



**10**

Mr. Chairman, I am Timothy J. Muris, Chairman of the Federal Trade Commission ("Commission" or "FTC"). I am pleased to appear before the Subcommittee today to testify in support of the FTC's FY 2004 Appropriation request.<sup>(1)</sup> The Commission would like to thank the Chairman and members of the Subcommittee for their continued support of the agency's mission.

The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy.<sup>(2)</sup>



The FTC's toll-free number 1-877-ID-THEFT is the central clearinghouse for identity theft complaints. Calls regarding identity theft have increased from more than 36,000 calls in FY 2000 to more than 185,000 calls in FY 2002. These complaints are available to the FTC's law enforcement partners through an online database, and now more than 650 law enforcement agencies access the data. In addition, FTC investigators, working with the Secret Service, develop preliminary investigative reports that are referred to regional Financial Crimes Task Forces for possible prosecution.

Continuing a program begun in March 2002, the FTC, the Secret Service, and the Department of Justice ("DOJ") conduct training seminars to provide hundreds of local and state law enforcement officers with practical tools to combat identity theft. To date, the Commission and its partners have conducted six regional training sessions for more than 600 law enforcement officers.

The FTC also engages in extensive education of both businesses and consumers about preventing and responding to identity theft. One of the agency's most popular publications is "Identity Theft: When Bad Things Happen to Your Good Name."<sup>(8)</sup>

### **3 Safeguarding Consumer Information**

In May 2002, the FTC finalized an order settling charges that Eli Lilly & Company unintentionally disclosed e-mail addresses of users of its Prozac.com and Lilly.com sites as a result of failures to take reasonable steps to protect the confidentiality and security of that information. The settlement requires Lilly to establish a security program to protect consumers' personal information against reasonably anticipated threats or risks



consumers about loan terms and alleged violations of the Truth in Lending Act.<sup>(27)</sup> In addition to monetary relief, the Mercantile settlement gives hundreds of consumers the opportunity to refinance loans at low or no cost.<sup>(28)</sup>



Truthful and substantiated health claims in advertising can be an important source of useful information for consumers. Inaccurate information, on the other hand, can cause serious physical as well as financial harm. For that reason, combating deceptive health claims, both online and off, continues to be a priority for the FTC.

## 1 Dietary Supplements

Challenging misleading or unsubstantiated claims in the advertisement of dietary supplements is a significant part of the FTC's consumer protection agenda. Over the past decade, the Commission has filed more than 80 law enforcement actions challenging false or unsubstantiated claims about the efficacy or safety of a wide variety of supplements.<sup>(29)</sup> The Commission focuses its enforcement priorities on claims for products with unproven benefits or that present significant safety concerns to consumers, and on deceptive or unsubstantiated claims that products treat or cure serious diseases. The FTC has taken action against all parties responsible for the deceptive marketing, including manufacturers, advertising agencies, infomercial producers, distributors, retailers, and endorsers.

## 2 Weight Loss Advertising

Since the 1990s, the Commission has filed nearly 100 cases challenging false or misleading claims for all types of weight loss products, including over-the-counter drugs, dietary supplements, commercial weight loss centers, weight loss devices, and exercise equipment.<sup>(30)</sup> In September 2002, the FTC issued a "Report on Weight-Loss Advertising: An Analysis of Current Trends."<sup>(31)</sup> The report concluded that false or misleading claims for weight loss products, such as claims of substantial weight loss without diet or exercise, are widespread and, despite an unprecedented level of FTC enforcement activity, appear to have increased over the last decade.

The FTC continues to explore ways to stem the tide of deceptive weight loss claims. In an opinion piece in Advertising Age, Commissioner Sheila Anthony commented that the Commission cannot solve this problem alone and made it clear that the industry and the media have a significant role to play.<sup>(30 0 6 388.30.1016 Tce(ay)euw [(C)-7(om)-1 -15.48COI(du)13(s)-15(d)-er N(i)-f16 Tw.</sup>

consumer advocates to discuss private and public sector cooperation in combating cross-border fraud. In addition, the Commission has entered into Memoranda of Understanding with the United Kingdom, Australia, and Canada to combat cross-border fraud through cooperation and coordinated enforcement activities, and to provide technical assistance to developing countries.

The FTC also is working on the adoption of an OECD Recommendation on Cross-Border Fraud, through OECD's Committee on Consumer Policy. This recommendation will help develop international consensus on what constitutes consumer fraud and on the key goals of cross-border cooperation. Last spring, Commissioner Mozelle Thompson, who has been instrumental in pursuing the Commission's cross-border agenda, was elected Chair of OECD's Committee on Consumer Policy.

## ■

The FTC has implemented a variety of initiatives that assist particular consumer groups. Such groups include children, Spanish-speaking consumers, and military personnel and their families.

### 1 Marketing to Children

■ The FTC continues to monitor the marketing of violent entertainment products to children. In September 2000, the agency reported that the entertainment industry targeted advertising and promotion of violent video games, movies, and music to children.<sup>(38)</sup> In response to requests from Congress, the Commission has issued three follow-up reports, in April and December of 2001 and in June of 2002.<sup>(39)</sup> These reports found substantial improvements by the movie and electronic games industries in how they marketed their products, but found no appreciable change in the music industry's marketing practices. These reports also documented widespread disclosure by the movie and electronic games industries of rating information in advertising, and some improvement by the music industry in disclosing the parental advisory label in advertising.

The FTC will prepare a fourth follow-up report on the industries' practices during the year following its last report. The Commission staff also is working with retailer trade groups on devising a consumer education message for parents, and is preparing to hold a public workshop on these issues later this year.

## ■

### 3 Military Sentinel

In September 2002, the FTC and the Department of Defense ("DOD") launched Military Sentinel, the first online consumer complaint database specifically tailored to the unique needs of the military community. The system offers members of the military and their families a way to file complaints and gain immediate access to the FTC's full range of educational materials and information.<sup>(44)</sup> It also gives DOD and law enforcement officers secure access to the complaints entered into the database.



During the unprecedented merger wave in the late 1990s through 2000, the agency was forced to divert resources to meet its statutory responsibilities under the Hart-Scott-Rodino Act ("HSR").<sup>(45)</sup> With the significant recent decline in merger activity, the Commission has been able to restore the historical balance of resources to both merger and nonmerger areas. Since the peak in merger activity in 2000, when the agency opened only 25 nonmerger investigations, the FTC has worked to reinvigorate its nonmerger enforcement program. In 2001, the agency opened 56 new nonmerger investigations, and in 2002, the agency opened another 59 nonmerger investigations. These investigations are targeting practices with enormous potential to harm competition and consumers.

Merger enforcement continues to be a major focus of the competition agenda in FY 2004. Stopping mergers that lessen competition ensures that consumers will have the benefit of lower prices and greater choices in their selection of goods and services. The FTC continues to review numerous complex transactions that raise significant competitive issues and entail extensive investigation and analysis. Some transactions involve difficult legal questions or numerous separate product and geographic markets, each requiring detailed analysis. Further, mergers in high tech markets involve especially exacting analysis because of quickly changing markets. While the Commission resolves most merger challenges through negotiated settlements, it is sometimes necessary to litigate, particularly in those instances when the merger has been consummated. Merger litigation requires the full-time attention of numerous staff members - not only lawyers but also economists, paralegals, and support staff. To counter arguments and evidence presented by merging parties, these cases also require analysis and testimony by outside experts with specialized knowledge, which can be extremely costly.

The following discussion addresses both enforcement and other initiatives in several key sectors of the economy and generally.



The health care sector remains enormously important to both consumers and the national economy. Health-related products and services account for more than 15 percent of the U.S. gross domestic product ("GDP"), and that share has grown by about 25 percent since 1990. Without effective antitrust enforcement, health costs would be greater and the share of GDP would be even higher.

#### 1 Prescription Drugs

Just last month, the FTC reached a major settlement with Bristol-Myers Squibb ("BMS") to resolve charges that BMS engaged in a series of anticompetitive acts over the past decade to obstruct entry of low-price generic competition for three of BMS's widely-used pharmaceutical products: two anti-cancer drugs, Taxol and Platinol, and the anti-anxiety agent BuSpar.<sup>(46)</sup> Among other things, the Commission's complaint alleged that BMS abused Food and Drug Administration ("FDA") regulations to obstruct generic competitors; misled the FDA about the scope, validity, and enforceability of patents to secure listing in the FDA's "Orange Book" list of approved drugs and their related patents; breached its duty of good faith and candor with the U.S. Patent and Trademark Office ("PTO"), while pursuing new patents claiming these drugs; filed baseless patent infringement suits against generic drug firms that sought FDA approval to market lower-priced drugs; and paid a would-be generic rival \$72.5 million to abandon its legal challenge to the validity of a BMS patent and to stay out of the market until(en)13 6 129. (o)13(ught)3(nt)( s)-3(tt)2(si)13(e)13(d dr)4(ug)13(s)-3(;)2

The settlement with BMS represents the latest FTC milestone in settlements regarding allegedly anticompetitive





royalties Unocal receives would be passed through to consumers in the form of higher retail gasoline prices. This

computers, fax machines, video games, and personal digital assistants. The Commission's complaint alleges that, once the standard was adopted, Rambus was in a position to reap millions in royalty fees each year, and potentially more than a billion dollars over the life of the patents.<sup>(65)</sup> Because standard-setting abuses can harm robust and efficiency-enhancing competition in high tech markets, the Commission will continue to pursue investigations in this important area.<sup>(66)</sup>

## 2 Intellectual Property Hearings

In 2002, the FTC and DOJ commenced a series of hearings on "Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy."<sup>(67)</sup> The hearings responded to the increasing need to manage the issues at the intersection of competition and intellectual property law and policy. The Commission anticipates releasing a report on its findings later this year.

## 3 Internet Task Force

In 2001, the FTC's Internet Task Force began to evaluate potentially anticompetitive regulations and business practices that could impede e-commerce. The Task Force has discovered that some state regulations may have the effect of protecting existing bricks-and-mortar businesses from new Internet competitors. The Task Force also is considering whether private companies may be hindering e-commerce through the use of potentially anticompetitive tactics. In October 2002, the Task Force held a public workshop to: (1) enhance the FTC's understanding of these issues; (2) educate policymakers about the potential anticompetitive effects of state regulations; and (3) educate private entities about the types of business practices that may be viewed as problematic.<sup>(68)</sup>

**en**

## 1 General Merger Enforcement

The Commission reviews and challenges mergers in any sector that have significant potential to harm competition and consumers. For example, last summer the Commission settled allegations that Bayer AG's \$6.2 billion purchase of Aventis S.A.'s crop science business raised antitrust concerns in the markets for a number of crop science products, including markets for (1) new generation chemical insecticide products and active ingredients; (2) post-

at least one clone copy of its current advanced Nastran software, including the source code. The divestiture will be through royalty-free, perpetual, non-



1. 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.
2. 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 40 additional statutes and more than 30 rules governing specific industries and practices.
3. The Commission works with various federal and state law enforcement agencies, as well as Canadian, Mexican, and other international authorities. See, e.g., FTC Press Release, State, Federal Law Enforcers Launch Sting on Business Opportunity, Work-at-Home Scams (June 20, 2002), available at <http://www.ftc.gov/opa.2002/06/bizopswe.htm>. See also FTC Press Release, FTC, States Give "No Credit" to Finance Related Scams in Latest Joint Law Enforcement Sweep (Sept. 5, 2002), available at <http://www.ftc.gov/opa/2002/09/opnocredit.htm>.
4. This figure represents the amount of redress that has been ordered by the court in over 55 orders from April 2002 to March 2003. The figure does not represent the actual amount of money that has or will be collected pursuant to those orders.
5. *FTC v. Access Resource Services, Inc.*, Civ. Action No. 02-60226-CIV Gold/Simonton (S.D. Fla. Nov. 4, 2002).
6. *FTC v. SkyBiz.com, Inc.*, Civ. Action No. 01-CV-396-EA (M) (N.D. Okla. Jan. 28, 2003).
7. *FTC v. Mitchell Gold*, Civ. Action No. SACv 98-968 DOC (Rzx) (C.D. Cal. March 7, 2003).
8. Since the Commission first published the booklet in February 2002, the FTC has distributed more than 1.2 million paper copies and logged more than 1 million "hits" accessing the booklet on the FTC web site. The publication is available at <http://www.ftc.gov/bcp/online/pubs/credit/idtheft.htm>.
9. *Eli Lilly & Co.*, Dkt. No. C-4047 (May 10, 2002).
10. *Microsoft Corp.*, Dkt. No. C-4069 (Dec. 24, 2002).
11. Standards for Safeguarding Customer Information; Final Rule, 67 Fed. Reg. 36,484 (May 23, 2002) (to be codified at 16 C.F.R. Part 314).
12. *FTC Facts for Businesses, Financial Institutions and Customer Data: Complying with the Safeguards Rule*, available at <http://www.ftc.gov/bcp/edu/pubs/business/idtheft/bus54.shtm>.
13. 15 U.S.C. §§ 6501-6506.
14. *United States v. Hershey Foods Corp.*, Civ. Action No. 4:03-cv-00350-JEJ (M.D. Pa. Feb. 26, 2003); *United States v. Mrs. Fields Famous Brands*, Civ. Action No. 2:03cv00205 (D. Utah Feb. 25, 2003); *United States v. The Ohio Art Co.*, Civ. Action No. 3:02CV7203 (N.D. Ohio Apr. 30, 2002); *United States v. American Pop Corn Co.*, Civ. Action No. C02-4008DEO (N.D. Iowa Feb. 28, 2002); *United States v. Lisa Frank, Inc.*, Civ. Action No. 01-1516-A (E.D. Va. Oct. 3, 2001); *United States v. Looksmart, Ltd.*, Civ. Action No. 01-606-A (E.D. Va. Apr. 23, 2001); *United States v. Bigmailbox.com, Inc.*, Civ. Action No. 01-605-A (E.D. Va. Apr. 23, 2001); *United States v. Monarch Servs., Inc.*, Civ. Action No. AMD 01 CV 1165 (D. Md. Apr. 20, 2001).
15. *United States v. Hershey Foods Corp.*, Civ. Action No. 4:03-cv-00350-JEJ (M.D. Pa. Feb. 26, 2003); *United States v. Mrs. Fields Famous Brands*, Civ. Action No. 2:03cv00205 (D. Utah Feb. 25, 2003).

16. FTC Press Release, Federal, State, and Local Law Enforcers Tackle Deceptive Spam and Internet Scams (Nov. 13, 2002), available at <<http://www.ftc.gov/opa/2002/11/netforce.htm>>.

17. See FTC Consumer Alert, Email Address Harvesting: How Spammers Reap What You Sow (Nov. 13, 2002), available at <<http://www.ftc.gov/bcp/online/pubs/alerts/spamalrt.htm>>.

d 18. FTC v. BTV Indus., Civ. Action cID 6 >>774eL(n)-2( cID.6 >>774eL(n)-21Tw ( )Tj 0.002 T0 8.787 0 5(C)6( .002 Tc 8.787c)9(0Tj 9(tT-

34. FTC v. STF Group, Civ. Action No. 03 C 0977 (N.D. Ill. filed Feb. 10, 2003).

35. FTC v. Pacific First Benefit, LLC, Civ. Action No. 02 C 8678 (N.D. Ill. filed Dec. 2, 2002).

36. FTC v. BTV Indus.,

52. FTC Press Release, FTC Seeks to Block Cytoc Corp.'s Acquisition of Digene Corp. (June 24, 2002), available at <[http://www.ftc.gov/opa/2002/06/cytc\\_digene.htm](http://www.ftc.gov/opa/2002/06/cytc_digene.htm)>.
53. Baxter International Inc. and Wyeth, Dkt. No. C-4068 (Feb. 3, 2003).
54. Amgen Inc. and Immunex Corp., Dkt. No. C-4056 (Sept. 3, 2002).
55. See Thomas B. Leary, Antitrust Issues in Settlement of Pharmaceutical Patent Disputes (Nov. 3, 2000), available at <<http://www.ftc.gov/speeches/leary/learypharma.htm>>; Thomas B. Leary, Antitrust Issues in the Settlement of Pharmaceutical Patent Disputes, Part II (May 17, 2001), available at <<http://www.ftc.gov/speeches/leary/learypharmaceuticalsettlement.htm>>.
56. Generic Drug Entry Prior to Patent Expiration: An FTC Study (July 2002), available at <<http://www.ftc.gov/opa/2002/07/genericdrugstudy.htm>>.
57. President Takes Action to Lower Prescription Drug Prices by Improving Access to Generic Drugs (Oct. 21, 2002), available at <<http://www.whitehouse.gov/news/releases/2002/10/20021021-2.html>>.
58. Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed; Proposed Rule, 67 Fed. Reg. 65448 (Oct. 24, 2002).
59. The FTC web site for the hearings is <http://www.ftc.gov/ogc/healthcarehearings/index.htm>. To date, the FTC has released a detailed agenda for the hearings' sessions in February through May. All of the documents relating to the hearings appear on the web site.
60. Conoco Inc. and Phillips Petroleum Company, Dkt. No. C-4058 (Feb. 7, 2003) (consent order).
61. Union Oil Co. of California, Dkt. No. 9305 (complaint issued Mar. 4, 2003).
62. A second standard-setting case, Rambus, also is pending before an Administrative Law Judge. This case, which is discussed below, involves standard setting in the electronics industry.



71. 15 U.S.C. § 18.

72. MSC.Software Corp., Dkt. No. 9299 (Oct. 29, 2002).