

well-suited to studying an evolving marketplace and developing antitrust policy. In this role, we continue to hold public hearings, conduct studies, and issue reports to Congress and the public.

Our activities of the past year illustrate how this broad role promotes competition. The Commission's testimony today will highlight three main goals and achievements: (1) building on the agency's recent history of aggressive law enforcement; (2) focusing on industries and issues significant to consumers, such as energy, health care, and matters derived from the new economy, including intellectual property rights; and (3) continuing to use the FTC's special role as an expert agency to advance the state of knowledge about particular issues central to our mission. In accomplishing these goals, there is a high degree of unity among the five Commissioners. In fact, there is near unanimity in voting patterns, particularly with respect to votes concerning law enforcement matters. The near unanimity of voting patterns reflects both a broad consensus among the Commissioners about the types of cases the Commission should pursue, and the careful and deliberate process by which the

governmental regulations. This information assisted the agency in setting the agenda for a second public conference in May 2002. The information gathered through these public conferences will form the basis for a report to be issued later this year.

- x Gasoline Price Monitoring. The FTC also recently announced a project to monitor wholesale and retail prices of gasoline. FTC staff will inspect wholesale gasoline prices for 20 U.S. cities and retail gasoline prices for 360 cities. Anomalies in the data will prompt further inquiries and likely will alert the agency to the possibility of anticompetitive conduct in certain parts of the country. It also will increase our understanding of the factors affecting gasoline prices.

2. Anticompetitive Health Care Practices. During the past year, the FTC has placed renewed emphasis on stopping collusion and other anticompetitive practices that raise health care costs and decrease quality.

- x Antitrust Investigations Involving Pharmaceutical Companies. The growing cost of prescription drugs is a significant concern for patients, employers, and government. Drug expenditures doubled between 1995 and 2000.⁽²⁰⁾

In response, the FTC dramatically has increased its attention to pharmaceutical-related matters in both merger and non-merger investigations. The agency now focuses one-quarter of all competition mission resources on this industry. We also have opened increasingly more pharmaceutical-related investigations. In 1996, less than 5 percent of new competition investigations involved pharmaceuticals, while in 2001, the percentage of new investigations involving pharmaceutical products was almost 25 percent.

- x Mergers Aff

distributor of Elan's 30 mg and 60 mg generic Adalat products and allow Biovail to profit from the sale of both products. Our complaint alleged that the companies' agreement substantially reduced their incentives to introduce competing 30 mg and 60 mg generic Adalat products. The proposed order, which has a ten-year term, remedies the companies' alleged anticompetitive conduct by requiring them to terminate the agreement and barring them from engaging in similar conduct in the future.⁽³⁰⁾

- x Antitrust Investigations Involving Health Care Providers. So far this year, the agency has reached settlements with five groups of physicians for allegedly engaging in collusive practices that drove up consumers' costs. In August, the Commission announced settlements with a Dallas-Fort Worth-area physicians group and Denver-area physician practice groups and their agent.⁽³¹⁾

The Commission alleged that the Dallas-Fort Worth group of more than 1,200 physicians entered into agreements to fix fees and to refuse to deal with health plans except on collectively agreed-upon terms. The Commission alleged that the Denver-area physician groups (comprised of more than 80 physicians) used their agent to enter into similar agreements to fix fees and to refuse to deal with payors except on collectively agreed-upon terms. These settlements were patterned after settlements that the Commission announced in May with two other Denver-area physician organizations.⁽³²⁾

Earlier this year, the Commission also settled charges that a group of Napa County, California, obstetricians and gynecologists agreed to fix fees and other terms of dealing with health plans and refused to deal with health plans except on collectively determined terms. To resolve the matter, the physicians agreed to refrain from engaging in similar conduct in the future, and to dissolve the organization through which they conducted their allegedly anticompetitive activity.⁽³³⁾

The Commission's proposed and final orders put a stop to further anticompetitive collusive conduct that harms employers, individual patients, and health plans by depriving them of the benefits of competition in the purchase of physician services.

- x Generic Drug Study. In July, the Commission released an industry-wide study focused on certain aspects of generic drug competition under the Hatch-Waxman Amendments.⁽³⁴⁾

The study examined whether the Commission's enforcement actions against alleged anticompetitive agreements, which relied on certain Hatch-Waxman provisions, were isolated examples or representative of conduct frequently undertaken by pharmaceutical companies. The study also examined more broadly how the process that Hatch-Waxman established to permit generic entry prior to expiration of a brand-name drug product's patents has worked between 1992 and 2000.⁽³⁵⁾

- x Workshop on Health Care and Competition Law and Policy. On September 9 and 10, 2002, the Commission held a public workshop focusing on the impact of competition law and policy on the cost, quality, and availability of health care, and the incentives for innovation in the field. Given the significance of health care spending in the United States, it is important that competition law and policy support and encourage efficient delivery of health care products and services. Competition law and policy also should encourage innovation in the form of new and improved drugs, treatments, and delivery options. Developing and implementing competition policy for health care raises complex and sensitive issues. The goal of this workshop was to promote dialogue, learning, and consensus building among all interested parties (including, but not limited to, the business, consumer, government, legal, provider, insurer, and health policy/health services/health economics communities).

3. Matters Involving the High -Tech Industry and Intellectual Property Rights . The continuing

development of "high-tech" industries and the significance of intellectual property rights influence our antitrust agenda. The U.S. economy is more knowledge-based than ever. While the fundamental principles of antitrust do not differ when applied to high-tech industries, or other industries in which patents or other intellectual property are highly significant, the issues are often more complex, take more time to resolve, and require different kinds of expertise. To address these needs, we now have patent lawyers on staff, and we sometimes hire technical consultants in areas such a

- x international comparative law perspectives regarding the competition/intellectual property interface; and,
- x jurisprudential is

legislature on similar requirements in a real estate bill; and (3) a staff comment before the Connecticut Board of Opticians, which is considering additional restrictions on out-of-state and Internet contact lens sellers.⁽⁵³⁾

- x Internet Competition Workshop . In October, the Commission will hold a public workshop on possible efforts to restrict competition on the Internet. The workshop will include panel discussions to address certain specific industries that are important to consumers and that have experienced some growth in commerce via the Internet, but where competition may have been hampered by state regulations or potentially anticompetitive business practices. For example, the workshop will include panels on some or all of the following industries: retailing, automobiles, cyber-charter schools, real estate, health care, wine sales, auctions, contact lenses, and caskets. The Internet Task Force expects that the workshop will (1) enhance the Commission's understanding of these issues, (2) help educate policymakers about the effects of overly restrictive state regulations, and (3) help educate private entities about the types of business practices that may or may not be viewed as problematic.

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2002), available at <<http://www.ftc.gov/opa/2002/03/bcfaq.htm>>.

13. See id.

14. Polygram Holding, Inc., Docket No., 9298 (June 28, 2002) (Initial Decision), available at <<http://www.ftc.gov/os/2002/06/polygramid.pdf>>; Schering Plough Corp., Docket No. 9297 (July 2, 2002) (Initial Decision), available at <<http://www.ftc.gov/os/caselist/d9297.htm>>; Rambus Inc., Docket No. 9302 (June 18, 2002) (complaint), available at <<http://www.ftc.gov/os/2002/06/rambuscmp.htm>>.

15. Warner Communications Inc., Dkt. No., 4025 (consent order) (Sept. 21, 2001); Schering-Plough Corp., Dkt. 9297 (Apr. 5, 2002) (consent order as to American Home Products); Biovail Corp., File No. 011-0094 (Apr. 23, 2002) (proposed consent order accepted for placement on public record for comment); Physician Integrated Servs. of Denver, Inc., Dkt. No. 4054 (July 19, 2002) (consent order); Aurora Associated Primary Care Physicians, L.L.C., Dkt. No. 4055 (July 19, 2002) (consent order); Obstetrics and Gynecology Med. Corp. of Napa Valley, Dkt. No. 4048 (May 17, 2002) (consent order); Biovail Corp. and Elan Corp. PLC., Dkt. No., 4057 (Aug. 20, 2002) (consent order); System Health Providers, File No. 011-0196 (Aug. 20, 2002) (proposed consent order accepted for placement on public record for comment); Professionals in Women's Care, File No. 011-0175 (Aug. 20, 2002) (proposed consent order accepted for placement on public record for comment); and American Institute for Conservation of Historic and Artistic Works, File No. 011-0244 (Sept. 10, 2002) (proposed consent order accepted for placement on public record for comment).

16. Chevron Corp./Texaco Inc., Docket No. C-4023 (Jan. 2, 2002) (consent order).

17. Valero Energy Corp./Ultrammar Diamond Shamrock Corp., Docket No. C-4031 (Feb. 19, 2002) (consent order).

43. Any meeting among competitors, regardless of whether an antitrust exemption applies, carries some risk that the discussion may spill over into competitively sensitive matters. An antitrust exemption, however, may be perceived as providing some shelter for firms inclined to discuss off-limits topics, particularly when there is some interpretive flexibility as to what subject matters are reasonably "related to" the objectives of the legislation.

44. We are aware, of course, that there have been rare instances in which Congress enacted statutory grants of immunity for joint action of competitors. In those situations, the exemption typically applied to specific industries or activities that were subject to a special regulatory regime, or to a specific transaction or agreement that had been approved by a federal agency, again usually in the context of a regulated industry. Prior approval of an agreement by a federal agency has not been required when the scope of the immunity was very limited, but broader grants of immunity have been accompanied by strict controls on the development and implementation of agreements. Without such strict limits, the dangers of antitrust exemptions are even greater.

45. 317 U.S. 341 (1943).

46. 365 U.S. 127 (1961).

47. 381 U.S. 657 (1965).

48. American Bar Association Section of Antitrust Law, The State of Antitrust Enforcement - 2001, Report of the Task Force on the Federal Antitrust Agencies - 2001, 42 (2001), available at <<http://www.abanet.org/antitrust/antitrustenforcement.pdf>>.

49. Materials related to the workshop are available at <<http://www.ftc.gov/bc/b2b/index.htm>>.

50. Entering the 21st Century: Competition Policy in the World of B2B Electronic Marketplaces, A Report by the Federal Trade Commission Staff (October 2000), available at <<http://www.ftc.gov/os/2000/10/b2breport.pdf>>.

51. Materials related to the workshop are available at <<http://www.ftc.gov/opp/ecommerce/index.htm>>.

52. See Press Release, FTC Terminates HSR Waiting Period for Covisint B2B Venture (September 11, 2000), available at <<http://www.ftc.gov/opa/2000/09/covisint.htm>>.

53. Letter from Timothy J. Muris, Chairman, Federal Trade Commission and Charles A. James,