborah Platt Majoras, Chairman), available at <http://www.ftc.gov/os/testimony/0510243CommissionTestimonyConcerningGasolinePrices05232006Senate.pdf>.

⁴² *Competition in the Real Estate Brokerage Industry: Hearing Before the H. Subcomm. on Housing and Community Opportunity* (2006) (Prepared Statement of the FTC, Presented by Maureen K. Ohlhausen), available at <http://www.ftc.gov/os/2006/07/CompetitionintheRealEstate%20BrokerageIndustry%20estimony%20ouse07252006.pdf>.

attorney matching services, attorney advertising rules, real estate settlement services, pharmacy benefit managers, wine distribution, patent rules of practice, and on-line auction trading assistants.

The Commission authorized staff to file comments with the Professional Ethics Committee of the State Bar of Texas concerning on-line attorney matching services, which are designed to help consumers find attorneys who are able to handle their legal needs. FTC staff argued that online legal matching services have the potential to lower consumers' costs related to acquiring information about the price and quality of legal services, which is likely to lead to more intense competition among attorneys and will ultimately benefit consumers. At the same time, staff saw "no indication that consumers were likely to suffer harm" from online legal matching services that would justify banning them.⁴⁸ The Ethics Committee subsequently issued a revised opinion that largely followed staff's recommendation to require certain disclosures in connection with the use of on-line matching services, rather than banning all such services.

In September, 2006, the Commission authorized staff to file comments with the New York Unified Court System pursuant to a request from the court's Proposed Rules Governing Lawyer Advertising. Staff was concerned that several provisions in the proposed rules were overly broad, could restrict truthful advertising, and could adversely affect prices paid and services received by consumers. Staff suggested that the New York Unified Court System protect consumers from false and misleading advertising by revising the rules and using less restrictive means such as requiring clear and prominent disclosure of certain information. In

⁴⁸ FTC Staff Comments to Mr. W. John Glancy, Chairman, Professional Ethics Committee for the State Bar of Texas (May 26, 2006), *available at* <http://www.ftc.gov/os/2006/05/V060017CommentsonaRequestforAnEthicsOpinionImage.pdf>.

⁴⁹ Federal Trade Commission and United States Department of Justice Comments to Assemblywoman Helene E. Weinstein, Chair, Committee on Judiciary, New York State Assembly (June 21, 2006), *available at*

⁵¹ FTC Staff Comments to The Honorable Paula Dockery (Apr. 10, 2006), *available at*

⁵⁴ Brief for the United States as Amicus Curiae, *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber*, No. 05-381 (U.S. May 26, 2006) (FTC and DOJ joint brief), available at <http://www.ftc.gov/os/2006/05/P062112Weyerhaeuse>

manufacturers located outside the United States, for delivery outside of the United States. In keeping with the position previously advanced in the *Empagran* litigation, the brief urged the Second Circuit to affirm the dismissal of the complaint for lack of jurisdiction.⁵⁵ Shortly after the brief was filed, the parties withdrew the appeal.

In January 2007, the FTC and DOJ filed a joint amicus brief with the U.S. Supreme Court in the case of *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, addressing whether an agreement between a supplier and dealer that sets the dealer's minimum retail price constitutes a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. 1, or is instead properly analyzed under the rule of reason. The brief argues that the *per se* rule against vertical minimum resale price maintenance established in *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1911), is irreconcilable with modern economic analysis and the Court's modern antitrust jurisprudence, and should be overruled.⁵⁶

In January 2007, the FTC and DOJ filed a joint amicus brief in the case of *Credit Suisse First Boston v. Glen Billing*, addressing the application of the antitrust laws to activities subject to SEC regulation. The brief argues that collaborative underwriting activities occurring during the initial public offering of securities that are expressly or implicitly authorized under the securities laws, as well as conduct inextricably intertwined with such activities, are immune from

⁵⁵ Brief for the United States and the Federal Trade Commission as Amici Curiae in Support of Defendants-Appellees and in Support of Affirmance of the Judgment, *Latino Quimica-Amtex S.A., et al. v. Atofina S.A.* No. 05-5754-cv (2d Cir. June 1, 2006), available at <http://www.ftc.gov/os/2006/06/P062113LatinoQuimica-AmtexvAtofinaAmicusBrief.pdf>.

⁵⁶ Brief of the United States as Amicus Curiae Supporting Petitioner, *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.* No. 06-480 (U.S. Jan. 22, 2007) (FTC and DOJ joint brief), available at <http://www.ftc.gov/os/2007/01/070122Leegin06-480amicusPDC.pdf>.

the antitrust laws. At the same time, the brief cautions that not all underwriting activities occurring in connection with an initial public offering are exempt from the antitrust laws. The brief urges the U.S. Supreme Court to vacate the lower court rulings, neither of which struck the appropriate balance between the interests of the antitrust and securities laws.⁵⁷

The FTC also participated in discussions with DOJ and other federal agencies regarding the position taken by the United States as amicus in several cases involving intellectual property, which had important implications for competition and consumer interests.⁵⁸ In the cases decided to date, the Supreme Court has vacated or reversed lower court rulings that threatened consumer interests by taking an unduly rigid approach to patent litigation and remedies.⁵⁹

IX. Hearings, Conferences, Workshops, and Reports

Hearings, conferences, and workshops organized by the FTC represent a unique opportunity for the agency to develop policy research and development tools. These events and other agency reports foster a deeper understanding of the complex issues involved in the economic and legal analysis of antitrust law.

⁵⁷ Brief of the United States as Amicus Curiae Supporting Vacatur, *Credit Suisse First Boston v. Glen Billing* No. 05-1157 (U.S. Jan. 22, 2007) (FTC and DOJ joint brief), available at <http://www.ftc.gov/os/2007/01/070122creditsuisse05-1157amicus.pdf>.

⁵⁸ See Brief for the United States as Amicus Curiae Supporting Respondent, *eBay Inc. and Halfcom, Inc. v. MercExchange, LLC*, 126 S.Ct. 1837 (2006) (No. 05-130); Brief for the United States of America Supporting Petitioner, *MedImmune, Inc. v. Genentech, Inc.*, 127 S.Ct. 764 (2007)(No. 05-608); Brief for the United States as Amicus Curiae Supporting Petitioner, *KSR In'l Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Aug. 2006).

⁵⁹ See *MedImmune, Inc. v. Genentech, Inc.*, 127 S.Ct. 764, 777 (2007); *eBay Inc. and Half.com, Inc. v. MercExchange, LLC*, 126 S. Ct. 1837, 1838-39 (2006).

The Commission issued the first of two reports that stem from the hearings in 2003. The first report, *To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy*,⁶¹ concluded that competition in markets and patents can work in tandem to foster innovation, but the report found that each policy requires a proper alignment with the other to do so. The FTC's first report analyzed and made recommendations for the patent system. The Commission and DOJ are nearing completion of the second report, which will describe and make recommendations for competition law and policy.

In March 2006, FTC staff initiated a study on authorized generic drugs.⁶² 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.

In September 2006, FTC staff released a report on the municipal provision of wireless internet access. The Commission recognizes that improving consumer access to broadband internet service is an important goal for federal, state, and local governments, and the report

⁶¹ Federal Trade Commission, *To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy* (Oct. 2003), available at <http://www.ftc.gov/os/2003/10/innovationrpt.pdf>.

⁶² FTC News 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>.

describes a variety of options to reduce competitive risks arising from municipal provision of wireless internet access while still achieving benefits from increased broadband access.⁶³

In November 2006, the Commission released a report that provides enforcement perspectives on the Noerr-Pennington doctrine, which precludes application of the antitrust laws to certain private acts that urge government action. The report provides FTC's views on how best to apply the doctrine to conduct that imposes significant risk to competition but does not further the important First Amendment and governmental decision-making principles underlying the doctrine.⁶⁴

In February 2007, the FTC hosted a public workshop on "Broadband Connectivity Competition Policy."⁶⁵ This workshop brought together experts from business, government, and the technology sector, as well as consumer advocates and academics. The purpose was to explore competition and consumer protection issues relating to broadba

⁶³ Federal Trade Commission, *Municipal Provision of Wireless Internet* (Sep. 2006), available at <http://www.ftc.gov/os/2006/10/V060021municipalprovwirelessinternet.pdf>.

⁶⁴ Federal Trade Commission, *Enforcement Perspectives on the Noerr-Pennington Doctrine* (2006), available at <http://www.ftc.gov/reports/P013518enfperspectNoerr-Penningtondoctrine.pdf>.

⁶⁵ *FTC Workshop, Broadband Connectivity Competition Policy* (Feb. 13-14, 2007), available at <http://www.ftc.gov/opp/workshops/broadband/index.html>.

In April 2007, the Commission will hold a three-day conference on “Energy Markets in the 21st Century: Competition Policy in Perspective.”⁶⁶ The conference will bring together leading experts from government, the energy industry, consumer groups, and the academic community to explore a range of energy issues that are important to American consumers and the U.S. and global economies. Panels will discuss topics including: the relationship between market forces and government policy in energy markets; the dependence of the U.S. transportation sector on petroleum; the effects of electric power industry restructuring on competition and consumers; what energy producers and consumers may expect in the way of technological developments in the industry; the security of U.S. energy supplies; and the government’s role in maintaining competition and protecting energy consumers.

X. International Coordination and Technical Assistance

In February 2007, I created the FTC’s Office of International Affairs to coordinate more effectively the full range of the FTC’s international activities. The move brings international antitrust, consumer protection, and technical assistance programs under one office.

FTC’s cooperation with competition agencies around the world is a vital component of our enforcement and policy programs, facilitating our ability to collaborate on cross-border cases, and promoting convergence toward sound, consumer welfare-based competition policies.

Commission staff routinely coordinate with colleagues in foreign agencies on mergers and anticompetitive conduct cases of mutual concern. The FTC promotes policy convergence through formal and informal working arrangements with other agencies, many of which seek the

⁶⁶ FTC Conference, *Energy Markets in the 21st Century: Competition Policy in Perspective* (Apr. 10-12, 2007), available at <http://www.ftc.gov/bcp/workshops/energymarkets/index.html>.

FTC's views in connection with developing new policy initiatives. For example, during the past year, the FTC consulted with the European Commission ("EC") regarding its review of policies on abuse of dominance and remedies, with the Canadian Competition Bureau on merger

that negotiate competition chapters of proposed free trade agreements, including in connection with negotiations with Korea, Thailand, and Malaysia during the last year.

The FTC also assists developing nations as they move toward market-based economies with developing and implementing competition laws and policies. These activities, funded mainly by the United States Agency for International Development and conducted in cooperation with DOJ, are an important part of the FTC's efforts to promote sound competition policies around the world. In 2006, the FTC sent 34 different staff experts on 30 technical assistance missions to BT9sDs3.7aIn 2006, the F

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. The FTC has launched 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 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.

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Mr. Chairman and Members of the Subcommittee, we appreciate this opportunity to provide an overview of the Commission's efforts to maintain a competitive marketplace for American consumers, and we appreciate the strong support that we have received from Congress. I would be happy to answer any questions that you may have.