sold to large business customers for their own use.[8] The complaint notes that in competing for contracts, both Staples and Office Depot can provide the low prices, nationwide distribution, and combination of services and features that manylarge business customers require, such as consistent and reliable nationwide deliveryand IT systems that can interf ace with their procurement systems for centralized purchasing and billing. According to the complaint, r egional and local office supplyvendors, or online sellers like Amazon Business, cannot meet those needs.

The Commission also continues to devote significant resources to stopping anticomp26 -2.32( tv-pes)]TJ 0 Tc 0 Tw22.58 0 Td ( )Tjhe(oc)4(a)4(l)2( t)-(, c)4(a)1( r)-7(e4(n pr)3)2(i)-2(de

found the Commission's analysis of the merger to be "comprehensive, carefully reasoned, and supported by substantial evidence in the record." [10] In the second, the Ninth Circuit employed a similar analysis to affirm a lower court decision blocking the merger of Idaho's dominant health

from allegedlycolluding to push a keycustomer to accept a reduction in fill levels, [14] eliminated allegedlyunreasonable provisions in trade association ethical codes that prevented competition among members,[15] and challenged allegedlyillegal invitation s to collude.[16]

Last year, the FTC achieved a notable victoryin a conduct matter at the Supreme Court in North Carolina Board of Dental Examiners, the Commission's third Supreme Court win in three years . There, the Court affirmed a Commission administrative decision and ruled that "a state board on which a controlling number of decision-makers are active market participants in the occupation the board regulates must satisfy[the] active supervision requirement in order to invoke state action antitrust immunity." [17] The decision seeks to ensure that the boards' regulatorydecisions reflect the policies of the state rather than the private economic interests of its members. The Court's ruling

Last fall, in response to questions from state officials about the impact of N.C. Dental, FTC staff issued guidance addressing antitrust compliance for state boards responsible for regulating occupations.[19] The guidance explains when a state regulatory board would require active supervision to invoke the state action defense and the factors that are relevant to determining whether the active supervision requirement is satisfied. It also clarifies that even without antitrust immunity, many routine activities of regulatory boards are unlikely to violate the antitrust laws.

Last year the Commission also issued an important statement regarding the scope of the FTC's competition authority related to unfair methods of competition . In this Statement of Enforcement Principles, a bipartisan majority of the Commission affirmed that the Commission will use

## 1. Combatting Efforts to Stifle Generic Competition

A top priorityfor the Commission for nearly20 years has been stopping anticompetitive reverse-payment settlements of patent litigation in which the brand -name drug firm pays its potential goe

We are beginning to see positive signs following the *Actavis* decision. The number of potential pay-for-delay deals in pharmaceutical patent settlement agreements declined in FY 2014, the first full fiscal year after the *Actavis* decision, as compared to FY 2013, based on a review of filings made with the FTC and the Department of Justice pursuant to the Medicare Modernization Act.[25] Moreover, more patent disputes were settled without reverse payments than in prior years—80 percent of the MMA filings for FY 2014 did not involve any compensation paid by the branded company to the generic company.[26] Although it is too early to tell if these figures represent a more permanent decline in pay-for-delay activity, the numbers are encouraging. At the same time, the data also shows a need for the FTC to continue to investigate and challenge agreements that delay generic drugs and impose substantial costs on consumers, employers, and taxpayers.

In addition to enforcement work, the Commission monitors private pay-for-delay cases and files amicus briefs where the agency's experience and expertise could prove helpful to the courts. For example, both the First and Third Circuits recently adopted the FTC's position as amicus in ruling that patent litigation settlements that do not involve cash but instead contain a

[25] From FY 2005 to FY 2012, potential pay-for-delay agreements contained in MMA filings increased steadily, from three in FY 2005 to 40 in FY 2012. But since early 2013, this trend seems to have reversed. For example, in FY 2014, 21 such reverse-payment agreements were filed with the Commission—a nearly 50% decline from the FY 2012 peak of 40—while the overall number of patent settlements has increased.

[26] FTC News Release, FTC Report on Drug Patent Settlements Shows Potential Pay-for-Delay Deals Decreased Substantially in the First Year Since Supreme Court's Actavis Decision (Jan. 13, 2016), https://www.ftc.gov/news-events/press-releases/2016/01/ftc-report-drug-patent-settlements-shows-potential-pay-delay.

for anticompetitive product design is particularly acute in the pharmaceutical industry, in part because it may be a profitable strategy even if consumers do not prefer the reformulated version of the product or if it lacks any real medical benefit. [29]

### 2. Stopping Other Efforts to Eliminate Competition in Pharmaceutical Markets

FTC work in pharmaceutical markets is not limited to efforts by branded drug companies to delay generic competition. Last August, the Commission charged two pharmaceutical companies with entering into an unlawful agreement not to compete in the sale of generic versions of Kapvay, a prescription drug used to treat ADHD. [30] By eliminating that competition, the agreement deprived consumers of the lower prices that typically result from generic competition. The companies abandoned their agreement shortly after learning of the FTC's investigation and are under an FTC order to prevent the conduct from recurring.

We have also taken action against unilateral conduct that excludes new rivals and keeps drug prices high. For example, in April 2015, we charged Cardinal Health with illegally monopolizing 25 local markets for the sale of low-energy radiopharmaceuticals by coercing the two radiopharmaceutical manufacturers not to supply new facilities that might compete with Cardinal to perform common diagnostic tests such as heart stress tests. To settle the FTC

[29] FTC Brief as Amicus Curiae, Mylan Pharms., Inc. v. Warner Chilcott PLC, Civ. A. No. 12-3824 (3d. Cir. Sept. 30, 2015), https://www.ftc.gov/system/files/documents/amicus_briefs/mylan-pharmaceuticals-inc.v.warner-chilcott-plc-et-al./151001mylanamicusbrief.pdf . Commissioner Ohlhausen voted against the filing of v. plc

charges, Cardinal agreed to stop its coercive tactics, and paid $26.8 million in ill-gotten gains into a fund to reimburse hospitals and clinics that overpaid for radiopharmaceuticals.[31]

## II. FTC Competition Research and Advocacy

Although law enforcement is the primarytool the Commission uses to promote competition and protect consumers, we also study emerging trends and business developments, and advocate for policies that impose the fewest unnecessaryrestrictions on competition . The agency's research efforts are enhanced bythe ability, when conducting a formal study, to compel the production of information under Section 6(b) of the FTC Act, which ensures that the

The Commission is conducting

entrepreneurs use technologyto interact directlywith consumers, the Commission seeks to better understand the competition, consumer protection, and economic issues created bythe proliferation of these new business models, as well as the extent to which theymayfit within, or challenge, existing regulatoryframeworks.

The FTC also engages in competition advocacy, providing comments to state legislatures, state and federal agencies, and other policymakers. Competition advocacyis particularly effective in addressing market restraints imposed bygovernments themselves, especiallywhen the underlying policyjustifications for these restraints may not be adequatelysubstantiated, and when these restraints impose unnecessaryburdens on competition to the detriment of consumers.

For example, the Commission has long used advocacyto promote competition in healthcare provider markets. Commission staff recentlysubmitted comments in a handful of states pertaining to so-called "certificates of public advantage," which purport to grant antitrust immunityto healthcare providers that engage in certain collaborations or merge.[36] Because procompetitive collaborations and combinations are alreadypermissible under the antitrust laws, the main effect of these laws is to immunize conduct and mergers that would not generate efficiencies and are likelyto result in consumer harm.

The FTC has also provided comments to state policymakers suggesting that they closely examine the purported health and safetyjustifications behind scope-of-practice restrictions that prevent certain health care professionals, such as advanced practice nurses or dental hygienists,

[36] See, e.g., FTC News Release, In Comments Submitted to Virginia and Tennessee Health Departments FTC Staff Offers Assistance in Evaluating Proposed Hospital Cooperation Agreements (Oct. 15, 2015), https://www.ftc.gov/news-events/press-releases/2015/10/comments-submitted-virginia-tennessee-health-departments-ftc; FTC News Release, FTC Staff Expresses Concern that New York's Certificate of Public Advantage Regulations Can Harm Competition (Apr. 24, 2015), https://www.ftc.gov/news-events/press-releases/2015/04/ftc-staff-expresses-concern-new-yorks-certificate-public.

from being able to take full advantage of their training and expertise. [37]

including those implicating the intersection of antitrust and intellectual property. We also continue to playa lead role in the negotiation of competition chapters of trade agreements such as the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership.

## IV. Conclusion

Competitive markets are the foundation of our economy, and effective antitrust enforcement helps ensure that those markets function well and benefit both consumers and businesses alike. Thank you for this opportunityto share highlights of the Commission's recent enforcement, research, and advocacywork to promote competition and protect consumers .