

**Prepared Statement of  
The Federal Trade Commission**

**Before the  
Subcommittee on Interstate Commerce, Trade, and Tourism  
Committee on Commerce, Science and Transportation  
United States Senate**

**Washington, D.C.  
September 12, 2007**

## I. Introduction

Chairman Dorgan, Ranking Member DeMint, and Members of the Subcommittee, I am Deborah Platt Majoras, Chairman of the Federal Trade Commission (“Commission” or “FTC”). I am pleased to come before you today at this reauthorization hearing.<sup>1</sup>

The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy.<sup>2</sup> The agency enforces laws that prohibit business practices that are harmful to consumers because they are anticompetitive, deceptive, or unfair, and promotes informed consumer choice and understanding of the competitive process.

The FTC has pursued a vigorous and effective law enforcement program in a dynamic marketplace that is increasingly global and characterized by changing technologies. Through the efforts of a dedicated, professional staff, the FTC continues to handle a growing workload.

The agency’s consumer protection work has focused on data security and identity theft, technology risks to consumers such as spam and spyware, fraud in the marketing of health care products, deceptive financial practices in the subprime mortgage and credit repair industries, telemarketing fraud, and Do Not Call enforcement. During the past three fiscal years, the FTC has obtained more than 250 court orders requiring defendants to pay more than \$1.2 billion in consumer redress, obtained 47 court judgments for civil penalties in an amount over \$38 million,

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<sup>1</sup> The written statement represents the views of the Federal Trade Commission. My oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any other Commissioner.

<sup>2</sup> The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.* With certain exceptions, the statute provides the agency with jurisdiction over nearly every economic sector. Certain entities, such as depository institutions and common carriers, as well as the business of insurance, are wholly or partly exempt from FTC jurisdiction. In addition to the FTC Act, the agency has enforcement responsibilities under more than 50 other statutes and more than 30 rules governing specific industries and practices.

and filed approximately 180 new complaints in federal district court to stop unfair and deceptive practices. It also completed 54 statutorily-mandated rulemakings and reports, hosted 48 conferences and workshops, issued 40 reports on topics significant to consumers, and developed 250 consumer and business education campaigns.

The Commission's competition mission has worked to strengthen free and open markets by removing the obstacles that impede competition and prevent its benefits from flowing to consumers. To accomplish this, the FTC has focused its enforcement efforts on sectors of the economy that have a significant impact on consumers, such as health care and pharmaceuticals, energy, technology, and real estate. So far in fiscal year 2007, there have been 20 merger cases that have resulted in enforcement action or withdrawal – including three litigated preliminary injunction actions – and 11 nonmerger enforcement actions.<sup>3</sup>

Our testimony today summarizes some of the major activities of the recent past and describes some of our planned future initiatives. It also identifies certain legislative recommendations that the Commission believes will allow us to better protect U.S. consumers.

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<sup>3</sup> The Commission wants to ensure that the quality of our work is maintained despite the quantity of demands placed upon us, the breadth of our mission, and the increasing challenges of a dynamic domestic and global marketplace. Today, the FTC has 1,074 full-time equivalent employees ("FTEs"). In the last few years, Congress has passed a variety of significant new laws that the FTC is charged, at least in part, with implementing and enforcing, such as the CAN-SPAM Act, the Fair and Accurate Credit Transactions Act, the Children's Online Privacy Protection Act, the Gramm-Leach-Bliley Act, and the U.S. SAFEWEB Act. We would like to work with the Committee to help ensure that our reauthorization includes appropriate increases in resources to meet these growing challenges.

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<sup>4</sup> The Commission's ability to seek civil penalties is limited, and we look forward to working with you to ensure that the FTC has the authority it needs to deter wrongful conduct and protect American consumers. For example, where civil penalties are authorized (such as for violations of specific statutes like CAN-SPAM, or regulations including the Telemarketing Sales Rule), the Commission cannot, unlike other agencies such as the Securities and Exchange Commission or the Commodity Futures Trading Commission, go directly to court, but must first refer the case to the Department of Justice, which has 45 days in which to decide whether to bring the action. Only if the DOJ declines may the FTC bring the civil penalties claim. The Commission has a good, long-standing working relationship with DOJ, which has greatly assisted us in our consumer protection efforts. But, for example, there are cases in which we must forgo seeking civil penalties in the interest of seeking expeditious injunctive relief. We look forward to working with the Committee to examine this issue.

<sup>5</sup> So far during FY2007, the FTC's Bureau of Consumer Protection has achieved many successes. It obtained 57 court orders requiring defendants to pay more than \$236 million in consumer redress, obtained 8 court judgments for civil

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defenses to well-known Web-based hacker attacks; failed to use readily available security measures to prevent unauthorized wireless connections to their networks; and sold sensitive consumer information to identity thieves posing as the company's clients. The Commission continues to monitor the marketplace to encourage companies to implement and maintain reasonable safeguards to protect sensitive consumer information. In appropriate cases, the Commission will bring enforcement actions.

## **2. Identity Theft Task Force**

On May 10, 2006, the President established an Identity Theft Task Force, which I co-chair, and which comprises 17 federal agencies with the mission of developing a comprehensive national strategy to combat identity theft.<sup>7</sup> In April 2007, the Task Force published its strategic plan for combating identity theft.<sup>8</sup>

In the Strategic Plan, the Task Force recommends dozens of initiatives directed at reducing the incidence and impact of identity theft. To prevent identity theft, the Plan recommends that governments, businesses, and consumers improve data security. It recommends that federal agencies and departments improve their internal data security processes; develop breach notification systems; and reduce unnecessary uses of Social Security numbers, which are often the key item of information that identity thieves need. For the private sector, the Task Force proposes that Congress establish national standards for data security and breach notification that would preempt the numerous state laws on these issues. The Plan also

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<sup>7</sup> Exec. Order No. 13,402, 71 FR 27945 (May 10, 2006).

<sup>8</sup> The President's Identity Theft Task Force, *Combating Identity Theft: A Strategic Plan* ("Strategic Plan"), available at <http://www.idtheft.gov>.

recommends the dissemination of additional guidance to the private sector for safeguarding sensitive consumer data; continued law enforcement against entities that fail to implement appropriate security; a multi-year consumer awareness campaign to encourage consumers to take steps to safeguard their personal information and minimize their risk of identity theft; a comprehensive assessment of the private sector's uses of Social Security numbers; and workshops on developing more reliable methods of authenticating the identities of individuals to prevent thieves who obtain consumer information from using it to open accounts in the consumer's name.

To assist victims in the recovery process, the Plan recommends development of easy-to-use reference materials for law enforcement, often the first responders to identity theft; implementation of a standard police report, often a key document for victim recovery; nationwide training for victim assistance counselors; and development of an Identity Theft Victim Statement of Rights. And finally, the Plan includes a host of recommendations for strengthening law enforcement's ability to detect and punish identity thieves.

Many of the Task Force recommendations have already been implemented or are in the process of being implemented. For example, the Office of Management and Budget has issued data security and breach management guidance for government agencies.<sup>9</sup> The FTC has developed and distributed detailed data security guidance for businesses,<sup>10</sup> is planning regional

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<sup>9</sup> OMB Memorandum 07-16, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information" (May 22, 2007), available at <http://www.whitehouse.gov/omb/memoranda/fy2007/m07-16.pdf>; OMB Memorandum, "Recommendations for Identity Theft Related Data Breach Notification" (Sept. 20, 2006), available at [http://www.whitehouse.gov/omb/memoranda/fy2006/task\\_force\\_theft\\_memo.pdf](http://www.whitehouse.gov/omb/memoranda/fy2006/task_force_theft_memo.pdf).

<sup>10</sup> See <http://www.ftc.gov/infosecurity/>.

data security conferences, has conducted a public workshop on consumer authentication,<sup>11</sup> has published an identity theft victim statement of rights on its website and at [www.idtheft.gov](http://www.idtheft.gov), and is leading the interagency study of the private sector usage of Social Security numbers.<sup>12</sup> The Department of Justice has forwarded to Congress a set of legislative recommendations that seek to close existing loopholes for the prosecution of some types of identity theft,<sup>13</sup> and is developing and presenting expanded training for their prosecutors and, in partnership with the FTC, for state and local law enforcement.

### 3. Education

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<sup>11</sup> See <http://www.ftc.gov/bcp/workshops/proofpositive/index.shtml>.

<sup>12</sup> On July 30, 2007, the FTC issued a request for public comment on the uses of Social Security numbers in the private sector, and announced that it was planning to host one or more public forums on the issue in the coming months. See <http://www.ftc.gov/opa/2007/07/ssn/shtm>.

<sup>13</sup> See [http://www.usdoj.gov/opa/pr/2007/July/07\\_crt\\_522%20%20%20.html](http://www.usdoj.gov/opa/pr/2007/July/07_crt_522%20%20%20.html).

<sup>14</sup> FTC News Release, *FTC Launches Nationwide Id Theft Education Campaign* (May 10, 2006), available at <http://www.ftc.gov/opa/2006/05/ddd.htm>.

<sup>15</sup> Available at <http://onguardonline.gov/index.html>.



specific topics such as phishing, spyware, and spam. Since its launch in late 2005, OnGuard

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*Available at <http://www.ftc.gov/bcp/edu/microsites/idtheft/business/data-breach.html>.*

in these areas and looks forward to continuing to work with this Committee to improve the Commission's ability to protect consumers.

- 1. Spam**

(networks of hijacked personal computers that spammers use to conceal their identities) and the exploitation of computer security vulnerabilities that allow spammers to operate anonymously. Industry is taking a leading role in developing technological tools, such as domain-level email authentication, to “uncloak” these anonymous spammers, and the Commission is encouraged by reported increases in the adoption rates for email authentication. Panelists also agreed that there is no single solution to the spam problem and encouraged key stakeholders to collaborate in the fight against spam. To that end, the Commission looks forward to continued collaboration with consumer groups, industry members, international bodies, Members of Congress, and criminal law enforcement authorities.

## **2. Spyware**

The Commission has brought eleven spyware enforcement actions in the past two years. These actions have reaffirmed three key principles: First, a consumer’s computer belongs to him or her, not the software distributor. Second, buried disclosures do not work, just as they have never worked in more traditional areas of commerce. And third, if a distributor puts a program on a consumer’s computer that the consumer does not want, the consumer must be able to uninstall or disable it.

The Commission’s most recent settlement with Direct Revenue, a distributor of adware, illustrates these principles.<sup>17</sup> According to the FTC’s complaint, Direct Revenue, directly and through its affiliates, offered consumers free content and software, such as screen savers, games, and utilities, without disclosing adequately that downloading these items would result in the

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<sup>17</sup> *In the Matter of Direct Revenue, LLC*, FTC Dkt. No. C-4194 (June 29, 2007), available at <http://www.ftc.gov/os/caselist/0523131/index.shtm>.

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<sup>18</sup> See FTC News Release, *Hearings Will Explore Emerging Technologies and Consumer Issues in the Next Decade* (July 26, 2006),

first such “town hall” meeting will take place on November 1-2 in Washington, D.C. and will address the issue of online behavioral marketing. Behavioral marketing involves the collection of information about a consumer’s activities online – including the searches the consumer has conducted, the Web pages visited, and the content the consumer has viewed. The information is then used to target advertising to the consumer that is intended to reflect the consumer’s interests, and thus increase the effectiveness of the advertising. The FTC will examine how behavioral marketing works, what types of data are collected, how such data are used, whether such data are sold or shared, and what information is conveyed to consumers about its use.

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<sup>19</sup> 15 U.S.C. § 45(a)(2) exempts from the FTC Act “common carriers subject to the Acts to Regulate Commerce.” 15 U.S.C. § 44 defines the “Acts to regulate commerce” as “Subtitle IV of Title 49 (interstate transportation) and the Communications Act of 1934” and all amendments thereto.

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<sup>20</sup> Partners for Understanding Pain, *Pain Advocacy Tool Kit* (Sept. 2006) (including members from American Cancer Society, American Pharmacists Association, and Arthritis Foundation, among others), *available at* [http://www.nmmra.org/resources/Home\\_Health/Nurses\\_Tool\\_Kit\\_2006.pdf](http://www.nmmra.org/resources/Home_Health/Nurses_Tool_Kit_2006.pdf).

<sup>21</sup> E.g. Approximately two thirds of U.S. adults are overweight or obese. National Center for Health Statistics, *Prevalence of Overweight and Obesity Among Adults: United States, 2003-2004*. *available at* <http://www.cdc.gov/nccdphp/dnpa/obesity/faq.htm#adults>; and approximately 127 million adults in the U.S. are overweight, 60

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<sup>22</sup> E.g., *FTC v. Window Rock Enters., Inc.*, No. CV04-8190 (JTLx) (C.D. Cal. filed Jan. 4, 2007) (stipulated final orders) (Cortislim), available at <http://www.ftc.gov/os/caselist/windowrock/windowrock.htm>; *In the Matter of Goen Techs. Corp.*, FTC File No. 042 3127 (Jan. 4, 2007) (consent order) (TrimSpa), available at <http://www.ftc.gov/os/caselist/goen/0423127agreement.pdf>; *United States v. Bayer Corp.*, No. 07-01 (HAA) (D.N.J. filed Jan. 3, 2007) (consent decree) (One-A-Day), available at <http://www.ftc.gov/os/caselist/bayercorp/070104consentdecree.pdf>; *FTC v. Chinery*, No. 05-3460 (GEB) (D.N.J. filed Dec. 26, 2006) (stipulated final order) (Xenadrine), available at <http://www.ftc.gov/os/caselist/chinery/070104stipulatedfinalorder.pdf>; *FTC v. QT, Inc.*, No. 03 C 3578 (N.D. Ill. Sept. 8, 2006) (final judgment order), available at <http://www.ftc.gov/os/caselist/0323011/061113grayfinaljdgmntorder.pdf>.

<sup>23</sup> See FTC News Release, *Federal Trade Commission Reaches "New Year's" Resolutions with Four Major Weight-Control Pill Marketers* (Jan. 4, 2007), available at <http://www.ftc.gov/opa/2007/01/weightloss.htm>.

<sup>24</sup> See FTC News Release, *Workshop Explores Marketing, Self-Regulation, and Childhood Obesity* (July 15, 2005),

assist in combating childhood obesity.<sup>25</sup>

A number of companies took the FTC's recommendations seriously. On October 16, 2006, for example, the Walt Disney Company announced new food guidelines aimed at giving parents and children healthier eating options.<sup>26</sup> And in November 2006, the Children's Advertising Review Unit, or "CARU," which is administered by the Council of Better Business Bureaus, announced a new self-regulatory advertising initiative designed to use advertising to help promote healthy dietary choices and healthy lifestyles among American children.<sup>27</sup> Eleven leading food manufacturers – including McDonalds, The Hershey Company, Kraft Foods, and General Mills – are participants in this initiative. On July 18, 2007, at a forum on childhood obesity hosted by the FTC and the Department of Health and Human Services ("HHS"), these companies released the details of their pledges to voluntarily restrict their advertising to children under 12 on television, radio, print, and Internet. Each of the companies committed either to limiting 100% of their advertising directed to children to food products that meet certain nutrition criteria or to refrain from adverprint, and Ie2.017heir a

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<sup>25</sup> *Perspectives on Marketing, Self-Regulation, & Childhood Obesity: A Report on a Joint Workshop of the Federal Trade Commission and the Department of Health and Human Services* (Apr. 2006), available at <http://www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf>.

<sup>26</sup> See Bruce Horovitz and Laura Petrecca, *Disney to Make Food Healthier for Kids*, USA TODAY (Oct. 17, 2006), available at [http://www.usatoday.com/money/media/2006-10-16-disney\\_x.htm](http://www.usatoday.com/money/media/2006-10-16-disney_x.htm).

<sup>27</sup> See Annys Shin, *Ads Aimed at Children Get Tighter Scrutiny; Firms to Promote More Healthful Diet Choices*, WASH. POST, Nov. 15, 2006, at D1.

<sup>28</sup> The one exception is Cadbury Adams, LLC, which committed either to refrain from advertising to children under 12 or to devote at least 50% of such advertising to a product that offers a healthier dietary option. Bubblicious gum is currently the only product Cadbury Adams advertises to children under 12.





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<sup>29</sup> The Commission also brings other law enforcement actions related to financial services, such as credit reporting, financial privacy, data security, and identity theft. For a description of some of these recent cases, see “The FTC in 2007: A Champion for Consumers and Competition,” Federal Trade Commission, April 2007, at 24-25, <http://www.ftc.gov/os/2007/04/ChairmansReport2007.pdf> at 29-30, 37.

<sup>30</sup> *FTC v. Mortgages Para Hispanos.Com Corp.*, No. 06-00019 (E.D. Tex. 2006); *FTC v. Ranney*, No. 04-1065 (D. Colo. 2004); *FTC v. Chase Fin.Funding*, No. 04-549 (C.D. Cal. 2004); *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2003); *United States v. Mercantile Mortgage Co.*, No. 02-5079 (N.D. Ill. 2002); *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. 2002);

Most recently, in 2006, the Commission filed suit against a mortgage broker for deceiving Hispanic consumers who sought to refinance their homes. The FTC’s complaint alleged that the broker misrepresented numerous key loan terms.<sup>31</sup> The alleged conduct was egregious because the FTC claimed that the lender conducted business with its clients almost entirely in Spanish, and then provided loan documents in English at closing containing the less favorable terms. To settle the suit, the broker paid consumer redress and agreed to a permanent injunction prohibiting it from misrepresenting loan terms.<sup>32</sup>

The Commission also has challenged deceptive and unfair practices in the servicing of mortgage loans.<sup>33</sup> For example, in November 2003, the Commission, along with the Department of Housing and Urban Development (“HUD”), announced a settlement with Fairbanks Capital Corp. and its parent company. Fairbanks (now called Select Portfolio Servicing, Inc.) had been one of the country’s largest third-party subprime loan servicers – it did not originate any loans, but collected and processed payments on behalf of the holders of the mortgage notes. The Commission alleged that Fairbanks failed to post consumers’ payments upon receipt, charged for unnecessary insurance, and imposed other unauthorized fees. The complaint also charged Fairbanks with violating federal laws by using dishonest or abusive tactics to collect debts, and by reporting to credit bureaus consumer payment information that it knew to be inaccurate. To resolve these charges, Fairbanks and its former chief executive officer paid over \$40 million in consumer redress, agreed to halt the alleged illegal practices, and implemented significant

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<sup>31</sup> *FTC v. Mortgages Para Hispanos.Com Corp*, *supra* note 28.

<sup>32</sup> Stipulated Final Judgment and Order of Permanent Injunction, *FTC v. Mortgages Para Hispanos.Com Corp.*, *supra* note 28, Sept. 25, 2006.

<sup>33</sup> *United States v. Fairbanks Capital Corp*, *supra* note 28; *FTC v. Capital City Mortgage Corp.*, *supra* note 28.

changes to company business practices to prevent future violations.<sup>34</sup> Just last month, the FTC announced a modified settlement with the company, which provided substantial benefits to consumers beyond those in the original settlement, including account adjustments and reimbursements or refunds of fees paid in certain circumstances.<sup>35</sup>

To leverage resources in the Commission's work on subprime mortgage lending, this summer it announced that it will cooperate in an innovative pilot project with federal banking agencies and state regulators to conduct targeted consumer-protection compliance reviews of selected non-depository lenders with significant subprime mortgage operations. The agencies will share information about the reviews and investigations, take action as appropriate, collaborate on the lessons learned, and seek ways to better cooperate in ensuring effective and consistent reviews of these institutions.

Finally, the Commission's Bureau of Economics recently announced results of a study that confirms the need to improve mortgage disclosures.<sup>36</sup> The research found: (1) the current federally required disclosures fail to convey key mortgage costs to many consumers; (2) better disclosures can significantly improve consumer recognition of mortgage costs; (3) both prime and subprime borrowers failed to understand key loan terms when viewing the current

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<sup>34</sup> Order Preliminarily Approving Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp., *United States v. Fairbanks Capital Corp.*, *supra* n.28, Nov. 21, 2003; Stipulated Final Judgment and Order as to Thomas D. Basmajian, *United States v. Fairbanks Capital Corp.*, *supra* n.28, Nov. 21, 2003.

<sup>35</sup> FTC News Release, *FTC, Subprime Mortgage Servicer Agree to Modified Settlement* (Aug. 2, 2007), available at <http://www.ftc.gov/opa/2007/08/sps.shtm>.

<sup>36</sup> FTC, Bureau of Economics Staff Report, James M. Lacko and Janis K. Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms*, June 2007. An earlier BE study addressed mortgage broker compensation disclosures. FTC, Bureau of Economics Staff Report, James M. Lacko and Janis K. Pappalardo, *The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment*, Feb. 2004, <http://www.ftc.gov/os/2004/01/030123mortgagefullrpt.pdf>.

disclosures, and both benefitted from improved disclosures; and (4) improved disclosures provided the greatest benefit for more complex loans, for which both prime and subprime borrowers had the most difficulty understanding loan terms. The Commission is working with federal regulators on next steps.

## **2. Payment Cards**

The Commission continues to bring law enforcement actions against marketers and distributors of payment cards within its jurisdiction. On July 30, the Commission obtained a temporary restraining order prohibiting EDebitPay and related companies from marketing reloadable prepaid debit cards<sup>37</sup> without adequately disclosing a processing and application fee of over \$150. Moreover, the FTC alleges that some consumers who did not apply for defendants' prepaid card nevertheless suffered unauthorized debits from their bank accounts. When consumers complained about the unauthorized withdrawals, defendants allegedly erected formidable barriers to obtaining refunds, including misrepresenting that consumers could not contest the debits as unauthorized.

The Commission has also been examining hidden expiration dates and dormancy fees on gift cards. This year, the Commission has announced two settlements in this area, one with Kmart Corporation and another with the national restaurant company, Darden Restaurants.<sup>38</sup> According to the FTC's complaints, both Kmart and Darden promoted their gift cards as equivalent to cash but failed to disclose that fees are assessed after two years (initially 15 months,

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<sup>37</sup> A prepaid debit card, also called a prepaid card, is typically a plastic stored valued card that uses magnetic stripe technology to store information about funds that consumers "prepay" or "load" onto the card. Consumers can use prepaid cards to make purchases or withdraw money from merchants and ATMs that accept the network brand on the card.

<sup>38</sup> See FTC News Release, *National Restaurant Company Settles FTC Charges for Deceptive Gift Card Sales* (Apr 3, 2007), available at <http://www.ftc.gov/opa/2007/04/darden.htm>.



granted the FTC's request for a preliminary injunction,<sup>41</sup> and the litigation is continuing. In another case, in June 2007, the FTC obtained an injunction against defendants who victimized Spanish-speaking consumers by posing as debt collectors seeking payments consumers did not owe.

Second, given the rise in consumer debt levels, as well as consumer complaints, it is time to take another look at the debt collection industry. This fall the FTC will hold a workshop to examine debt collection practices thirty years after enactment of the Fair Debt Collection Practices Act. The Commission will examine changes in the industry and the related consumer protection issues, including whether the law has kept pace with developments.

#### **E. Telemarketing and Do Not Call**

Since the mid-1980s, the Commission has had a strong commitment to rooting out telemarketing fraud. From 1991 to the present, the FTC has brought more than 350 telemarketing cases; 240 of these cases were brought after 1995, when the FTC promulgated the Telemarketing Sales Rule ("TSR").<sup>42</sup> As one illustration of the Commission's robust enforcement program, in July, the FTC halted the allegedly unlawful telemarketing operations of Suntasia Marketing<sup>43</sup> which, according to the FTC's complaint, took millions of dollars directly out of consumers' bank accounts without their knowledge or authorization. Suntasia allegedly tricked consumers into divulging their bank account numbers by pretending to be affiliated with the consumer's bank and offering a purportedly "free gift" to consumers who accepted a "free

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<sup>41</sup> Order Granting Motion for Preliminary Injunction, *FTC v. Rawlins & Rivera*, *supra* n.34, Apr. 6, 2007.

<sup>42</sup> 16 C.F.R. § 310. The Commission promulgated the TSR following Congressional enactment of the Telemarketing and Consumer Fraud and Abuse Prevention Act in 1994. 15 U.S.C. §§ 6101-6108.

<sup>43</sup> *FTC v. FTN Promotions, Inc.*, No. 8:07-cv-1279-T-30TGW (M.D. Fla. July 23, 2007).

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<sup>44</sup> *FTC v. 120199 Canada, Ltd.*, No. 1:04-CV-07204 (N.D. Ill.) (permanent injunction order entered Mar. 8, 2007).



penalties and \$8.6 million in redress or disgorgement ordered.<sup>45</sup>

The Commission understands that this Committee has passed S.781, the Do Not Call Implementation Act (“DNCIA”). The Commission supports this legislation and appreciates the Committee’s work on it. The Commission believes that the legislation, if enacted, will help ensure the continued success of the National Registry by providing the Commission with a stable funding source for its TSR enforcement activities. We also believe that the proposed legislation would benefit telemarketers, sellers, and service providers who access the Registry by providing them with a level fee structure.

#### **F. Media Violence**

The Commission has continued its efforts to monitor the marketing of violent entertainment to children and to encourage industry self-regulation. Since it began examining the issue in 1999, the Commission has issued six reports on the marketing of violent entertainment products to children. In April 2007, the Commission issued its latest report, which concluded that the movie, music, and video game industries generally comply with their own voluntary standards regarding the display of ratings and labels. Entertainment industries, however, continue to market some R-rated movies, M-rated video games, and explicit-content recordings on television shows and websites with substantial teen audiences. In addition, the FTC found that while video game retailers have made significant progress in limiting sales of M-rated games to children, movie and music retailers have made only modest progress in limiting sales of R-rated and unrated DVDs and explicit content music recordings to children. The report also

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<sup>45</sup> These Do Not Call cases are included in the 240 TSR cases noted above.

provides the results of a Commission survey of parents and children on their awareness and use of the video game rating system.

**G. “Green” Marketing**

The Commission continues to monitor marketplace developments to identify new consumer protection issues. In monitoring developments in the energy and environmental areas, the Commission has observed that new “green” claims, such as claims for carbon reduction, landfill reduction, and sustainable packaging are entering the market daily. These claims can be extremely useful for consumers; however, the complexity of the issues involved creates the potential for confusing, misleading, and fraudulent claims. Given this potential, in the coming months, FTC staff plans to conduct research, develop consumer and business outreach, and bring appropriate

criminal agencies, 115 FTC defendants or their associates have been charged, pled guilty, or were sentenced in criminal cases. The FTC'

lower-priced generic drugs is delayed, sometimes for many years.

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 consumers and others who pay for prescription drugs. For that reason, the Commission supports a legislative solution to prohibit these anticompetitive settlements, while allowing exceptions for those agreements that do not harm competition.

In addition, in November 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 between drug manufacturers Warner Chilcott and Barr Laboratories that prevented Barr from selling a lower-priced generic version of Warner Chilcott's Ovcon 35, a branded oral contraceptive.<sup>46</sup> Under threat of a preliminary injunction, in September 2006, Warner Chilcott waived the exclusionary provision in its agreement with Barr that 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, and it now has done so, giving consumers the benefits of price competition.<sup>47</sup>

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<sup>46</sup> *FTC v. Warner Chilcott Holdings Co. III*, No. 1:05-cv-02179-CKK (D.D.C. filed Nov. 7, 2005), available at <http://www.ftc.gov/os/caselist/0410034/051107comp0410034%20.pdf>.

<sup>47</sup> 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>. In October 2006, the district court entered a final order that settled the FTC's charges against Warner Chilcott. As a result of the settlement, Warner Chilcott: (1) must 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 affects competition; (2) must notify the FTC whenever it enters into supply or other agreements with generic pharmaceutical companies; and (3) for three months, had to 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. *FTC v. Warner Chilcott Holdings Co. III*, No. 1:05-cv-02179-CKK (D.D.C. filed Oct. 23, 2006) (stipulated permanent injunction and final order), available at <http://www.ftc.gov/os/caselist/0410034/finalorder.pdf>. The FTC's case against Barr is ongoing.

## 2. Pharmaceuticals, Medical Devices, and Diagnostic Systems

The Commission is active in enforcing the antitrust laws in the pharmaceutical, medical devices, and diagnostic systems industries. For example, the Commission challenged the terms of Actavis Group hf.'s proposed acquisition of Abrika Pharmaceuticals, Inc., alleging that the transaction would create a monopoly in the U.S. market for generic isradipine capsules, a drug typically prescribed to patients to lower their blood pressure and to treat hypertension, ischemia, and depression. Under a consent order that allowed the deal to proceed, the companies divested all rights and assets needed to make and market generic isradipine capsules to Cobalt Laboratories, Inc., an independent competitor.<sup>48</sup> The FTC also challenged Barr Pharmaceuticals' proposed acquisition of Pliva.<sup>49</sup> In settling the Commission's charges that the transaction would have increased concentration and led to higher prices, Barr was required to sell its generic antidepressant, trazodone; its generic blood pressure medication, triamterene/HCTZ; either Pliva's or Barr's generic drug for use in treating ruptured blood vessels in the brain; and Pliva's branded organ preservation solution. Last year, the FTC challenged several other pharmaceutical mergers, including: Watson Pharmaceuticals/Andrx Corporation;

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<sup>48</sup> *In the Matter of Actavis Group*, FTC Docket No. C-4190 (May 18, 2007) (decision and order), available at <http://www.ftc.gov/os/caselist/0710063/index.shtm>.

<sup>49</sup> *In the Matter of Barr Pharms., Inc.*, FTC Docket No. C-4171 (Dec. 8, 2006) (decision and order), available at [http://www.ftc.gov/os/caselist/0610217/0610217barrdo\\_final.pdf](http://www.ftc.gov/os/caselist/0610217/0610217barrdo_final.pdf).

<sup>50</sup> *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](http://www.ftc.gov/os/caselist/0610139/061212do_public_ver0610139.pdf).

<sup>51</sup> *In the Matter of Teva Pharm. Indus. Ltd. and IVAX Corp.*, FTC Docket No. C-4155 (Mar. 2, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510214/0510214.htm>.

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### 3. Hospitals and Physicians

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<sup>57</sup> *In the Matter of Evanston Northwestern Healthcare Corp.*, FTC Docket No. 9315 (Aug. 6, 2007) (Opinion of the Commission), available at <http://www.ftc.gov/os/adipro/d9315/070806opinion.pdf>.

<sup>58</sup> *In the Matter of Evanston Northwestern Healthcare Corp.*, FTC Docket No. 9315 (Oct. 20, 2005) (initial decision), available at <http://www.ftc.gov/os/adipro/d9315/051021idtextversion.pdf>.

<sup>59</sup> 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/0510154/0510154.htm>.

<sup>60</sup> *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/0510170/0510170c4166praedecisionorder.pdf>; *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>; *In the Matter of Advocate Health Partners, et al.*, FTC Docket No. C-4184 (Feb. 7, 2007) (decision and order), available at <http://www.ftc.gov/os/caselist/0310021/0310021.htm>; and *In the matter of Health Care Alliance of Laredo, L.C.*, FTC Docket No. C-4158 (Mar. 23, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0410097/0410097.htm>.

Further, in June, the Commission accepted a consent order in *South Carolina State Board of Dentistry*,<sup>61</sup> resolving charges that the South Carolina State Board of Dentistry restrained competition in the provision of preventive care by dental hygienists, limiting access to care by children living in poverty.

## **B. Energy**

Few issues are more important to American consumers and businesses than high energy prices. The FTC plays a key role in maintaining competition and protecting consumers in energy markets by challenging antitrust violations, conducting studies and analyses, and providing comments to other government agencies.

So far in 2007, the Commission has challenged three mergers in the energy industry. This past spring, the Commission challenged Equitable Resources proposed acquisition of The Peoples Natural Gas Company, a subsidiary of Dominion Resources.<sup>62</sup> Equitable and Dominion Peoples are each other's sole competitors in the distribution of natural gas to nonresidential customers in certain areas of Allegheny County, Pennsylvania, which includes Pittsburgh. In March, the FTC filed an administrative complaint against the acquisition, and in April the staff sought an injunction in federal court. Both actions alleged that the proposed transaction would result in a monopoly for many customers who now benefit from competition between the two firms. The district court denied the FTC's request for an injunction, asserting that because the Pennsylvania Utility Commission has the power to approve the merger, the FTC is banned from

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<sup>61</sup> *In the Matter of South Carolina State Board of Dentistry*, FTC Docket No. 9311 (June 20, 2007) (decision and order), available at <http://www.ftc.gov/os/adipro/d9311/070620decision.pdf>.

<sup>62</sup> *FTC v. Equitable Resources, Inc., Dominion Resources, Inc., et al.*, No. 07-cv-490 (W.D. Pa. filed April 13, 2007) (complaint filed), available at <http://www.ftc.gov/os/adipro/d9322/070413cmpltforpi-tro.pdf>.





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Other recent energy matters include: *Chevron/USA Petroleum*, an abandoned transaction in which Chevron would have acquired most of the retail gasoline stations owned by USA Petroleum, the largest remaining chain of service stations in California not controlled by a refiner (USA Petroleum's president stated that the parties abandoned the transaction because of resistance from the FTC), see Elizabeth Douglass, *Chevron Ends Bid to Buy Stations*, LA TIMES, Nov. 18, 2006, Part C at 2; *EPCO/TEPPCO*, in which EPCO's \$1.1 billion acquisition of TEPPCO's natural gas liquid storage business was only allowed to proceed if TEPPCO first agreed to divest its interests in the world's largest natural gas storage facility in Bellview, Texas, to an FTC-approved buyer, see *In the Matter of EPCO, Inc., and TEPPCO Partners, L.P.*, FTC Docket No. C-4173 (Oct. 31, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510108/0510108c4173do061103.pdf>; *Chevron/Unocal*, which resolved the Commission's administrative monopolization complaint against Unocal and antitrust concerns arising from Chevron's proposed \$18 billion acquisition of Unocal, see *In the Matter of Chevron Corp.*, FTC Docket No. C-4144 (July 27, 2005) (consent order), available at <http://www.ftc.gov/os/caselist/0510125/050802do0510125.pdf>

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<sup>68</sup> The Commission and DOJ also extended an open offer to assist state Attorneys General with gasoline pricing investigations upon request. As part of its continuing law enforcement interaction with the states, through the National Association of Attorneys General, the Commission sponsored a federal/state enforcement conference in September 2006 to explore competition issues in petroleum markets.

<sup>69</sup> “*Federal Trade Commission Report on Spring Summer 2006 Nationwide Gasoline Price Increases*” (August 30, 2006), available at <http://www.ftc.gov/reports/gasprices06/P040101Gas06increase.pdf>. Commissioner Leibowitz dissented from the Report. See <http://www.ftc.gov/speeches/leibowitz/P010401gas06dissent.pdf>.

<sup>70</sup> FTC News Release,

but found fifteen examples of pricing at the refining, wholesale, or retail level that fit the legislation's definition of evidence of "price gouging."<sup>71</sup> Other factors such as regional or local market trends, however, appeared to explain these firms' prices in nearly all cases.<sup>72</sup>

### C. Real Estate

Purchasing or selling a home is one of the most significant financial transactions most consumers will ever make, and anticompetitive industry practices can raise the prices of real estate services. In the past year, the agency has brought eight enforcement actions against associations of competing realtors or brokers. The associations, which control multiple listing services, adopted rules that allegedly discouraged consumers from entering into non-traditional listing contracts with real estate brokers. In seven of these matters, the Commission accepted settlements prohibiting multiple listing services from discriminating against non-traditional listing arrangements. The eighth matter, RealComp, is currently in administrative litigation; a trial was held in June and closing arguments are scheduled for September.<sup>73</sup> The result of these actions will allow consumers more choice and ensure that consumers who choose to use discount

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<sup>71</sup> Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2007, Pub. L. No. 109-108 § 632, 119 Stat. 2290 (2005) ("Section 632").

<sup>72</sup> 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>; but see concurring statement of Commissioner Jon Leibowitz (concluding that the behavior of many market participants leaves much to be desired and that price gouging statutes, which almost invariably require a declared state of emergency or other triggering event, may serve a salutary purpose of discouraging profiteering in the aftermath of a disaster), available at <http://www.ftc.gov/speeches/leibowitz/060518LeibowitzStatementReGasolineInvestigation.pdf>.

<sup>73</sup> See, e.g., 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>; see also FTC News Release, *FTC Charges Real Estate Groups with Anticompetitive Conduct in Limiting Consumers' Choice in Real Estate Services* (Oct. 12, 2006), available at <http://www.ftc.gov/opa/2006/10/realestatesweep.htm>; FTC News Release, *Commission Receives Application for Proposed Divestiture from Linde AG and The BOC Group plc; FTC Approves Final Consent Orders in Real Estate Competition Matters* (Dec. 1, 2006), available at <http://www.ftc.gov/opa/2006/12/fyi0677.htm>.

real estate brokers will not be handicapped by rules preventing other consumers from seeing their home listings on the Internet.

#### **D. Technology**

Technology is another area in which the Commission has acted to protect consumers by safeguarding competition. In February 2007, the Commission issued an opinion and final order on remedies in the legal proceeding against computer technology developer Rambus, Inc.<sup>74</sup> Previously, in July 2006, the Commission had determined that Rambus unlawfully monopolized the markets for four computer memory technologies that have been incorporated into industry standards for dynamic random access memory (DRAM) chips. DRAM chips are widely used in personal computers, servers, printers, and cameras.<sup>75</sup> In addition to barring Rambus from making misrepresentations or omissions to standard-setting organizations again in the future, the February 2007 order, among other things, requires Rambus to license its SDRAM and DDR SDRAM technology; with respect to uses of patented technologies after the effective date of the order, bars Rambus from collecting more than the specified maximum allowable royalty rates; and requires Rambus to employ a Commission-approved compliance officer to ensure that Rambus's patents and patent applications are disclosed to industry standard-setting bodies in which it participates.<sup>76</sup> Rambus has appealed the Commission's rulings to the U.S. Court of

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<sup>74</sup> FTC News Release, *FTC Issues Final Opinion and Order in Rambus Matter* (Feb. 5, 2007), available at <http://www.ftc.gov/opa/2007/02/070502rambus.htm>.

<sup>75</sup> *In the Matter of Rambus, Inc.*, Docket No. 9302 (July 31, 2006) (opinion of the Commission), available at <http://www.ftc.gov/os/adjpro/d9302/060802commissionopinion.pdf>.

<sup>76</sup> *In the Matter of Rambus Inc.*, Docket No. 9302 (Feb. 5, 2007) (opinion of the Commission on remedy) (Harbor, P, and Rosch, T, concurring in part, dissenting in part), available at <http://www.ftc.gov/os/adjpro/d9302/070205opinion.pdf>; *In the Matter of Rambus Inc.*, Docket No. 9302 (Feb. 2, 2007) (final order), available at <http://www.ftc.gov/os/adjpro/d9302/070205finalorder.pdf>.

Appeals for the District of Columbia Circuit.

### **E. Retail and Other Industries**

The FTC also guards against anticompetitive conduct in the retail sector. In June 2007, the Commission sought a preliminary injunction in federal district court blocking Whole Foods' acquisition of its chief rival, Wild Oats Markets, Inc.<sup>77</sup> The FTC charged that the proposed transaction would violate federal antitrust laws by eliminating the substantial competition between these two uniquely close competitors in numerous geographic markets across the country in the operation of premium natural and organic supermarkets. On August 16, 2007, a judge for the U.S. District Court of the District of Columbia denied the FTC's motion for preliminary injunction, and on August 23<sup>rd</sup> the Court of Appeals denied the FTC's emergency motion for an injunction pending appeal.<sup>78</sup> The matter remains in administrative litigation. Also, this year in June, the FTC challenged Rite Aid Corporation's proposed \$3.5 billion acquisition of the Brooks and Eckerd pharmacies from Canada's Jean Coutu Group (PJC), Inc.<sup>79</sup> To remedy the alleged anticompetitive impact of the proposed transaction, the Commission ordered Rite Aid and Jean Coutu to sell 23 pharmacies to Commission-approved buyers to preserve the competition that would otherwise be lost in the merger.

In March 2007, the Commission announced a proposed order settling charges that the Missouri State Board of Embalmers and Funeral Directors illegally restrained competition by

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<sup>77</sup> *FTC v. Whole Foods Markets and Wild Oats Markets*, No. 1:07-cv-01021 (D.D.C. filed June 5, 2007), (complaint filed), available at <http://www.ftc.gov/os/caselist/0710114/070605complaint.pdf>.

<sup>78</sup> *FTC v. Whole Foods Markets and Wild Oats Markets*, No. 07-1021 (D.D.C. Aug. 16, 2007); *FTC v. Whole Foods Markets and Wild Oats Markets*, No. 07-5276 (D.C. Cir. Aug. 23, 2007).

<sup>79</sup> *In the Matter of Rite Aid Corporation and The Jean Coutu Group*, FTC Docket No. C-4191 (June 4, 2007) (complaint filed), available at <http://www.ftc.gov/os/caselist/0610257/070604complaint.pdf>.







services,<sup>89</sup> attorney advertising,<sup>90</sup> and pharmacy benefit managers.<sup>91</sup>

## H. Hearings, Reports, Conferences, and Workshops

The FTC's hearings, conferences, and workshops represent a unique opportunity for the agency to develop policy and research tools and help foster a deeper understanding of the complex issues involved in the economic and legal analysis of antitrust law.

Beginning in June 2006 and continuing through May 2007, the FTC and the DOJ Antitrust Division held hearings to discuss the boundaries of permissible and impermissible conduct under Section 2 of the Sherman Act.<sup>92</sup> The primary goal of the hearings was to examine whether and when specific types of single-firm conduct are procompetitive or benign and when they may harm competition. The Commission expects to issue a report with DOJ on the hearings.

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

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<sup>89</sup> Federal Trade Commission and United States Department of Justice Comments to Assemblywoman Helene E. Weinstein, Chair, Committee on Judiciary, New York State Assembly (Apr. 27, 2007), available at <http://www.ftc.gov/be/V070004.pdf>.

<sup>90</sup> FTC Staff Comments to Ms. Lilia G. Judson, Executive Director, Indiana Supreme Court (May 11, 2007), available at <http://www.ftc.gov/be/V070010.pdf>; Brief of the Federal Trade Commission As *Amicus Curiae* Supporting Arguments to Vacate Opinion 39 of the New Jersey Supreme Court Committee on Attorney Advertising (May 8, 2007), available at <http://www.ftc.gov/be/V070003opinion39.pdf>; FTC Staff Comments to the Florida Bar (Mar. 23, 2007), available at <http://www.ftc.gov/be/V070002.pdf>; FTC Staff Comments to the Rules of Professional Conduct Committee, Louisiana State Bar Association (Mar. 14, 2007), available at <http://www.ftc.gov/be/V070001.pdf>; FTC Staff Comments to the Office of Court Administration of the New York Unified Court System (Sept. 14, 2006), available at <http://www.ftc.gov/os/2006/09/V060020-image.pdf>.

<sup>91</sup> FTC Staff Comments to Assemblywoman Nellie Pou, Chair, Appropriations Committee, New Jersey General Assembly (Apr. 17, 2007), available at <http://www.ftc.gov/be/V060019.pdf>; FTC Staff Comments to Terry G. Kilgore, Member, Commonwealth of Virginia House of Delegates (Oct. 2, 2006), available at <http://www.ftc.gov/be/V060018.pdf>.

<sup>92</sup> FTC News Release, *FTC and DOJ to Host Joint Public Hearings on Single-Firm Conduct as Related to Competition* (Nov. 28, 2005), available at <http://www.ftc.gov/opa/2005/11/unilateral.htm>.

Access Task Force, the FTC recently addressed two issues of interest to policy makers.

~~First, in the Commission's 2007 Report on the 96 1089 0 100692 559m.0172 Tc05T32 0 0 12 00.87 100699 27m0 Tc(T Sed~~

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<sup>93</sup> FTC Staff Report, *Municipal Provision of Wireless Internet* (Sept. 2005), available at <http://www.ftc.gov/os/2006/10/V060021municipalprovwirelessinternet.pdf>.

<sup>94</sup> FTC Staff Report, *Broadband Connectivity Competition Policy* (June 2007), available at <http://www.ftc.gov/reports/broadband/v070000report.pdf>.

<sup>95</sup> 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>.

role in maintaining competition and protecting energy consumers. The Commission expects to issue a report detailing the findings of this conference.

Also in April of this year, the FTC and the DOJ issued a joint report, titled *Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition*, to inform consumers, businesses, and intellectual property rights holders about the agencies' competition views with respect to a wide range of activities involving intellectual property.<sup>96</sup> The report discusses issues including: refusals to license patents, collaborative standard setting, patent pooling, intellectual property licensing, the tying and bundling of intellectual property rights, and methods of extending market power conferred by a patent beyond the patent's expiration. This second report on antitrust and intellectual property joins a report issued in 2003 following extensive hearings on this important topic.

In May 2007, the Commission and the DOJ Antitrust Division released a joint report, *Competition in the Real Estate Brokerage Industry*. The purpose of the report is to inform consumers and other industry participants about important competition issues involving residential real estate, including the impact of the Internet, the competitive structure of the real estate brokerage industry, and obstacles to a more competitive environment.<sup>97</sup>

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<sup>96</sup> Federal Trade Commission and Department of Justice, *Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition* (April 17, 2007), available at <http://www.ftc.gov/opa/2007/04/ipreport.shtm>.

<sup>97</sup> Federal Trade Commission and United States Department of Justice, *Competition in the Real Estate Brokerage Industry* (Apr. 2007), available at <http://www.ftc.gov/reports/realestate/V050015.pdf>. To complement the report, the Commission simultaneously released a consumer education publication, *Buying a Home: It's a Big Deal*, which has tips for considering the services of a real estate professional and using the Internet as a source of real estate information. FTC Consumer Education, *Buying a Home: It's a Big Deal* (May 2007), available at <http://www.ftc.gov/bc/edu/pubs/consumer/alerts/zalt001.shtm>

## 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.<sup>98</sup> As a part of this effort, the Commission's website, [www.ftc.gov](http://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 and Gas,<sup>99</sup> Health Care,<sup>100</sup> Real Estate,<sup>101</sup> and Technology.<sup>102</sup> 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,

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<sup>98</sup> Available at <http://www.ftc.gov/ftc/antitrust.htm>.

<sup>99</sup> Available at <http://www.ftc.gov/ftc/oilgas/index.html>.

<sup>100</sup> Available at <http://www.ftc.gov/bc/healthcare/index.htm>.

<sup>101</sup> Available at <http://www.ftc.gov/bc/realestate/index.htm>.

<sup>102</sup> Available at <http://www.ftc.gov/bc/tech/index.htm>.

Protection and the Office of General Counsel. OIA brings increased prominence to the FTC's international work, and enhances the FTC's ability to coordinate its enforcement efforts effectively to promote sound enforcement and convergence toward best practices with the agency's 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 know no borders. The Commission works 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 and implementing competition and consumer protection laws and policies.

**A. Consumer Protection**

Globalization and rapid changes in technology have accelerated the pace of new consumer protection challenges, such as spam, spyware, telemarketing fraud, data security, and privacy, that cross national borders and raise both enforcement and policy issues. The Internet ahanc

FTC to cooperate more fully with foreign law enforcement agencies in the area of cross-border fraud and other practices that are global and harm consumers, such as fraudulent spam, spyware, misleading health and safety advertising, privacy and security breaches, and telemarketing fraud. The FTC already has used the powers conferred by the Act to share information with foreign agencies in several investigations. The increasing use of these new tools will remove some of the key roadblocks to effective international enforcement 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. The Commission has worked hard to expand partnerships with Canadian law enforcement entities to fight cross-border mass marketing fraud 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 the challenges of cross-border consumer protection.

and legal obstacles that many consumers face when trying to resolve disputes with businesses, in their own country or abroad, particularly in cross-border e-commerce transactions.

The FTC will continue to focus the international community on the importance of enforcement as a key component of privacy protection in the OECD, the Asia Pacific Economic Cooperation (“APEC”), and other multilateral organizations. The FTC also continues to participate actively in APEC’s Electronic Commerce Steering Group and several OECD

high-level meetings with the drafters of the antimonopoly law and with officials in China's Ministry of Commerce responsible for their pre-merger notification guidelines, and conducted a multi-day, hands-on seminar on merger process and analysis for Chinese officials. The FTC continues to play a lead role with respect to market-based competition and innovation issues in the US-China Strategic Economic Dialogue, including participation in the May 22-23 summit meeting in Washington. We have just held our annual bilateral meetings with the Japanese Fair Trade Commission, we participated in consultations in Washington and in foreign capitals with top officials of, among others, the Korean Fair Trade Commission and Mexican Federal Competition Commissions, and we will soon hold our annual consultations with the European Commission's Directorate General for Competition.

The FTC plays a lead role in key multilateral fora that provide important opportunities for competition agencies to promote cooperation and convergence. In the International Competition Network, the FTC serves on the Steering Group, and FTC officials hold leadership positions in working groups on unilateral conduct, mergers, and competition policy implementation. We are also active in the competition work of the OECD, UNCTAD, and APEC. The FTC participates in U.S. delegations that negotiate competition chapters of proposed free trade agreements, such as with Korea, Thailand, and Malaysia.

As competition enforcement has proliferated worldwide, the FTC's international competition program has promoted sound, coherent, and fair application of competition laws, to the benefit of American businesses and consumers.





