
¹ The views expressed herein are my own and do not necessarily represent the views of the Federal Trade Commission or of any other individual Commissioner.

about their choices. But when those incentives are not enough, enforcement of the consumer protection laws promotes the provision of complete and accurate information and protects private information from unwanted and unknowing dissemination. Competition and consumer protection laws work in tandem with the other toward the ultimate goal of enhancing consumer welfare.

At the FTC, we employ a multi-pronged approach to protecting competition and consumers. We have an aggressive law enforcement program through which we litigate when necessary and negotiate settlements when they can fully resolve our competition and consumer protection concerns. We also inform our work through a vigorous research program, and we promote the benefits of competition and free markets through vigorous competition advocacy in all sectors of government. Finally, recognizing that informed consumers are empowered market participants, we implement a robust consumer education program, as well as an active program to educate businesses about what competition and consumer laws expect of them.

While we are charged, with few exceptions, with applying the FTC Act to all industries equally, there is no question that we devote more resources to the largest sectors of the economy. Today, I will focus on two large sectors of the U.S. economy, health care and financial services, and explain how the FTC implements competition and consumer protection policy to protect and promote consumer choice in these vital industries.

Protecting Competition and Consumers In Health Care

Most countries, of course, devote a substantial percentage of their resources to health care. American consumers paid nearly \$1.8 trillion for health care in 2004 -- about 15 percent of gross domestic product. By far the fastest growing portion of that amount is expenditures for

pharmaceuticals. While we know that innovations in pharmaceuticals are saving lives, we also are coping with the fact that some consumers' budgets are strained or even broken by the prices of brand-name pharmaceuticals, which are unregulated in the United States. This has given greater urgency to the entry of generic drugs into the market, and the FTC has worked to ensure that such entry is not delayed through anticompetitive means.

Despite the enormous sums spent on health care, consumers typically do not have good information to help them make choices about their physicians and medical treatment. Last summer, the Commission, together with the Antitrust Division, issued a major report entitled *Improving Health Care: A Dose of Competition*, which was the culmination of a two-year project that began with public hearings.² Our report found that right now, “[t]he public has access to better information about the price and quality of automobiles than it does about most health care services.”³ Consumer information about the quality of health care providers is hard to find and not always reliable.⁴ Without good, reliable information, patients are often at sea. Our report provided significant recommendations about the availability of information regarding the price and quality of health-care services, as well as physician collective bargaining; insurance mandates; hospital merger analysis; managed care organizations' bargaining power; and hospital group purchasing organizations.

² FTC, IMPROVING HEALTH CARE: A DOSE OF COMPETITION (July 2004), available at <http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf>.

³ *Id.*, Executive Summary at 6.

⁴ *Id.*, Ch. 1 at 18.

⁵ Complaint, *Novartis, AG*, Docket No. 0510106 (July 19, 2005), *available at*

⁸ See generally *Generic Drug Entry Prior to Patent Expiration: An FTC Study* (July 2002), available at <http://www.ftc.gov/os/2002/07/genericdrugstudy.pdf>.

⁹ Complaint, *Schering-Plough Corp.*, Docket No. 9297 (Apr. 2, 2001), available at <http://www.ftc.gov/os/2001/04/scheringpart3cmp.pdf>. See also Decision and Order, *Bristol-Meyers Squibb Co.*, Docket No. 4076 (Consent order settled charges that BMS delayed competition from generic versions of three major drug produ

parties maintained that the settlements were not in the public interest.

and two anti-cancer drugs, Taxol and Platinol.), *available at* <http://www.ftc.gov/os/2003/04/bristolmyerssquibbdo.pdf>.

¹⁰ Initial Decision, *Schering-Plough Corp.*, Docket No. 9297 (May 29, 2002), *available at* <http://www.ftc.gov/os/2002/06/spcuslahporder.pdf>.

¹¹ Opinion of the Commission, *Schering-Plough Corp.*, Docket No. 9297 (Dec. 18, 2003), *available at* <http://www.ftc.gov/os/adipro/d9297/031218commissionopinion.pdf>.

¹² Petition for a Writ of Certiorari, *Federal Trade Comm'n v. Schering-Plough Corp.*, (Aug. 29, 2005), *available at* <http://www.ftc.gov/os/2005/08/050829scheringploughpet.pdf>. In the same vein, the Commission has challenged other conduct that undermined the competitive goals of Hatch-Waxman. For example, in our action against Biovail Corporation, we argued that Biovail, by wrongfully listing a patent in the FDA's "Orange Book," improperly forestalled competition. Under Hatch-Waxman, would-be generic rivals who seek to enter prior to patent expiration must assert to the FDA that their drug does not infringe any valid patents that the brand firm has listed in the Orange Book. If a brand-name manufacturer with a patent listed in the Orange Book timely sues a generic for infringement, Hatch-Waxman awards the brand with an automatic 30-month stay of FDA approval of the generic's product. Biovail allegedly had acquired one 30-month stay this way, but – anticipating the expiration of that stay – improperly sought a second 30-month stay. It acquired and listed in the Orange Book a new patent, one that allegedly did not claim the drug's current formulation and therefore should not have been listed in the Orange Book. That compelled the generic to assert to the FDA – again – that its drug did not infringe any valid patents in the Orange Book, and offered Biovail an opportunity – again – to sue for infringement and obtain another 30-month stay. *See* Complaint, *Biovail Corp.*, Docket. No. C-4060 (Apr. 23, 2002), *available at* <http://www.ftc.gov/os/2002/04/biovailcomplaint.htm>; Decision and Order,

Biovail Corporation, Docket No. C-4060 (Oct. 2, 2002).

¹³ Final Order and Stipulated Permanent Injunction, *FTC v. Perrigo Co.*, Civ. No. 4-1397 (D.D.C. 2004), available at <http://www.ftc.gov/os/caselist/0210197.htm>

The Commission does not oppose many physician networks and other health care joint ventures. As the FTC/DOJ Health Care Antitrust Enforcement Policy Statements¹⁵ recognize, many physician and other health care networks produce significant efficiencies arising from risk- and cost-sharing and other forms of integration that benefit consumers. But our experience shows that physician price-fixing – without integrative efficiencies – will raise consumer health care costs considerably. It is to those arrangements that we direct our law enforcement.

For example, in January of this year, the Commission approved a consent order in a case that alleged that medical professionals who were members of the White Sands Health Care System, a physician-hospital association in south-central New Mexico, had unlawfully colluded. According to the Commission's complaint, White Sands' members included 80 percent of the independently-practicing physicians in the area, the only hospital in the area, and thirty-one non-physician health care providers, including all of the nurse anesthetists in the area. The Commission's complaint alleges that White Sands offered no efficiency-enhancing integration but rather simply facilitated horizontal agreements among member physicians and nurse anaesthetists on price and other terms. It further alleges that White Sands collectively negotiated

Millennium Orthopaedics, LLC, Docket No. C-4140 (June 13, 2005), available at <http://www.ftc.gov/os/caselist/0310087/050617comp0310087.pdf>; Complaint, *Preferred Health Services, Inc.*, Docket No. C-4134 (Apr. 13, 2005), available at <http://www.ftc.gov/os/caselist/0410099/050302comp0410099.pdf>; Complaint, *White Sands Healthcare Systems, L.L.C.*, Docket No. C-4130 (Jan. 11, 2005), available at <http://www.ftc.gov/os/caselist/0310135/050114comp0310135.pdf>; Complaint, *Southeastern New Mexico Physicians, IPA, Inc.*, Docket No. C-4113 (Aug. 5, 2004), available at <http://www.ftc.gov/os/caselist/0310134/040806comp0310134.pdf>; Complaint, *California Pacific Medical Group, Inc., dba Brown and Toland Medical Group*, Docket No. 9306 (July 8, 2003), available at <http://www.ftc.gov/os/2003/07/caadmincmp.pdf>.

¹⁵ DOJ/FTC Statements of Antitrust Enforcement Policy in Healthcare (1996), Statements 8 and 9.

with health plans, and that White Sands’ members jointly refused to deal with health plans as individuals.

The result of the arrangement was predictable. Health plans faced higher prices from White Sands’ members. That, in turn, raised the cost of medical care to patients in the area. Our consent decree sought to remedy this by prohibiting respondents from – among other things – entering into or facilitating agreements among health care providers to negotiate collectively with payors on the providers’ behalf.

4. Deceptive Health Claims

The FTC also has promoted efforts to provide consumers with clear and accurate health care information by attacking fraud that plagues the marketplace.

One of the challenging health issues facing U.S. consumers – as well as consumers in many other countries – is the rapidly growing rate of obesity in adults and children. The latest data from the U.S. National Center for Health Statistics estimate that over 60 million adults in the United States are obese, and the numbers for children are even more sobering – 9 million young people between ages 6 and 19, with the percentage of overweight children tripling since 1980.¹⁶

Over the past decade, the FTC has brought more than 100 cases targeting deceptive weight loss claims, for a variety of pills, potions, patches, and lotions. Products like “Fat Trapper” and “Exercise in a Bottle” promise fast and easy weight loss with claims that you can

¹⁶ “*Overweight and Obesity: Home,*” *Division of Nutrition and Physical Activity, Centers for Disease Control and Prevention* (Apr. 29, 2005), available at <http://www.cdc.gov/nccdphp/dnpa/obesity>.

“eat what you want and never – ever – ever have to diet again.”¹⁷ But wait, there’s more! One marketer even promised that its product would work faster than a hunger strike! “Even if you eat nothing you won’t slim down as fast,” the ad promised, claiming the product would burn off “more fat than running 98 miles per week.”¹⁸ Not only do consumers lose money buying these useless products, but they use them in lieu of implementing effective diet and exercise programs. We have been successful in challenging these claims, in many cases getting the courts to issue temporary restraining orders, asset freezes, strong permanent injunctive relief, and substantial money judgments.

The Commission also has an active advertising enforcement agenda that focuses on preventing false or misleading health and disease claims for foods, over-the-counter drugs, devices, and dietary supplements. We focus on preventing these types of deceptive claims because they can cause harm not just to consumers’ pocket books, but also to their health.

For example, ads for a liquid containing seaweed and colloidal silver — aptly named “Seasilver” — falsely claimed that drinking just one capful a day of the product could cure hundreds of specific diseases, ranging from chronic fatigue syndrome to diabetes. “Seasilver” — falsely claimed to cure AIDS, HIV, and other diseases.

¹⁷ These and other claims made in an infomercial for two dietary supplement products were challenged by the Commission as false and misleading. *See FTC v. Enforma Natural Prods., Inc.*, Civ. Action No. 04376JSL (CWx)(C.D. Cal. 2000)(stipulated final order).

¹⁸ In the Commission’s pending case against this marketer of the “Himalayan Diet Breakthrough” the court granted a preliminary injunction and asset freeze. *FTC v. AVS Marketing, Inc. et al.*, Civ. Action No. 04C-6915 (N.D. Ill. Nov. 19, 2004)(stipulated order).

claims that science proves that a food confers a specific health benefit on consumers, the FTC requires that the advertiser have the science to back up its claim. If consumers are to rely on the information in the marketplace to make better-informed pur

The Commission has had an active competition advocacy program in the health care sector. In the last year, the Commission directed its attention most frequently to legislation proposed by states that would restrict pharmacy benefit management companies, known as PBMs. PBMs manage health care plans' prescription drug insurance coverage. They assemble networks of retail pharmacies so that a plan sponsor's members can fill prescriptions easily

¹⁹ Letter from FTC Staff to Senator Richard L. Brown, North Dakota Senate (Mar. 8, 2005), *available at* <http://www.ftc.gov/os/2005/03/050311northdakotacomnts.pdf>.

²⁰ See FDA Staff Report, Calories Count: Report of the Working Group on Obesity (March 2004), *available at* <http://www.cfsan.fda.gov/~dms/owg-rpt.html#v>

²² PBMs use mail-order pharmacies to manage prescription drug costs, and many plan sponsors have

and, a year after first asking the media for help, we found that the number of ads with Red Flag claims had fallen from almost 50 to 15 percent. Fifteen percent is still too high, but the progress made is remarkable. For some of the worst claims – like the promise of substantial weight loss without diet or exercise, the results are even better – they are down from a whopping 43 percent to 5 percent of weight loss product ads.

Protecting Competition and Consumers in Financial Services

In addition to health-related issues, the Commission has devoted substantial resources to attacking schemes that harm consumers' financial well-being – such as identity theft, deceptive credit counseling and debt management offers, and fraudulent business opportunities – and to protecting the privacy of consumers' financial data. Unfortunately, advances in technology, while providing greater choices for consumers, also have significantly increased the opportunities for deception, fraud, and in many instances blatant theft.

1. Credit Counseling and Debt Management Schemes

One area of attack is scam artists in the credit counseling, debt management, and debt negotiation industries who target disadvantaged consumers. Taking money from consumers who are already struggling to make ends meet, without providing the counseling and debt reduction services these schemes promise, is a particularly heinous practice. The Commission has now brought six cases involving alleged bogus credit counseling, debt management services, or debt negotiation services, and there are others in the pipeline.²⁷

²⁷ *FTC v. AmeriDebt, Inc.*, Civil. No. PJM 03-3317 (D. Md.) (filed Nov. 19, 2003), available at <http://www.ftc.gov/opa/2003/11/ameridebt.htm>; *FTC v. Debt Management Foundation Services, Inc.*, No. 8:04-CV-1674-T-17MSS (M.D. Fla.) (filed July 20, 2004) available at <http://www.ftc.gov/opa/2004/07/dmfs.htm>; *FTC v. Jubilee Financial Services, Inc.*, No. 02-6468 (C.D. Cal.) (filed Aug. 19, 2002) available at

2. Biz Opp Schemes

Another area of focus is business opportunity scams. These schemes appeal to the optimist in all of us, with their exhortations to “Be Your Own Boss!” and “Make Every Day a Vacation!” Unfortunately, the con artists who promote these shady business schemes take consumers’ money without providing them the tools necessary to generate the promised earnings. Earlier this year, the FTC, the Department of Justice, the U.S. Postal Inspection Service, and 14 states announced an unprecedented law enforcement collaboration to target business opportunity fraud in which we announced more than 200 actions.²⁸ Working with our criminal law enforcement partners, 32 people in that sweep have been charged criminally, and four have been sentenced already with prison terms ranging from 57 to 81 months.

Our law enforcement efforts seek to restore both money and confidence to the victims of the schemes we have shut down. Recently, we received a letter from the victim of an earlier business opportunity scam who had just received a partial redress check from us. In her letter, she thanks the FTC for “looking out for ‘sucker consumers’ like me.” She goes on to say, “At

<http://www.ftc.gov/opa/2002/09/opnocredit.htm>; *FTC v. Better Budget Financial Services, Inc.*, No. 04-12326 (D. Mass) (filed Nov. 2, 2004) available at <http://www.ftc.gov/opa/2004/11/bbfs.htm>; *FTC v. National Consumer Council*, No. SA CV 04-0474 CJC (JWJx) (C.D. Cal.) (filed April 23, 2004) available at <http://www.ftc.gov/opa/2004/05/ncc.htm>; *FTC v. Innovative Systems Technology, Inc.*, No. CV04-0728 GAF JTLx (C.D. Cal.) (filed Feb. 4, 2004) available at <http://www.ftc.gov/os/caselist/0323006/0323006.htm>.

²⁸ See FTC Press Release, *Criminal and Civil Enforcement Agencies Launch Major Assault Against Promoters of Business Opportunity and Work-at-Home Schemes* (Feb. 22, 2005), available at <http://www.ftc.gov/opa/2005/02/bizzoppflop.htm>.

the time I was unemployed and grasping for anything that might provide an honest income . . . I am glad that someone is watching out and working for me, the consumer.”

Letters like that underscore all that is at stake and why it is critical that we take action to stop the perpetrators of fraud and strip them of their ill-gotten gains.

3. Data Privacy

Perhaps no consumer protection issue has absorbed more time and resources this year than data security. Recent news reports about the release of consumers’ sensitive information from large commercial information services, retailers, and major banks, demonstrate that, if this data is not adequately secured, it can fall into criminals’ hands and cause serious harm to consumers. Currently, 10 million Americans are victims of identity theft each year.²⁹

The FTC’s primary goal is to encourage all companies to put in place solid information security practices *before* a breach can occur. We believe that our law enforcement efforts are focusing firms on the issue. To date, we have filed five cases challenging false security claims under the FTC Act. In each case, we alleged that the defendants promised that they would take reasonable steps to protect consumers’ sensitive information, but failed to do so.³⁰

We recently filed and settled our sixth case in this area, for the first time alleging that inadequate data security can be an unfair business practice under Section 5 of the FTC Act.³¹ In

²⁹ See Consumer Fraud in the United States: An FTC Survey, at ES-2 (Aug. 2004), available at <http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf>.

³⁰ For documents related to these enforcement actions, see http://www.ftc.gov/privacy/privacyinitiatives/promises_enf.html.

³¹ See FTC Press Release, *BJ’S Wholesale Club Settles FTC Charges* (June 16, 2005), available at <http://www.ftc.gov/opa/2005/06/bjswholesale.htm>.

that action, the Commission alleged that BJ's Wholesale Club, a Fortune 500 company with over \$6 billion in annual sales, failed to maintain adequate security for such information, even though the company had not made an express promise to maintain such security. Our settlement required BJ's to establish a comprehensive and rigorous information security program, and to obtain regular security assessments of that program from a qualified independent auditor. Through this action, we wanted to provide clear notice to the business community that failure to maintain reasonable and appropriate security measures in light of the sensitivity of the information can cause substantial consumer injury and may violate the FTC Act.

The FTC also educates consumers and businesses about the risks of identity theft and assists victims and law enforcement officials. The FTC maintains a website and a toll-free hotline staffed with trained counselors to advise victims on how to reclaim their identities. We receive roughly 15 to 20 thousand contacts per week on the hotline, or through our website or mail, from victims and from consumers who want to avoid becoming victims. The FTC also facilitates cooperation, information sharing, and training among federal, state, and local law enforcement authorities fighting this crime.

Nor surprisingly, Congress has been debating whether to enact new protections for sensitive consumer data, and I now have testified four times on the issue.³² The FTC has urged

³² Prepared Statement of the FTC, *Data Breaches and Identity Theft*, Before the Committee on Commerce, Science, and Transportation of the United States Senate (June 16, 2005), available at <http://www.ftc.gov/opa/2005/06/datasectest.htm>; Prepared Statement of the FTC, *Securing Electronic Personal Data: Striking A Balance Between Privacy and Commercial and Governmental Use*, Before the Committee on the Judiciary, United States Senate (Apr. 13, 2005), available at <http://www.ftc.gov/opa/2005/04/financialdatatest.htm>; Prepared Statement of the FTC, *Protecting Consumers' Data: Policy Issues Raised by ChoicePoint*, Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, United

Department of Justice convened a special Hurricane Katrina Fraud Taskforce and invited the Federal Trade Commission's participation. This Taskforce will help us to work together with sister agencies to track down and prosecute fraudsters who attempt to exploit Katrina's victims. Our Consumer Response Center is handling fraud complaints, and our lawyers and investigators are prepared to respond swiftly to any actual frauds. We also issued an alert to help a generous nation make sure their donations for hurricane relief go to help victims and not line the pockets of fraudsters. We have taken these steps quickly because it is our job to do these very things -- educate the public, handle consumer complaints and problems, bring law enforcement action to stop fraud -- and while this circumstance may be more tragic than most, the response that is required is no more or less than what our agency was created to do.

Finally, I want to thank all of the nations and international organizations who have given so generously to the hurricane relief efforts.

Thank you again for the opportunity to speak to you today.