

**Statement of
Federal Trade Commissioner J. Thomas Rosch
Pay-for-Delay Press Conference
January 13, 2010**

Decades ago our Supreme Court condemned as illegal per se an agreement by potential competitors stifling competition between them. As I testified last year before Chairman Rush's subcommittee, almost all, if not all, reverse payment agreements do that insofar as they delay generic competition longer than it might otherwise occur. That is because, on its face, the payment goes in the wrong direction – namely from the brand holding a patent to the generic potential competitor allegedly infringing the patent. Under settlements involving alleged patent infringement in which I participated-and I participated in a number of them during my nearly 40 years of private practice – any payment went the other way (from the alleged infringer to the patent holder). It may theoretically be possible to justify such a backward payment, but it is hard to see how, and, in any event, the participants in such a settlement certainly should bear a heavy burden of proof on that score.