

**Prepared Statement of
The Federal Trade Commission**

**Before the
Subcommittee on
Science, the Departments of State, Justice, and Commerce, and Related
Agencies**

**of the Committee on Appropriations
United States House of Representatives**

**Washington, D.C.
March 30, 2006**

To accomplish our mission in FY 2007, the FTC requests \$223,000,000 and 1,074 FTE. The FY 2007 request represents an increase of \$13,000,000 over the agency's FY 2006 enacted level.

During FY 2007, the FTC will address significant law enforcement and policy issues throughout the economy, devoting major portions of its resources to those areas in which the agency can provide the greatest benefits to consumers. This testimony in support of our FY 2007 appropriation highlights program priorities in the FTC's two missions. The focus of the consumer protection mission will be on broad efforts to fight fraud and deception, as well as on initiatives supporting consumer privacy and combating technology-driven threats such as spam and spyware. The focus of the competition mission will be on merger and nonmerger enforcement, particularly in health care, energy, high technology, and international competition. The testimony concludes with a summary of the agency's FY 2007 appropriation request.

The FTC's broad mission addresses a wide range of topical issues that affect consumers every day. In recognition of that fact, in 2005, *Washingtonian* magazine recognized the FTC as one of seven federal agencies on its annual list of "Great Places to Work." The *Washingtonian* observed that the FTC advises consumers "on the big issues of the day: identity theft, spam, the 'do not call' registry, the marketing of unhealthy foods to children," and touted the agency as one of the best places to work "if you like being part of the news."³

³ Lisa Daniel, "Great Places to Work," *Washingtonian* (Nov. 2005), at 36.

ChoicePoint failed to use reasonable procedures to screen prospective subscribers and monitor their access to sensitive consumer data, in violation of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et. seq*

2. Education and Cooperation

The Commission also provides business education to promote better data security practices, consumer education and victim assistance, and coordination with other law enforcement through the Identity Theft Data Clearinghouse, a centralized database of victim complaints.

Our Consumer Response Center⁹ responds to roughly 15 to 20 thousand contacts per week from the toll-free identity theft hotline, 1-877-ID THEFT, or through our website or mail, from victims and from consumers who want to avoid becoming victims.

Our business outreach efforts include providing guidance on issues related to data security. For example, the agency disseminates guidance for businesses on reducing risks to their computer systems,¹⁰ as well as guidance for financial firms on complying with the Gramm-Leach-Bliley Act (“GLBA”) Safeguards Rule.¹¹ The FTC also operates the Identity Theft Data Clearinghouse, the nation’s central database of victim complaints designed to support law enforcement investigations nationwide. The database includes over one million complaints received directly from consumers as well as various state and federal agencies. It enables us to

⁹ In a consumer satisfaction survey of all government call centers – the American Customer Satisfaction Index – the FTC’s Call Center was ranked number one in the nation among all federal call centers providing similar services. ACSI Scores for the Federal Government, Dec. 15, 2004. These poll results are available at <http://www.theacsi.org/government/govt-04.html>.

¹⁰ The full text of the guidance for businesses can be found at <http://www.ftc.gov/bcp/online/pubs/buspubs/security.pdf>.

¹¹ See http://www.ftc.gov/privacy/privacyinitiatives/safeguards_educ.html.

the distribution of spyware alleged to cause injury to consumers in the online marketplace.¹² To augment our efforts, several weeks ago, the FTC established a Federal-State Spyware Law Enforcement Task Force to foster federal-state cooperation on the important issue of spyware law enforcement.

The FTC continues to maintain an active program to attack fraudulent spam. To date, we have filed 85 spam-related cases against 237 individuals and companies. In the summer of 2005, we announced, together with the Department of Justice (“DOJ”), the filing of seven civil penalty cases against online operations supplying pornography that we alleged illegally exposed unwitting consumers to graphic sexual content, in violation of the FTC’s Adult Labeling Rule and the CAN-SPAM Act;¹³ these two laws require of scammer Task F F

passage of the US SAFE WEB Act,

consumers how to spot online scams, and specific information on a range of topics, including spyware

selling “Mature” rated videogames to children, there is still need for substantial improvement.

The latest survey, conducted between October 2005 and January 2006, shows that 42 percent of the teenage shoppers were able to purchase M-rated games, a significant improvement from a 2003 survey in which 69 percent were able to purchase such products. Notably, the latest survey found that national sellers were much more likely to restrict the sales of M-rated games to the shoppers, with only 35 percent of shoppers able to purchase a game. In contrast, regional or local sellers sold games to the shoppers 63 percent of the time.

In addition, this year the FTC intends to survey parents and children regarding game ratings and will monitor the placement of ads for Rf shothe place-cplWmporc

allegedly

deceptive negative-option marketing, gift cards with inadequate disclosures, unfair or deceptive rebate practices, and consumer issues relating to “alternative” mortgage products in the marketplace, such as interest-only loans and “option” ARMs.

F. Health Fraud, Weight-Loss, and Childhood Obesity

The Commission also has an active advertising enforcement program that focuses on preventing false or misleading health and disease claims for foods, over-the-counter drugs, devices, and dietary supplements. The FTC has brought 14 cases over the past year and more than 100 cases over the past decade involving allegedly deceptive or unsubstantiated claims for dietary supplements and foods. In June 2005, the Commission obtained the largest monetary judgment ever obtained in an FTC health fraud case – up to \$20 million – to settle claims that Great American Products, Inc. made deceptive anti-aging claims for pills and sprays that promised human growth hormone benefits.²⁶ In another case, the Commission settled charges that Tropicana Products, Inc. made unsubstantiated claims that drinking two to three glasses of “Healthy Heart” orange juice per day would produce specific and dramatic effects on blood pressure, cholesterol, and homocysteine levels, thereby reducing the risk of heart disease and stroke.²⁷ The FTC also settled a federal district court case alleging that A. Glenn Braswell, Chase Revel, seven affiliated companies, two expert endorsers, and one additional individual made false claims that their Gero Vita products could cure, prevent, or treat a number of serious

²⁶ *FTC v. Great American Products, Inc.*, Civ. No. 3:05-CV-00170-RV-MD (N.D. Fla. May 10, 2005), available at <http://www.ftc.gov/opa/2005/06/greatamerican.htm>.

²⁷ *In the Matter of Tropicana Products, Inc.*, FTC File No. 042 3154, available at <http://www.ftc.gov/opa/2005/06/tropicana.htm>.

conditions such as emphysema, diabetes, and Alzheimer’s disease.²⁸ Among other provisions, the order in that case permanently bans Mr. Braswell from direct response marketing of foods, dietary supplements, and unapproved drugs.

In late 2003, the Commission provided the media with a list of Red Flag weight-loss claims that are always false – such as claims that a product causes substantial weight loss no matter what or how much the consumer eats – and asked the media to improve its screening of such ads.²⁹ An FTC staff survey in 2004 suggests that, compared to 2001, there has been a significant decline in the incidence of Red Flag weight-loss claims in the television, radio, and print advertisements included in the survey.³⁰

In July 2005, the FTC and the Department of Health and Human Services (“HHS”) held a public workshop on “Marketing, Self-Regulation, and Childhood Obesity.”³¹ Through this workshop, we provided a forum for sharing perspectives from all stakeholders on the marketing of food and beverages to children, on industry self-regulatory efforts, and on recent initiatives by individual companies to respond to childhood obesity through changes in their products or their marketing methods.

²⁸ *FTC v. A. Glenn Braswell, et al.*, Civ. No. CV 03-3700-DT (C.D. Cal. May 27, 2003), available at <http://www.ftc.gov/os/caselist/gerovita/gerovita.htm>.

²⁹ See FTC Press Release, *FTC Release Guidance to Media on False Weight-Loss Claims*, (Dec. 9, 2003), available at <http://www.ftc.gov/opa/2003/12/weightlossrpt.htm>

³⁰ Federal Trade Commission, *2004 Weight-Loss Advertising Survey: A Report from the Staff of the Federal Trade Commission*, (Apr. 2005). Full text available at <http://www.ftc.gov/os/2005/04/050411weightlosssurvey04.pdf>.

³¹ The workshop agenda, videocast, transcript, panelist presentations, and public comments received by the Commission are available at <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/index.htm>.

G. Alcohol

Alcohol consumption by minors is a matter of significant national concern because of the substantial risks it poses. In the past year, the FTC has contributed to the overall government effort to reduce teen drinking and injury through promoting self-regulation and consumer education. Our efforts focus on concerns about advertising and youth. The Commission will continue to monitor alcohol industry self-regulation. Over the past year, we worked with companies to help them enforce compliance with voluntary codes limiting where alcohol ads appear. In response to earlier recommendations made by the Commission, the Beer Institute and Wine Institute established independent boards to review complaints about code compliance, and the Beer Institute modified its code to prohibit promotions for “drinking games.” This coming year, we will issue compulsory process to alcohol companies as part of a formal study of alcohol self-regulatory efforts.

H. Project Scofflaw and Criminal Referrals

As part of its law enforcement tools, the FTC secures orders against companies that allegedly have violated various consumer protection laws to protect consumers from any further fraud and deception. If these orders are violated, the FTC deploys the full range of powers available to stop repeat offenders and to deter other defendants from ignoring order provisions. For example, this past year, a federal district court awarded the government \$5.45 million in civil penalties and \$1.68 million in disgorgement against Richard Prochnow for his violations of a 1996 FTC order and the Telemarketing Sales Rule in connection with deceptive marketing of magazine subscriptions and buying club memberships.³² In another case, *NBTY, Inc.*, a leading

³² *United States v. Prochnow*, CV No. 1:02-CV-0917-JOS, (N.D. Ga. June 6, 2003).

stalking, harassment, and embarrassment. To combat this threat, Commission attorneys are actively investigating companies that appear to be obtaining consumers' phone records by pretexting, which is the use of false pretenses to obtain sensitive information. This practice not only violates Section 5 of the FTC Act, but it undermines consumers' confidence in the marketplace and in the security of their sensitive data.

J. Hispanic Law Enforcement Initiative

The FTC staff's 2004 Consumer Fraud Survey found that Hispanic consumers are victimized disproportionately by fraud.³⁶ In response, the FTC launched a Hispanic Law Enforcement and Outreach Initiative and announced 34 law enforcement actions involving Spanish-language frauds. Eleven new cases were filed in the past year, including alleged scams involving disease cures, weight loss products, discount health cards, advance-fee credit cards, mortgage lending, business opportunity schemes, and prize promotions.

Partnering with the United States Postal Inspection Service, the FTC also has held a series of Hispanic Law Enforcement and Outreach Forums across the country, including, most recently, in Los Angeles, San Diego, Phoenix, Dallas, Miami, and Cleveland. Additional forums are planned for Las Vegas and New York City. In addition, all of our new consumer education materials – and most of our older materials – are now available in English and Spanish.³⁷

³⁶ See Federal Trade Commission Staff Report, *Consumer Fraud in the United States: An FTC Survey* (Aug. 2004), available at <http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf>.

³⁷ See FTC Press Release *FTC Continues Campaign to Stop Scams Aimed at Hispanics* (Jan. 24, 2006), available at <http://www.ftc.gov/opa/2006/01/ohiorelease.htm>.

K. Advocacy

In addition to law enforcement, the Commission also pursues advocacy to enhance consumer welfare. A key element in promoting competition and preserving consumer choice is fostering the free flow of truthful and non-misleading information and avoiding unduly burdensome restrictions that might keep useful information from consumers and hamper competition. The FTC, through its enforcement against deceptive health-related advertising, has developed substantial experience in policy issues related to food and drug advertising and labeling, and staff has filed numerous comments with the Food and Drug Administration (“FDA”) on these topics. For example, FTC staff recently filed a comment on the proposed rule regarding the use of the term “natural” in food labeling, which has the potential to reduce competition and harm consumers.

would be obligated to pay for the expanded or new service on a monthly basis after the conclusion of the free month, unless or until they cancel the service. The FTC's objection focused on this "negative option" feature, arguing that it would be disclosed inadequately and would serve more as a marketing vehicle than as a redress mechanism. In response to objections raised by the FTC and others, the parties restructured their settlement agreement to remove the negative option feature.

L. 2005 Hurricanes

In anticipation of Hurricane Katrina, the FTC updated materials specially prepared to address consumer issues that arise in the wake of disasters and determined what the agency could do to assist victims, knowing that after their basic needs were addressed by the first-responders, they would have to reclaim their financial lives. FTC attorneys immediately contacted the major credit card companies to discuss how hurricane victims with no working addresses and destroyed financial records would be able to retain their good credit and, ultimately, pay their bills. The FTC developed a website with valuable information and assembled educational materials and alerts regarding the home repair and other scams that would likely surface, as well as alerts to all Americans regarding charity scams.³⁹ We have worked with the DOJ and other agencies on the Hurricane Fraud Task Force to ensure the swift prosecution of those who used the hurricanes as a means to commit fraud, and we have served the Task Force as the national clearinghouse for complaints about hurricane-related fraud and identity theft.

³⁹ See FTC website for those affected by Hurricane Katrina or Hurricane Rita at <http://www.ftc.gov/bcp/online/events/katrina/index.html>.

III. Maintaining Competition

Competition provides the foundation for a thriving economy and the best protection for consumers. The goal of the FTC's competition mission is to remove the obstacles that impede competition and that prevent its benefits from flowing to consumers. The FTC has adopted fundamental strategies to maximize the impact of its competition mission. One such strategy is to focus on sectors of the economy that have the greatest impact on consumers, such as energy and health care. In the past year, the agency pursued a broad range of merger and nonmerger enforcement actions in these and other industries, and also invested significant resources in improving processes and sharing guidance with the public.

A. Energy

A fair and competitive petroleum industry is of vital importance to the national security and economic prosperity of the United States, as the effects from Hurricanes Katrina and Rita have confirmed. The Commission continues to use all of its available tools to promote competition and protect consumers in the petroleum industry, including effective challenges to mergers and practices that violate any laws that the Commission enforces, careful scrutiny of industry behavior to detect anticompetitive conduct, and comprehensive research to understand petroleum sector developments.

1.

administrative monopolization complaint against Union Oil of California (“Unocal”)⁴⁰ and antitrust concerns arising from Chevron’s proposed \$18 billion acquisition of Unocal.⁴¹ The settlements focused primarily on resolving allegations of monopolization through anticompetitive abuses of the regulatory process related to California reformulated gasoline, and prevented Unocal from enforcing certain patents that would lead to an increase of approximately a nickel per gallon at the pump. They also resolved concerns raised by the merger that Chevron would have been able to use information obtained through patent licenses to facilitate coordinated interaction among itself and other refiners and marketers, leading to higher prices for reformulated gasoline. By the terms of the order, the combined firm agrees not to enforce its relevant patents or collect royalties on those patents.⁴²

Second, the FTC ordered significant divestitures in the acquisition of Kaneb Services and Pipe Line Partners, companies that engaged in petroleum transportation and terminaling in a number of markets, by Valero L.P., the largest petroleum terminal operator and second largest operator of liquid petroleum pipelines in the United States. The FTC’s complaint alleged that the

⁴⁰ *In the Matter of Union Oil Company of California*, FTC Docket No. 9305, FTC File No. 011 0214 (Mar. 4, 2003) (complaint), available at <http://www.ftc.gov/os/2003/03/unocalcmp.htm>.

⁴¹ *In the Matter of Chevron Corporation and Unocal Corporation*, FTC Docket No. C-4144 (July 27, 2005) (complaint), available at <http://www.ftc.gov/os/caselist/0510125/050802comp0510125.pdf>.

⁴² *In the Matter of Chevron Corporation and Unocal Corporation*, FTC Docket No. C-4144 (July 27, 2005) (decision and order), available at <http://www.ftc.gov/os/caselist/0510125/050802do0510125.pdf>.

acquisition potentially would increase prices in bulk gasoline and diesel markets.⁴³ The FTC's June 2005 divestiture order succeeded in maintaining import possibilities for wholesale customers in Northern California, Denver, and greater Philadelphia and precluded the merging parties from undertaking potential anticompetitive price increases.⁴⁴

Third, the Commission filed a complaint on July 27, 2005, in federal district court in Hawaii, alleging that Aloha Petroleum's proposed acquisition of Trustreet Properties' half interest in an import-capable terminal and retail gasoline assets on the island of Oahu would have reduced the number of gasoline marketers and could have led to higher gasoline prices for Hawaii consumers.⁴⁵ To resolve this case, the parties executed a 20-year throughput agreement that will preserve competition allegedly threatened by the acquisition.⁴⁶

Other energy-related investigations complement the FTC's proactive merger enforcement program in this important sector. Currently, the agency is conducting two related Congressionally mandated investigations into gasoline prices – one under Section 1809 of the Energy Policy Act of 2005 to determine whether the price of gasoline is being artificially

⁴³ *In the Matter of Valero. L.P., Valero Energy Corporation, Kaneb Services LLC, and Kaneb Pipeline Partners, L.P.*, FTC Docket No. C-4141 (June 14, 2005) (complaint), available at <http://www.ftc.gov/os/caselist/0510022/050615comp0510022.pdf>.

⁴⁴ *Id.* (decision and order), available at <http://www.ftc.gov/os/caselist/0510022/050726do0510022.pdf>.

⁴⁵ *Aloha Petroleum Ltd., et al. v. FTC*, FTC File No. 051 0131 (July 27, 2005) (complaint), available at <http://www.ftc.gov/os/caselist/1510131/050728comp1510131.pdf>.

⁴⁶ FTC Press Release, *FTC Resolves Aloha Petroleum Litigation* (Sept. 6, 2005), available at <http://www.ftc.gov/opa/2005/09/alohapetrol.htm>.

manipulated,⁴⁷ and the other focused on gasoline prices in the aftermath of Hurricane Katrina, pursuant to Section 632 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006.⁴⁸ These ongoing investigations are examining multiple levels of the petroleum industry in all geographic areas of the U.S. – from refining through product transportation, terminaling, marketing, and retailing. As Section 632 mandates, the Commission will spend at least \$1 million to conduct the investigations. The FTC has issued compulsory process – civil investigative demands and Section 6(b) orders – to obtain necessary information and has worked vigorously to ensure that the companies comply with the Commission’s information demands. Commission staff also has conducted investigational hearings (similar to depositions) to examine industry officials under oath regarding various relevant issues. FTC staff members have provided oral briefings for Congressional staff on a monthly basis and, on March 2, 2006, delivered a written interim staff report to relevant Senate and House committees. The interim report discussed the history, focus, and progress of the investigations and underscored specific issues raised in the investigations.⁴⁹ The Commission expects to submit its final written report on the investigations to the Congress in May 2006. We will take swift and decisive enforcement action if these investigations unearth violations of the laws that we enforce.

⁴⁷ Pub. L. No. 109-58, § 1809, 119 Stat. 594 (Aug. 8, 2005).

⁴⁸ Pub. L. No. 109-108, § 632, 119 Stat. 2290 (Nov. 22, 2005).

⁴⁹ Federal Trade Commission, *Interim Report on Gasoline Pricing: A Report to Congress*, (Mar. 2006). Full text available at <http://www.ftc.gov/os/2006/03/0510243GasolinePricesInvestigationInterimReporttoCongress.pdf>

2. Monitoring and Historical Reviews

Consistent with past practice, the FTC continues to monitor retail gasoline and diesel prices in 360 cities and wholesale prices in 20 major markets across the country to identify unusual price movements that might indicate illegal activity. If FTC staff members detect unusual price movements in an area, they research the possible causes and consult, when appropriate, with state attorneys general, state energy agencies, and the federal Energy Information Administration. Thus far, staff's examination of detected anomalies has found a market-driven explanation for each anomaly. If evidence of anticompetitive conduct is found, however, the Commission will open an investigation and pursue all appropriate law enforcement action.

In addition to our enforcement work, the Commission devotes substantial time to researching and reporting on petroleum sector developments. In July 2005, the agency issued a report explaining how fluctuations in the prices that U.S. consumers pay for gasoline result from a wide range of factors.⁵⁰ The report concluded that, over the past 20 years, changes in the price of crude oil have led to the vast majority of the changes in the retail price of gasoline in the United States. Other important factors include increasing demand at both the national and international levels; supply restrictions resulting from circumstances such as political instability, refinery fires, or hurricanes; federal, state, and local regulations, such as "clean fuel" requirements; and taxes. The report provides real-world examples of how short supplies can

⁵⁰ Federal Trade Commission, *Gasoline Price Changes: The Dynamic of Supply, Demand and Competition: A Federal Trade Commission Report*, (July 2005). Full text available at <http://www.ftc.gov/reports/gasprices05/050705gaspricesrpt.pdf>.

cause price increases, which in turn prompt additional supplies, which then act to ease prices.⁵¹

B. Health Care

The health care industry has an enormous impact on U.S. consumers. Annual health care expenditures are approaching \$2 trillion, and now represent about one of every six dollars of GDP. During the past year, the FTC continued to devote substantial resources to protecting competition in this vital sector of the American economy by challenging anticompetitive mergers and other conduct.

1. Pharmaceuticals

The Commission was particularly active in enforcing the antitrust laws in the pharmaceutical industry. In July 2005, the Commission acted to preserve competition by requiring Novartis and Eon Labs to divest three generic drugs that competed with Novartis' branded products before permitting Novartis' proposed \$1.72 billion acquisition of Eon Labs, Inc. to proceed.⁵² The three medications were a tricyclic antidepressant, a muscle relaxant, and a drug used to treat tuberculosis. The prices of the generic drugs for consumers were less than half that of the branded products.

This month (March 2006), the Commission approved a consent order that allowed Teva Pharmaceutical Industries Ltd. to acquire IVAX Corporation after the companies agreed to sell

⁵¹ FTC Press Release, *FTC Releases Report on "Gasoline Price Changes: the Dynamic of Supply, Demand and Competition* (July 5, 2005), available at <http://www.ftc.gov/opa/2005/07/gaspricefactor.htm>.

⁵² FTC Press Release, *Protecting Competition, the Federal Trade Commission Approves Novartis AG's Acquisition of Eon Labs* (July 19, 2005), available at <http://www.ftc.gov/opa/2005/07/novartis.htm>; see also *In the Matter of Novartis AG*, FTC Docket No. C-4150 (Sept. 21, 2005) (decision and order), available at <http://www.ftc.gov/os/caselist/0510106/0509236do0510106.pdf>.

complaint, charging that Schering's agreements violated Section 5 of the FTC Act. ESI entered

federal court alleging that the agreement violated the antitrust laws. The litigation is proceeding.

2. Medical Services and Devices

This past year, the Commission actively enforced the antitrust laws against transactions that allegedly would have reduced competition for several types of medical services and devices. In November 2005, the Commission ordered divestitures to protect patients who require regular outpatient dialysis services from higher prices and reduced quality or service.⁵⁷ Under the order, DaVita, Inc. will divest 69 dialysis clinics in 35 markets across the United States as a condition to proceeding with its \$3.1 billion acquisition of Gambro Healthcare Inc. The two firms were the second and third largest U.S. providers of dialysis services. The divestitures will restore competition to localized markets that allegedly otherwise would have been lost.

The Commission intervened in December 2005, on behalf of coronary artery disease patients, by ordering divestitures in Johnson & Johnson's attempted \$25.4 billion acquisition of Guidant Corporation to preserve competition for three life-saving medical devices used in coronary bypass surgery and implantation of medicated stents to open clogged arteries.⁵⁸ Johnson & Johnson later abandoned its bid for Guidant after being outbid by Boston Scientific. The Commission currently is reviewing Boston Scientific's proposed acquisition of Guidant.

This month, the Commission settled charges that Allergan, Inc.'s \$3.2 billion purchase of

⁵⁷ FTC Press Release, *FTC Accepts Settlement to Remedy DaVita's Acquisition of Rival Outpatient Dialysis Clinic Provider Gambro* (Oct. 4, 2005), available at <http://www.ftc.gov/opa/2005/10/davita.htm>; see also FTC Press Release, *Announced Action for November 18, 2005: Commission Approval of Final Consent Order* (Nov. 18, 2005), available at <http://www.ftc.gov/opa/2005/11/fyi0579.htm>.

⁵⁸ *In the Matter of Johnson & Johnson*, FTC Docket No. C-4154, FTC File No. 051 0050 (Dec. 21, 2005) (decision and order), available at <http://www.ftc.gov/os/caselist/0510050/051227do0510050.pdf>.

Inamed Corporation would violate federal antitrust laws.⁵⁹ Allergan manufactures Botox, while Inamed owns the rights to develop and distribute Reloxin, the most serious potential Botox rival. The FTC alleged that Allergan's purchase of Inamed would reduce competition and force consumers to pay higher prices for the botulinum toxin type A products used by millions of Americans to erase wrinkles. The FTC settlement provides that the companies will return the development and distribution rights to Reloxin to Ipsen Ltd., its U.K.-based manufacturer. Previously, the FTC had investigated Medicis Pharmaceutical Corp.'s attempt to acquire Inamed. Medicis abandoned the transaction in December 2005.

3. Hospitals

The Commission has worked vigorously to preserve competition among the nation's hospitals. On February 10, 2004, the Commission filed a complaint challenging Evanston Northwestern Healthcare Corporation's acquisition of an important competitor, Highland Park Hospital. In October 2005, an Administrative Law Judge ruled that the transaction violated the antitrust laws.⁶⁰ The ALJ found that the transaction had resulted in higher prices and substantially lessened competition for acute care inpatient services in parts of Chicago's northwestern suburbs. The hospital's appeal of the ALJ's decision and order requiring

⁵⁹ *In the Matter of Allergan, Inc. and Inamed Corporation*, FTC Docket No. C-4156 (Mar. 8, 2006) (decision and order), available at http://www.ftc.gov/os/caselist/0610031/0610031AllerganInamedDecisionOrder_PR.pdf.

⁶⁰ *In the Matter of Evanston Northwestern Healthcare Corporation*, FTC Docket No. 9315 (Oct. 21, 2005) (initial decision), available at

divestiture of Highland Park Hospital now is pending before the Commission.⁶¹

4. Physician Price Fixing

During the past year, the FTC continued to investigate and challenge unlawful price fixing by physician groups. In December 2005, the Commission issued a unanimous decision that held that a physician group, known as North Texas Specialty Physicians (“NTSP”), had violated the antitrust laws when it negotiated agreements among participating physicians on price and other terms, refused to negotiate with payers except on terms agreed to among its members, and refused to submit payor offers to members if the terms did not satisfy the group’s demands.⁶² The physicians have appealed the Commission’s decision to the U.S. Court of Appeals for the Fifth Circuit.

The Commission also entered into consent agreements that brought to a halt allegedly unlawful price fixing by six other physician groups. The member physicians of each group had coordinated the prices of some of their services, without sufficiently integrating their practices to achieve cost savings and other efficiencies. The physician groups that entered into the consent agreements are Health Care Alliance of Laredo (80 physicians in Laredo, Texas); New Millennium Orthopaedics (32 physicians in Cincinnati, Ohio); Partners Health Network (225 physicians in the Pickens County, South Carolina area); Preferred Health Services (100

⁶¹ In April 2005, the FTC entered into a partial settlement resolving Count III of the complaint, which alleged illegal collusion among approximately 900 doctors in Cook and Lake Counties, Illinois. The doctors agreed to cease and desist from the allegedly illegal collective conduct.

⁶² *In the Matter of North Texas Specialty Physicians*, FTC Docket No. 9312 (Dec. 1, 2005) (final order), available at <http://www.ftc.gov/os/adjpro/d9312/051201finalorder.pdf>, as amended by Order Modifying Opinion of the Commission (Jan. 20, 2006), available at <http://www.ftc.gov/os/adjpro/d9312/index.htm>.

physicians in Seneca, South Carolina); San Juan IPA (120 physicians in Farmington, New Mexico); and White Sands Healthcare Systems (45 physicians in the Alamogordo, New Mexico area).⁶³

C. Chemicals

In June 2005, the Commission announced a consent order that allowed Occidental Chemical Company's proposed purchase of the chemical assets of V

Company to go forward, provided the companies divest a variety of overlapping assets ranging from toothbrushes to antiperspirant/deodorants to ensure continued competition following the transaction.⁶⁵ Americans who use these products will be protected from anticipated higher prices in the wake of this acquisition.

E. Casino Services

In order to ensure continued competition in the market for casino services in Baton Rouge, Louisiana, the Commission in July 2005 announced a consent order that would permit Penn National Gaming, Inc.'s (PNG) \$2.2 billion acquisition of Argosy Gaming Company (Argosy), provided PNG sold Argosy's Baton Rouge casino to Columbia Sussex Corporation within four months of the order's becoming final.⁶⁶ Because PNG and Argosy then operated the only two casinos in Baton Rouge, the Commission concluded that the divestiture was necessary to preserve a competitive alternative.

F. Household Moving Services

In June 2005, the Commission upheld an ALJ's Initial Decision that found that the Kentucky Household Goods Carriers Association, Inc., consisting of competing household

⁶⁵ FTC Press Release, *FTC Consent Order Remedies Likely Anticompetitive Effects of Procter & Gamble's Acquisition of Gillette* (Sept. 30, 2005), available at <http://www.ftc.gov/opa/2005/09/pggillette.htm>; see also *In the Matter of The Procter and Gamble Company and The Gillette Company*, FTC Docket No. C-4151 (Dec. 15, 2005) (decision and order), available at <http://www.ftc.gov/os/caselist/0510115/051215do0510115.pdf>.

⁶⁶ FTC Press Release, *Preserving Competition for Casino Services in Baton Rouge, Louisiana, FTC Clears Penn National's Purchase of Argosy Gaming* (July 27, 2005), available at <http://www.ftc.gov/opa/2005/07/pngaming.htm>. See also *In the Matter of Penn National Gaming, Inc.*, FTC Docket No. C-4143 (Oct. 27, 2005) (decision and order), available at <http://www.ftc.gov/os/caselist/0510029/051101do0510029.pdf>.

moving services companies, engaged in illegal price-fixing by jointly filing tariffs containing collective rates on behalf of its members, and that the association was not entitled to the state action defense against antitrust liability.⁶⁷ The Commission ruled that the state's role fell "far short of the active supervision required by [Supreme Court cases]," and thus the state action doctrine did not apply. Although the Kentucky Transportation Cabinet (KTC) is responsible for ensuring that carriers' rates are just and reasonable, the Commission found that the KTC followed no formula or methodology in making that determination, the KTC did not obtain basic data that would permit a proper assessment, and procedural elements consistent with active supervision were absent.

G. Newspaper Inserts

In March 2006, the Commission announced a consent order against Valassis Communications, Inc. settling charges that Valassis had invited its competitor to collude and to eliminate price competition in violation of the FTC Act.⁶⁸ According to the Commission's complaint, Valassis and News America Marketing are competitors in the American market for free-standing newspaper inserts, the multi-page booklets found in newspapers containing discount coupons for various products. The Commission alleged that in a July 2004 public call with security analysts, Valassis invited News America Marketing to join a scheme to allocate

⁶⁷ *In the Matter of Kentucky Household Goods Carriers Association*, FTC Docket No. 9309 (Jun. 22, 2005) (Opinion and Final Order), available at <http://www.ftc.gov/os/adjpro/d9309/050622opinionofthecommission.pdf>.

⁶⁸ See FTC Press Release, available at <http://www.ftc.gov/opa/2006/03/valassis.htm>. See also *In the Matter of Valassis Communications Inc.*, FTC File No. 051 0008 (Mar. 14, 2006) (Decision and Order), available at <http://www.ftc.gov/os/caselist/0510008/060314do0510008.pdf>.

customers and fix prices, thereby ending an ongoing price war between the two competitors and raising prices for the inserts. News America Marketing did not accept the offer. The Commission's consent order prohibits Valassis from inviting collusion and from actually entering into or implementing a collusive scheme.

H. Merger Review Process Improvements

In February 2006, the agency initiated substantial reforms to the processes and procedures that the Commission uses to review mergers and acquisitions.⁶⁹ The reforms will lower the cost, increase the overall efficiency, and enhance the substantive effectiveness of the FTC's merger review process by formalizing well-defined "best practices" for the Commission and the parties to transactions.

Most significantly, the agency will implement a presumption that it generally will not require a party to search the files of more than 35 of its employees to respond to a Request for Additional Information, or a "second request." This presumptive limit will be contingent on the parties' providing staff with specified types of access to and information about its employees, which will enable staff to identify the appropriate employees for the parties to search. Furthermore, the parties also must agree to produce the materials responsive to the modified second request 30 days before the parties formally certify that they are in substantial compliance with the second request. These procedures will streamline the merger review process by facilitating the rapid identification of the relevant issues, more focused second requests, and more consistent investigation timetables. The reforms also will improve the merger review process

⁶⁹ *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>.

through the assignment of greater responsibility for deviations from the best practices.

In another recent merger process-related advance, the new Electronic Filing Application (e-Premerger) System permits electronic filing of required information about proposed mergers and acquisitions under the Hart-Scott-Rodino Premerger Notification Act. This single integrated system already is proving more efficient for business filers as well as taxpayers. Businesses need only file at a single location to provide the required information to both the FTC and the Department of Justice's Antitrust Division ("the Agencies"), and taxpayers do not need to support two redundant systems. The FTC has managed the development and deployment of this integrated bi-agency system and will operate this system on behalf of the Agencies.

I. Guidance, Transparency, and Competition Advocacy

Issued by the FTC and the DOJ's Antitrust Division in 1992, the Horizontal Merger

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durable restraints on competition. Recent FTC advocacy efforts have contributed to several positive consumer outcomes. In the past year, the Agencies have provided several state legislatures with advocacy comments urging the states not to adopt proposed legislation that would require real estate brokers to provide certain services to consumers, regardless of whether they actually want such services. We have argued in our advocacies that such minimum-service regulations – while presented as necessary to protect consumers – actually restrict consumer choice and reduce competition between limited-service brokers and traditional, full-service full-price brokers, resulting in home buyers and sellers likely paying higher prices for real estate brokerage services. Although we failed to sway all the state legislatures we contacted, we have had several successes in opposing these restrictions, with a number of states ultimately deciding not to adopt them.

The FTC also has significant experience in analyzing the impact of state laws on the distribution of alcohol, and in particular, the competitive effects of bans on direct-to-consumer wine shipping. An FTC staff report addressing such effects was cited a dozen times in last year’s Supreme Court decision in *Granholm v. Heald*,⁷⁰ which held that the laws of Michigan and New York that discriminated against out-of-state wine manufacturers and in favor of in-state wine manufacturers in the sale and shipping of wine within those states violated the Commerce Clause

⁷⁰ 544 U.S. 460 (2005).

of the United States Constitution. The FTC continues to monitor developments in this evolving area, with the staff having recently provided an advocacy comment to an Ohio legislator in favor of proposed legislation that would permit direct shipping of wine to consumers in that state.⁷¹

J. New Initiatives

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.

IV. International Activities

The FTC works to promote cooperation and convergence toward best practices with competition and consumer protection 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 now know no borders. We work 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 competition and consumer protection laws and policies.

A. Consumer Protection

In an era of electronic commerce, it is easy for purveyors of spam, spyware, and fraud to locate outside the United States in an attempt to evade the Commission's enforcement jurisdiction. Indeed, because an increasing number of law enforcement investigations the FTC undertakes involve some cross-border component, over the last few years the Commission has launched a comprehensive program to combat cross-border fraud. To address limitations in the FTC's ability to investigate cross-border fraud, last June, the FTC submitted a report to Congress recommending enactment of the US SAFE WEB ActwviT Actwv4

increase includes: