I would like to thank Larry for organizing this session and more generally for his on-going efforts to provide opportunities to get the word out to the academic community about what is going on at the agencies. Last spring, I spoke at a session like this one at the Industrial Organization Society meetings in Boston.[1] As I devoted most of my remarks then to the consumer protection activities in the Bureau of Economics, I will use my time today to talk about competition matters. As was the case for what I said about consumer protection matters last spring, what I say today about any matter – competition-related or otherwise – reflects my views. It does not necessarily reflect the views of the Federal Trade Commission or any of the individual Commissioners.

In the brief time allotted me, I'll talk about three issues. I have chosen two because they are substantively two of the most important that the Commission has been dealing with since I arrived. The other one just struck me as being a case that some of you would find interesting to use with your students.

Issue 1 concerns standard setting organizations, or SSOs. These can create a kind of Scylla and Charybdis for participating firms. One of the risks concerns the obligations to disclose patented technology. The Commission has, in recent years, brought monopolization claims against two companies for failing to disclose patents incorporated into industry standards. It brought a case against Unocal for fas been dealing dar 8.viting TJ9.4odht

trivial problem, to put it mildly. In September of 2005, Chairman Majoras gave a speech in which she said that the Commission would not view discussions of licensing terms in SSOs as per se violations of the antitrust laws but would, instead, evaluate them under a rule of reason.[5] More recently, the Department of Justice issued a business letter in which it said it would not challenge the unilateral disclosure of the maximum license fees a patent holder would charge.[6]

Issue 2 concerns the behavior of pharmaceutical companies faced with generic entry. The legislative background for understanding the issues is incentives provided by the Hatch-Waxman Act[7] for a generic to challenge the patent on a drug before it expires. When a generic company files a so-called “paragraph Ioc5ODA,”it satrtm a s45-day losck

entry has been the phenomenon of authorized generics. The 180-day exclusivity period granted under Hatch-Waxman does not in any way prevent the patent holder from bringing out its own generic or granting to another generic producer a license to market a generic version of the drug. While this strategy has been available to pharmaceutical companies since passage of the Hatch-Waxman Act in 1984, it has become a more common strategy in recent years. In response to a Congressional mandate, the Commission is currently doing a study of the effects of this strategy.[10]

The last issue I will mention concerns invitations to collude. If you are looking for an interesting case to discuss with your classes, I recommend to you the Commission's complaint against Valassis.[11] The product at issue in the case was free-standing inserts – the booklets of coupons that come in Sunday newspapers. Historically, two companies each had about half the market – Valassis and News America Marketing, a subsidiary of NewsCorp. According to the complaint, in June 2001, Valassis raised its prices by 5%. When News America did not follow suit, it gained market share. With News America sticking to its old prices, Valassis decided in February 2002 to abandon its attempts to raise prices and instead to try to regain its lost market share. From February 2002 until the middle of 2004, a price war ensued, with prices dropping more than 15% from those that prevailed in June 2001. At that point, the complaint alleges, Valassis decided to give up on recovering its market share and instead decided to raise prices. It did not,notis 0 Tc85es. pr8.47 083es

communication. The Valassis case is the first of which I am aware in which there was an allegation that a public statement was an invitation to collude.

One can debate whether public statements in general and analyst calls in particular should be treated any differently from private communication for the purposes of invitations to collude. On the one hand, discussions of pricing strategy can provide analysts with information they need to place proper valuations on stocks and thereby improve the efficiency of the capital markets. That said, if statements made in analyst calls were deemed legal provided they contained information that investors might deem relevant for valuation, then analyst conference calls would become the new "instant messenger" for invitations to collude. Indeed, as the Commission's aid to public comment pointed out, economic analysis suggests that analyst conference calls could be particularly effective media for communicating invitations to collude if doing so were legal. In private conversation, an executive might promise to raise prices and have no intention of following through. Doing so in an analyst conference call would create the risk of willfully misleading investors.

As this session is occurring at the hiring meetings, let me just close by saying what a fabulous place the Federal Trade Commission is to work. It is a place where ideas and truth really matter. I worded that last sentence carefully. I said both "ideas and truth," because the academic journals contain far too many ideas and far too many results that are not true, or at least not reliable. It is not such a big problem when the published result is an article in the *Journal of Public Policy and Marketing* suggesting that the Do Not Call List lowered economic welfare.[13] But the problem exists in even the very top journals, and the apparent authority presumed for articles in those journals makes the problem much harder to deal with. And I qualified "matter" with "really," because ideas of course matter within the university. At the agencies, though, they matter for reasons beyond tenure decisions. The FTC can be a great place for newly-minted Ph.D.s as well as for people who, for whatever, reason, have decided to leave academia. For faculty on sabbatical, we can arrange visits for a semester or a year. And there are potentially opportunities even for the most senior people. If you or your students might have some interest, let me know.

As I know Larry wanted to leave time for discussion, I'll end my comments with that. Thank you.

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[13] T. Randolph Beard and Avery M. Abernethy, "Consumer Prices and the Federal Trade Commission's 'Do-Not-Call' Program, 24 JOURNAL OF PUBLIC POLICY & MARKETING 253 (2005). For a comment, see Keith B. Anderson, "The Costs and Benefits of Do-Not-Call: A Comment on 'Consumer Prices and the