

**Prepared Statement of
The Federal Trade Commission**

**Before the
Subcommittee on
Financial Services and General Government**

**of the Committee on Appropriations
United States House of Representatives**

**Washington, D.C.
February 28, 2007**

I. Introduction

Chairman Serrano, Ranking Member Regula, and members of the Subcommittee, I am Deborah Platt Majoras, Chairman of the Federal Trade Commission (“Commission” or “FTC”). I am pleased to appear before you today to testify in support of the FTC’s FY 2008 Appropriation request and to discuss our work to protect consumers and promote competition.¹ The Commission thanks you for this opportunity and we look forward to building a strong and productive relationship to further the interests of American consumers.

The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy.² The agency enforces laws that prohibit business practices that are harmful to consumers because they are anticompetitive, deceptive, or unfair, and it promotes informed consumer choice and understanding of the competitive process.

The FTC has pursued a vigorous and effective law enforcement program in a dynamic marketplace that is increasingly global and characterized by changing technologies. Through the efforts of a dedicated, professional staff, the FTC continues to handle a growing workload. Our testimony today summarizes some of the major activities of the past year and describes some of the planned initiatives for FY 2008.

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 50 other statutes and more than 30 rules governing specific industries and practices.

To meet the challenges in our Consumer Protection and Maintaining Competition efforts in FY 2008, the FTC requests \$240,239,000 and 1,084 FTE. The FY 2008 request represents a total increase of \$17,239,000 in funding.

During FY2008, the FTC will address significant law enforcement and policy issues throughout the U.S. economy and abroad, devoting major portions of its resources to those areas in which the agency can provide the greatest benefits to consumers. This testimony highlights program priorities in the FTC's two missions. The focus of the Consumer Protection mission will be on broad efforts to fight unfair and deceptive conduct involving data security, identity theft, Do Not Call enforcement, financial services, advertising, media violence ratings, childhood obesity, and new technology-driven threats such as spam and spyware. The focus of the Competition mission will be on merger and nonmerger enforcement, particularly in the health care, energy, and high technology industries. The testimony concludes with a summary of the agency's FY2008 appropriation request.

II. Consumer Protection

During FY2006, the FTC's Bureau of Consumer Protection achieved many successes. It obtained 93 court orders requiring defendants to pay more than \$309 million in consumer redress; obtained 24 court judgments for civil penalties in an amount over \$27 million; filed 60 new complaints in federal district court to stop unfair and deceptive practices; completed 13 statutorily-mandated rulemakings and other statutorily-mandated requirements such as reports; led three law enforcement sweeps; hosted 11 conferences and workshops; filed 24 consumer advocacy comments; issued 11 reports on topics significant to consumers; and developed 79 consumer and business education campaigns.

The FTC continues to build on this successful record. This testimony highlights key

issues and initiatives for the agency's consumer protection mission in FY 2008, as well as the methods the FTC will use to address them.

A. Consumer Privacy

Protecting the privacy of American consumers has long been a top priority at the Federal Trade Commission, and it remains a crucial consumer protection issue. The explosive growth of the Internet and the development of sophisticated computer systems and databases have made it easier than ever for companies to gather, store, and use information about their customers. These new information systems can provide tremendous benefits to consumers, who can access customer service hotlines 24-hours-a-day, have easier access to credit, and enjoy many marketplace conveniences that they have come to expect. At the same time, if the sensitive information needed to enable these services is not protected adequately, consumers can be harmed and lose confidence in the marketplace. This testimony discusses some examples of the Commission's recent work on privacy issues.

1. Data Security and Identity Theft

In 1998, Congress passed the Identity Theft Assumption and Deterrence Act ("the Identity Theft Act"), which assigned the FTC a unique role in combating identity theft and coordinating government efforts.³ This role includes taking consumer complaints; implementing the Identity Theft Data Clearinghouse, a centralized database of victim complaints used by 1,300 law enforcement agencies; assisting victims and consumers by providing information and education; and educating businesses on sound security practices. The FTC continues to focus on combating identity theft primarily through law enforcement, participation in the Presidential

³ Pub. L. No. 105-318, 112 Stat. 3007 (1998) (codified at 18 U.S.C. § 1028).

Identity Theft Task Force, education, and workshops.

a. Law Enforcement

While the FTC, a civil enforcement agency, cannot enforce criminal identity theft laws, it can take law enforcement action against businesses that fail to implement reasonable safeguards to protect sensitive consumer information from identity thieves. Over the past two years, the FTC has brought 14 enforcement actions against businesses, including BJ's Wholesale Club, ChoicePoint, CardSystems Solutions, and DSW, for their failure to provide reasonable data security. These actions include cases against companies that allegedly threw files containing consumer home loan applications into an unsecured dumpster; stored sensitive information in multiple files when there was no longer a business need to keep the information; failed to implement simple, low-cost, and readily available defenses to well-known Web-based hacker attacks; stored sensitive consumer information in unencrypted files that could be easily accessed using commonly known user IDs and passwords; and failed to use readily available security measures to prevent unauthorized wireless connections to their networks.⁴

For example, last fall, the Commission announced a consent agreement with Guidance Software, Inc. settling allegations that the company made misrepresentations about the security it provided for customers' sensitive information. Guidance supplies forensic software that can be used to obtain evidence from computer hard drives after a breach. Guidance allegedly stored customer credit card information, including account numbers, expiration dates, and security codes, on its computer network, without providing appropriate security for the information. As a

⁴ See Chairman Deborah Platt Majoras, Federal Trade Commission, Remarks at the American Bar Association Consumer Protection Conference (Jan. 30, 2007), available at <http://www.ftc.gov/speeches/majoras/070130ABAConsumerProtection.pdf>.

result, the Commission's complaint alleges, a hacker was able to use a simple and well-known type of attack to install hacker tools on Guidance's computer network and export consumers' credit card information. The FTC's settlement with Guidance requires the company to implement a comprehensive information-security program and obtain audits by an independent third-party security professional every other year for 10 years.⁵ The Commission continues to monitor the marketplace to encourage companies to maintain reasonable safeguards to protect sensitive consumer information. Where appropriate, the Commission will bring enforcement action.

b. Identity Theft Task Force

Last year, President Bush concluded that federal government resources directed at identity theft could be better marshaled through a more comprehensive and coordinated effort. Accordingly, on May 10, 2006, the President established his Identity Theft Task Force, which Attorney General Gonzales chairs, and I co-chair.⁶ In his Executive Order, the President directed the Task Force to submit to him a strategic plan for fighting identity theft. The 18 federal agencies that comprise the Task Force have been hard at work developing the plan.

On September 19, 2006, the Task Force issued a series of interim recommendations. These recommendations include: development of government-wide guidance addressing whether and how to provide notice to individuals in the event of a government agency data breach; the development of a universal police report that identity theft victims can use to present their case to

⁵ *In the Matter of Guidance Software, Inc.*, FTC File No. 062 3057 (Nov. 16, 2006) (consent agreement), available at <http://www.ftc.gov/os/caselist/0623057/0623057%20-Guidance%20consent%20agreement.pdf>.

⁶ See FTC Press Release, *FTC Launches Nationwide ID Theft Education Campaign* (May 10, 2006), available at <http://www.ftc.gov/opa/2006/05/ddd.htm>.

creditors and credit reporting agencies; and an accelerated review of government's use of Social Security numbers.⁷ Following issuance of the interim recommendations, the Task Force solicited public comments to supplement its research and analysis, and to identify areas where additional recommendations may be warranted.⁸ The Task Force is in the process of reviewing the comments and preparing a final strategic plan and recommendations.

c. Education

Education of consumers and businesses is integral to the Commission's consumer protection mission. The FTC continues to educate consumers on how to avoid becoming victims of identity theft, and recently launched a nationwide identity theft education program, "Avoid ID Theft: Deter, Detect, Defend."⁹ The message for consumers is that they can:

- DETER identity thieves by safeguarding their personal information;
- DETECT suspicious activity by routinely monitoring their financial accounts, billing statements, and credit reports; and
- DEFEND against ID theft as soon as they suspect it. Quick action is essential.

The Deter, Detect, Defend campaign has been very popular – the FTC has distributed more than 1.5 million brochures and 30,000 kits to address identity theft. These kits can be used by employers, community groups, members of Congress, and others to educate their constituencies. The kit contains a victim recovery guide, a training booklet, a guide to talking

⁷ President's Identity Theft Task Force, *Summary of Interim Recommendations* (Sept. 2006), available at <http://www.ftc.gov/os/2006/09/060916interimrecommend.pdf>.

⁸ President's Identity Theft Task Force Seeks Public Comment (Dec. 26, 2006), available at <http://www.ftc.gov/speeches/majoras/061221PublicNoticeFinal.pdf>.

⁹ See FTC Press Release, *FTC Launches Nationwide Id Theft Education Campaign* (May 10, 2006), available at <http://www.ftc.gov/opa/2006/05/ddd.htm>.

about identity theft, presentation slides, an easy-to-read brochure, and a 10-minute video that organizations can use to educate their employees, customers, and communities about identity theft. The Commission has also formed many partnerships to help us broaden our reach. For example, the U.S. Postal Inspection Service just started a large-scale outreach campaign that is placing the FTC's educational materials on subway cars in Washington, D.C., New York, Chicago, and San Francisco, and placing paid advertising in college newspapers and on campuses around the country. The FTC also sponsors an innovative multimedia website, OnGuardOnline, designed to educate consumers about basic computer security.¹⁰ The website provides information on specific topics such as phishing, spyware, and spam. Since its launch in late 2005, OnGuardOnline has attracted more than 3.5 million visits.

d. Workshops

The Commission continually tries to stay abreast of developments in privacy, data security, and identity theft. Over the past several years, the Commission has hosted numerous workshops and public forums to this end.¹¹

This spring, the Commission will host a workshop to explore consumer authentication as another avenue for combating identity theft. Implementing better procedures for authenticating

¹⁰ Available at <http://onguardonline.gov/index.html>; see also Chairman Deborah Platt Majoras, Federal Trade Commission, Remarks at the Consumer Federation of America 2007 Consumer Assembly (Feb. 2, 2007), available at <http://www.ftc.gov/speeches/majoras/070202consumerfederation.pdf>.

¹¹ See materials for the conferences *Protecting Consumers in the Next Tech-Ade* (Nov. 6-8, 2006), available at <http://www.ftc.gov/techade>; *Information Flows, The Costs and Benefits to Consumers and Businesses of the Collection and Use of Consumer Information* (June 18, 2003), available at <http://www.ftc.gov/bcp/workshops/infoflows/030618agenda.html>; *The eInformation Marketplace: Merging and Exchanging Consumer Data* (Mar. 13, 2001), available at <http://www.ftc.gov/bcp/workshops/infomktplace/index.html>; *Technologies for Protecting Personal Information Workshop 1: The Consumer Experience* (May 13, 2003), available at <http://www.ftc.gov/bcp/workshops/technology/agenda.htm>; *FTC Spyware Workshop* (Apr. 19, 2004), available at <http://www.ftc.gov/bcp/workshops/spyware>; *Radio Frequency Identification: Applications and Implications for Consumers* (June 21, 2004), available at <http://ftc.gov/bcp/workshops/rfid/index.htm>.

consumers -- that is, verifying that they are who they say they are when they open new accounts or access existing ones -- can make it more difficult for criminals to use stolen information. We hope that the Commission's workshop will help spur the development of more effective techniques, like multifactor authentication and biometrics.

2. Pretexting

Another important issue on the Commission's privacy agenda is the practice of telephone records pretexting. Phone pretexting is the short-hand term used to describe the use of false pretenses to obtain sensitive phone records, including lists of calls made and the dates and duration of such calls, and then sell them to third parties without the knowledge or consent of the actual account holder. In a typical scenario, a pretexter calls the consumer's telephone company, pretends to be the consumer, and asks for his recent phone bill to be faxed to him. Another technique includes opening an online account for the subscriber and accessing the records online. This disturbing practice was made infamous last fall with the well-publicized Hewlett-Packard case.

This past May, well before the Hewlett-Packard pretexting story became national news, the Commission filed five cases against Web-based operations that obtained and sold consumers' confidential telephone records to third parties.¹² The FTC's complaints allege that the

¹² *FTC v. Info. Search, Inc.*, No. 1:06-CV-01099-AMD (D. Md. filed May 1, 2006), available at <http://www.ftc.gov/os/caselist/pretextingsweep/060501informationsearch-cmplt.pdf>; *FTC v. AccuSearch, Inc. d/b/a Abika.com*, No. 06-CV-0105 (D. Wyo. filed May 1, 2006), available at <http://www.ftc.gov/os/caselist/pretextingsweep/060501accusearchcomplaint.pdf>; *FTC v. CEO Group, Inc. d/b/a Check Em Out*, No. 06-60602 (S.D. Fla. filed May 1, 2006), available at <http://www.ftc.gov/os/caselist/pretextingsweep/060501ceogroup-cmplt.pdf>; *FTC v. 77 Investigations, Inc.*, No. EDCV06-0439 VAP (C.D. Cal. filed May 1, 2006), available at <http://www.ftc.gov/os/caselist/pretextingsweep/060501-77investigcmplt.pdf>; *FTC v. Integrity Sec. & Investigation Servs., Inc.*, No. 2:06-CV-241-RGD-JEB (E.D. Va. filed May 1, 2006), available at <http://www.ftc.gov/os/caselist/pretextingsweep/060503integritysecurcmplt.pdf>. The Commission's efforts against phone pretexting are ongoing. In addition to our civil cases, in light of recent Congressional passage of the Telephone Records and Privacy Protection Act, which criminalizes certain telephone pretexting, the Commission is

unauthorized sale of phone records is an unfair practice in violation of the FTC Act and seek a permanent halt to the sale of the phone records. To date, the Commission has resolved two of these cases. The settlement orders impose strong remedies against the defendants, including a ban on obtaining or selling phone records and a prohibition against pretexting to obtain other personal information of consumers. Additionally, the defendants must give up the profits made from their sales.

Just this month, the FTC announced its case against Action Research Group, an alleged pretexter who deceptively obtained and sold consumers' confidential phone records without their knowledge or consent.¹³ The agency has asked the court to stop the conduct and to order the defendants to give up their ill-gotten gains.

B. Technology

Although technology can play a key role in combating identity theft and improving consumers' lives, it also can create new consumer protection challenges. The Commission has been examining technology issues such as spyware, spam, digital rights management, and protecting consumers in the next "tech-ade."

1. Spyware

The Commission has brought eleven spyware enforcement actions in the past two years. These actions have reaffirmed three key principles: First, a consumer's computer belongs to him or her, not the software distributor. Second, buried disclosures do not work, just as they have never worked in more traditional areas of commerce. And third, if a distributor puts a program

likely to develop investigations that can be referred to criminal law enforcement authorities.

¹³ *FTC v. Action Research Group*, No. 6:07-CV-0227-ORL-22JGG (M.D. Fla. filed Feb. 15, 2007), available at <http://www.ftc.gov/os/caselist/0723021/070214actionresearchgrpcmplt.pdf>.

on a consumer's computer that the consumer does not want, the consumer must be able to uninstall or disable it.

The Commission illustrated these principles in a recent spyware settlement with Zango, Inc., formerly known as 180solutions.¹⁴ Zango provides advertising software programs, or adware, that monitor consumers' Internet use in order to display targeted pop-up ads, and the company sent billions of pop-up ads to consumers over several years. The consent order settles allegations that the company installed its advertising software programs on consumers' computers without adequate notice or consent. The complaint alleged that Zango's distributors frequently offered consumers free programs or software, such as screensavers, peer-to-peer file sharing software, and games, without disclosing that downloading them would also result in installation of Zango's adware. In other instances, Zango's third-party distributors allegedly exploited security vulnerabilities in Web browsers to install the adware via "drive-by" downloads. As a result, millions of consumers received pop-up ads without knowing why and had their Internet use monitored without their knowledge.

Moreover, the complaint alleged that the company deliberately made these adware programs difficult for consumers to identify, locate, and remove from their computers. As part of the settlement, Zango agreed to disgorge \$3 million in ill-gotten gains derived from its past actions. The company also agreed to injunctive provisions that will protect consumers against these practices in the future. The Commission will continue to bring law enforcement actions in this area.

¹⁴ *In the Matter of Zango, Inc.*, FTC File No. 052 3130 (Nov. 3, 2006) (consent agreement), available at <http://www.ftc.gov/os/caselist/0523130/0523130agree061103.pdf>.

2. Spam

Since 1997, when the FTC brought its first case involving spam, the Commission has aggressively pursued deceptive and unfair practices in spam through 89 law enforcement actions, 26 of which were filed after Congress enacted the CAN-SPAM Act. In FY 2006, the FTC brought eight new law enforcement actions targeting deceptive and fraudulent spam email. For example, in March 2006, the FTC obtained a \$900,000 civil penalty award in a case against Jumpstart Technologies, which allegedly promised “free” movie tickets to consumers, if they divulged the email addresses of several friends. Jumpstart then repeatedly emailed those friends, making the messages appear as if they originated from the consumer’s own email address. The FTC alleged that Jumpstart’s use of misleading “from” information and subject lines violated the CAN-SPAM Act. The settlement also prohibits the company from engaging in future email campaigns with deceptive sender information or content.¹⁵ The civil penalty is the largest obtained by the Commission for illegal spam.

The FTC continues to devote resources to fighting spam. The Commission is aware of email filtering companies’ recent reports that the amount of spam they process is rising and is studying whether this increase has resulted in a change in the amount of spam actually reaching consumers. The Commission’s recent experience suggests that spam is being used increasingly as a vehicle for more pernicious conduct, such as phishing, as well as viruses, and spyware. This spam goes beyond mere annoyance to consumers – it can result in significant harm by shutting down consumers’ computers, enabling keystroke loggers to steal identities, and undermining the

¹⁵ *United States v. Jumpstart Techs., LLC*, No. C-06-2079 (MHP) (N.D. Cal. filed Mar. 22, 2006) (consent decree), available at <http://www.ftc.gov/os/caselist/0423176/0423176JumpstartTechnologiesConsentDecree.pdf>.

stability of the Internet. In the coming months, as a follow-up to its initial Spam Forum of 2003, the Commission will host a workshop to examine how spam has evolved and what stakeholders can do to address it.

3. Digital Rights Management (DRM)

DRM technologies generally limit the ability of consumers to use content, such as software, music, and movies. While there are, of course, legitimate uses of DRM technology, such as protecting intellectual property rights and encouraging innovation, DRM also can raise consumer protection concerns. Consumers may be deceived if the content seller makes a false or misleading material claim about how the content may be used or if the seller fails to disclose adequately material limitations on DRM-restricted content.

Just last month, the FTC announced its first action involving DRM, against Sony BMG Music Entertainment.¹⁶ Sony BMG sold CDs that consumers could listen to on any traditional home stereo, portable, car, or computer CD player. Unbeknownst to consumers, however, these CDs contained DRM technology that allowed the music to be played on consumers' computers, but did not permit the music files to be directly transferred to or played on certain portable digital devices, such as an Apple iPod. The DRM technology also limited consumers to making three copies of the music files directly from the original CDs, and installed software that created security vulnerabilities and monitored consumers' listening habits to send them marketing messages.

In its complaint, the FTC alleged that Sony BMG did not adequately disclose that the DRM software would limit the devices on which consumers could play the CDs or the number of

¹⁶ *In the Matter of Sony BMG Music Entm't*, FTC File No. 062 3019 (Jan. 30, 2007) (consent agreement), available at <http://www.ftc.gov/os/caselist/0623019/070130agreement0623019.pdf>.

copies they could make. Because ordinary experience with CDs would not lead consumers to expect these limits, and because these limits likely would affect purchasing decisions, the FTC alleged that Sony BMG's failure to disclose adequately these limits was deceptive in violation of Section 5 of the FTC Act. To resolve these allegations, Sony BMG entered into a consent agreement with the Commission under which it must clearly and prominently disclose to consumers any restrictions on the devices on which its music CDs can be played and the number of copies that can be made. *Sony BMG*, among other things, stands for the important proposition that if new technologies contain material limitations on their use, including that they are not interoperable so that the product does not perform as expected, then it may be deceptive to fail to disclose adequately the restrictions to consumers. The Commission will continue to monitor new technologies such as DRM to ensure that their use and disclosure comply with consumer protection laws.

4. Tech-Ade Workshop

The FTC is committed to understanding the implications of technology changes on privacy and consumer protection -- as they are happening or even before they happen. Last November, the FTC convened public hearings on the subject of *Protecting Consumers in the Next Tech-Ade*.¹⁷ The FTC heard from more than 100 of the best and brightest in the tech world about new technologies on the horizon and their potential effect on consumers.

One interesting trend that was highlighted at Tech-Ade is the widening gap between older consumers and younger consumers in their use of technology. Younger consumers are much more likely to be interconnected with other users of technology in a wide variety of ways -- they

¹⁷ See FTC Press Release, *Hearings Will Explore Emerging Technologies and Consumer Issues in the Next Decade* (July 26, 2006), available at <http://www.ftc.gov/opa/2006/07/techade.htm>.

are online, on cell phones, text messaging, uploading videos, playing online games, and creating websites and blogs.

Accordingly, advertisers and marketers are making creative use of these technologies to convey their messages to consumers at an early age. At the Tech-Ade workshop, participants discussed several new interactive methods to make advertising more relevant to younger consumers. These included: (1) advergames and in-game advertising, such as interactive games on an advertiser's website that incorporate the advertiser's products or, video games that feature a product advertisement; (2) behavioral targeting, which relies on sophisticated technology to analyze consumers' online activities and provide advertising identified as relevant to their interests; and (3) viral, "buzz," and word-of-mouth marketing, which rely on pre-existing social networks to increase awareness about a particular product or brand.

Given these trends, the FTC is proposing the development of a "media literacy" initiative to educate and empower children and their parents to be more discerning consumers of information. The goals of this initiative are to raise awareness of advertising and marketing messages; increase knowledge of how to skillfully read, analyze, and appreciate an advertisement; show the benefits of being an informed consumer; and help build partnerships to leverage agency resources and education messages.

This initiative is just one example of how the Commission is using what it learned at the Tech-Ade conference to develop its future consumer protection agenda. The Commission will issue a draft report on the Tech-Ade conference highlighting additional new developments this spring.

C. Health

Of course not all fraud is technology related. Health fraud, for example, can still be found in the offline world as in the online world. Too often, consumers fall prey to fraudulent health marketing because they are desperate for help. Fifty million Americans suffer from a chronic pain condition¹⁸ and have found no effective cure or treatment. Seventy million Americans are trying to lose weight.¹⁹ The FTC continues to take action against companies that take advantage of these consumers.

From April 2006 through February 2007, the FTC initiated or resolved 13 law enforcement actions involving 25 products making allegedly deceptive health claims.²⁰ For example, in September 2006, a federal district court found that defendants' claims for their purported pain relief ionized bracelets were false and unsubstantiated, and required the individual and corporate defendants to pay up to \$87 million in refunds to consumers.

In January 2007, the Commission announced separate cases against the marketers of four extensively advertised products -- Xenadrine EFX, CortiSlim, TrimSpa, and One-A-Day WeightSmart. Marketers for these products settled charges that they had made false or

¹⁸ Partners for Understanding Pain, *Pain Advocacy Tool Kit* (Sept. 2006) (including members from American Cancer Society, American Pharmacists Association, and Arthritis Foundation, among others), available at http://www.nmmra.org/resources/Home_Health/Nurses_Tool_Kit_2006.pdf.

¹⁹ M.K. Serdula, et al., *Prevalence of Attempting Weight Loss and Strategies for Controlling Weight*, 282 JAMA 1353-1358 (1999).

²⁰ E.g., *FTC v. QT, Inc.*, No. 03 C 3578 (N.D. Ill. Sept. 8, 2006) (final judgment order), available at <http://www.ftc.gov/os/caselist/0323011/061113grayfinaljdgmntorder.pdf>; *FTC v. Chinery*, No. 05-3460 (GEB) (D.N.J. filed Dec. 26, 2006) (stipulated final order), available at <http://www.ftc.gov/os/caselist/chinery/070104stipulatedfinalorder.pdf>; *FTC v. Window Rock Enters., Inc.*, No. CV04-8190 (JTLx) (C.D. Cal. filed Jan. 4, 2007) (stipulated final orders), available at <http://www.ftc.gov/os/caselist/windowrock/windowrock.htm>; *In the Matter of Goen Techs. Corp.*, FTC File No. 042 3127 (Jan. 4, 2007) (consent order), available at <http://www.ftc.gov/os/caselist/goen/0423127agreement.pdf>; *United States v. Bayer Corp.*, No. 07-01 (HAA) (D.N.J. filed Jan. 3, 2007) (consent decree), available at <http://www.ftc.gov/os/caselist/bayercorp/070104consentdecree.pdf>.

unsubstantiated weight-loss or weight-control claims. In settling, the marketers surrendered cash and other assets collectively worth at least \$25 million and agreed to limit their future advertising claims.²¹

Another important issue on the Commission's health agenda is childhood obesity. In the summer of 2005, the Commission and the Department of Health & Human Services held a joint workshop on the issue of childhood obesity.²² The goal was to encourage industry to respond to the public concerns surrounding food advertising and marketing by taking strong action to modify their products, their marketing techniques, and their messages. The Commission's April 2006 report on the workshop pointed out that all segments of society -- parents, schools, government, health care professionals, food companies, and the media -- need to work to help improve our children's health. The report urged industry to consider a wide range of options as to how self-regulation could assist in combating childhood obesity.²³

A number of companies took the FTC's recommendations seriously. On October 16, 2006, for example, the Walt Disney Company announced new food guidelines aimed at giving parents and children healthier eating options.²⁴ And just a few months ago, the Children's Advertising Review Unit, CARU, which is administered by the Council of Better Business

²¹ See FTC Press Release, *Federal Trade Commission Reaches "New Year's" Resolutions with Four Major Weight-Control Pill Marketers* (Jan. 4, 2007), available at <http://www.ftc.gov/opa/2007/01/weightloss.htm>.

²² See FTC Press Release, *Workshop Explores Marketing, Self-Regulation, and Childhood Obesity* (July 15, 2005), available at <http://www.ftc.gov/opa/2005/07/obesityworkshopma.htm>.

²³ *Perspectives on Marketing, Self-Regulation, & Childhood Obesity: A Report on a Joint Workshop of the Federal Trade Commission and the Department of Health and Human Services* (Apr. 2006), available at <http://www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf>.

²⁴ See Bruce Horovitz and Laura Petrecca, *Disney to Make Food Healthier for Kids*, USA TODAY (Oct. 17, 2006), available at http://www.usatoday.com/money/media/2006-10-16-disney_x.htm.

Bureaus, announced a new self-regulatory advertising initiative designed to use advertising to help promote healthy dietary choices and healthy lifestyles among American children.²⁵ Ten leading food manufacturers -- including McDonalds, The Hershey Company, Kraft Foods, and Cadbury Schweppes -- committed to devoting at least 50% of their advertising directed to children under twelve to advertising products that represent healthy dietary choices or that prominently include healthy lifestyle messages that encourage physical activity or good nutrition. They also committed to reducing their use of third-party licensed characters and to incorporating healthy lifestyle messages into their interactive games.

D. Financial Practices

As with health issues, financial issues impact all consumers -- whether they are purchasing a home, trying to establish credit or improve their credit rating, or managing rising debt. Thus, protecting consumers in the financial services marketplace is a critical part of the FTC's consumer protection mission. The FTC has jurisdiction over a wide range of financial service providers other than depository institutions. Last year, the Commission sought to strengthen the Commission's work in the area of core financial services, such as lending and debt collection. This year, the Division of Financial Practices will focus on the "ABCs": Alternative mortgages, Bad debt collection, and Credit-related deception.

1. Alternative Mortgages

A mortgage is often the largest financial obligation many consumers will ever have, and Commission law enforcement actions have targeted deceptive and other illegal practices in the mortgage market, with a focus on the subprime market. FTC actions have targeted deceptive or

²⁵ See Anny Shin, *Ads Aimed at Children Get Tighter Scrutiny; Firms to Promote More Healthful Diet Choices*, WASH. POST, Nov. 15, 2006, at D1.

unfair practices by mortgage brokers, lenders, and loan servicers in all stages of mortgage lending -- from advertising and marketing through loan servicing. In recent years, the Commission has brought 21 actions against companies in the mortgage lending industry, yielding more than \$320 million in redress for consumers.²⁶

The FTC will continue this enforcement work, with an eye toward recent developments in mortgage products. “Nontraditional” or “alternative” mortgage products have become increasingly popular, and last year the Commission held a workshop to examine the consumer protection issues arising from them. These products generally offer consumers the option of making lower required payments in the early years of a loan -- which make it easier, initially, to purchase a home, or to purchase a more expensive home. But they also pose substantial risks for consumers who do not understand, or are not prepared for, the possible “payment shock” down the road, when monthly minimum payments jump higher -- sometimes even double -- at the end of the introductory period. Following up on what the Commission learned at its workshop, it is looking closely at instances of deceptive mortgage advertising, particularly advertising of “nontraditional” mortgages.

2. Bad Debt Collection

As consumer debt levels have risen, so have complaints to the Commission about debt collectors. The Commission receives more complaints about debt collectors than any other single industry, with 66,000 complaints about third-party debt collectors in 2005 and more than 69,000 in 2006.

²⁶ See Chairman Deborah Platt Majoras, Federal Trade Commission, Remarks at the Consumer Federation of America 2007 Consumer Assembly (Feb. 2, 2007), *available at* <http://www.ftc.gov/speeches/majoras/070202consumerfederation.pdf>.

The FTC is tackling the problem of unlawful debt collection practices in two ways. First, the Commission engages in aggressive law enforcement. Earlier this month, the Commission filed an action to stop a debt collector's repeated, egregious violations of the Fair Debt Collection Practices Act. The Commission alleged that Rawlins & Rivera, as well as its principals and attorney, engaged in deceptive and abusive debt collection practices, including making false threats that consumers will face immediate legal action, property seizure, wage garnishment, and even arrest, if they do not immediately pay their debts. The Commission also alleged that the defendants often embellish their empty threats with abusive and profane language, as well as threats to reveal the debt to relatives and others.²⁷

Second, this fall, the FTC will hold a workshop to examine and take stock of the debt collection industry. The Fair Debt Collection Practices Act was enacted 30 years ago. Given the rise in consumer debt levels, as well as consumer complaints, it is time to take a close look at the industry. The Commission will examine changes in the industry and the various consumer protection issues, including whether the law has kept pace with developments.

3. Credit Deception

Some consumers with financial problems fall prey to deceptive debt negotiation or similar credit repair schemes. Of course, legitimate credit counseling organizations offer valuable services to help consumers solve their financial problems. However, the Commission has taken enforcement actions against those offering debt reduction services that charge hidden fees, make false promises to lower consumers' debts, or misrepresent that they will eliminate accurate negative information from consumers' credit reports.

²⁷ *FTC v. Rawlins & Rivera, Inc.*, No. 6:07-CIV-146-ORL (M.D. Fla. filed Jan. 31, 2007) (complaint filed), available at <http://www.ftc.gov/os/caselist/0623139/070202cmp0623139.pdf>.

Just a few weeks ago, the Commission filed a complaint against Select Management Solutions. In its complaint, the Commission alleged that telemarketers for Select Management Solutions falsely promised that they could lower consumer credit card interest rates to the single digits, resulting in savings of at least \$2,500. Consumers were charged \$695 for this service. The Commission alleged that consumers experienced no savings and that the money-back guarantee was not a guarantee. Defendants operate in Canada, and the Commission is working jointly with its Canadian law enforcement partners to permanently halt this unlawful scheme. Indeed, the Canadian defendants were served with the temporary restraining order issued by the U.S. court in this case.²⁸ The Commission continues to monitor this industry and will bring appropriate enforcement actions.

E. Do Not Call

The National Do Not Call (DNC) Registry has been an unqualified success. It has registered more than 130 million telephone numbers since its inception in 2003. Because consumers' registrations expire after five years, the Commission plans a significant effort to educate consumers on the need to reregister their phone numbers.

Most entities covered by the DNC Rule comply, but for those who do not, tough enforcement is a high priority for the FTC. Since the FTC began enforcing compliance with the Registry in October 2003, the agency has filed 25 enforcement actions against 52 individual and 73 corporate defendants, alleging that they had called consumers protected by the Registry. In 13 of those cases, the FTC obtained settlements with orders requiring payment in the aggregate of more than \$9 million in civil penalties and more than \$8 million in consumer redress and

²⁸ *FTC v. Select Personnel Mgmt, Inc.*, No. 07C 0529 (N.D. Ill. Jan. 29, 2007) (TRO filed), available at <http://www.ftc.gov/os/caselist/0623215/temprestrainingorder.pdf>.

disgorgement.

In June 2006, the FTC announced the first case to highlight the application of DNC provisions to corporate affiliates.²⁹ The defendants allegedly asserted that they were permitted to call consumers on the DNC Registry on the basis of a purported established business relationship between the consumers and the seller's corporate affiliates, but the FTC contended the relationship did not meet the "consumer expectation" test for allowing such calls. The defendants allegedly violated other Telemarketing Sales Rule ("TSR") provisions, including by not paying the fee to access numbers on the Registry and instead using the access purchased by a separately incorporated affiliate. The FTC obtained \$350,000 in civil penalties.

Just last month, the FTC successfully resolved litigation against The Broadcast Team ("TBT"), a telemarketer that specialized in broadcasting prerecorded calls.³⁰ The Department of Justice filed a civil penalty action on the FTC's behalf in December 2005 alleging that TBT called numbers on the Registry and made "abandoned calls" -- calls which fail to connect consumers to a live operator within two seconds. TBT preemptively filed a separate action against the FTC for declaratory and injunctive relief, arguing, among other things, that the FTC lacked statutory authority and that its application of TSR provisions would violate the First Amendment. In April 2006, a federal district court dismissed TBT's action for failure to state a claim. TBT appealed. In January 2007, TBT and its owners settled the civil penalty action, agreeing to dismiss their appeal, comply with the TSR, and pay a \$1 million civil penalty. The

²⁹ *United States v. Malvern Marketing, LLC*, No. 06 CV 4612 (S.D.N.Y. filed June 13, 2006), available at <http://www.ftc.gov/opa/2006/06/phaseone.htm>.

³⁰ *United States v. The Broadcast Team*, Case 6:05-cv-01920-PCF-JGG (M.D. Fla. 2006), available at <http://www.ftc.gov/opa/2007/02/broadcastteam.htm>.

Commission continues to bring enforcement actions in this area.

F. Media Violence

The Commission has continued its efforts to monitor the marketing of violent entertainment to children and to encourage industry self-regulation, and will soon issue its sixth report analyzing the marketing of violent entertainment products by the motion picture, music recording, and video game industries.

G. Alcohol

In the past year, the FTC has contributed to the overall government effort to reduce teen drinking and injury by promoting self-regulation and consumer education. In October 2006, the FTC launched the “We Don’t Serve Teens” campaign to reduce underage drinking by encouraging adults to stop providing teens with access to alcohol. The campaign’s centerpiece is www.DontServeTeens.gov, a website sponsored by a coalition of public and private sector organizations. It features information on the risks of underage drinking, ways to talk to teens and adults about the issue, and ideas for community outreach.³¹ The FTC will continue its efforts in this area.

H. Hispanic Law Enforcement Initiative

The FTC continues aggressively to combat consumer fraud against Hispanics. Since 2004, the FTC has filed 39 actions against 131 businesses and individuals who are alleged to have sold fraudulently a myriad of products and services to Spanish-speaking consumers.

In September 2006, the FTC co-hosted an Hispanic outreach workshop with the U.S. Postal Inspection Service (USPIS), the U.S. Attorney’s Office for the Southern District of New

³¹ See FTC Press Release, *New Campaign Empowers Adults to Say “We Don’t Serve Teens”* (Oct. 18, 2006), available at <http://www.ftc.gov/opa/2006/10/alcohol.htm>.

York, and the Manhattan Hispanic Chamber of Commerce. The workshop was the latest in a series of workshops by the FTC and the USPIS that aimed to identify local problems and discuss ways to address them; facilitate open dialogue with local government, consumer groups, and members of the Hispanic community on issues affecting Hispanic consumers; and share consumer education resources to help local communities conduct outreach about fraud, how to prevent it, and where to report it.

During the workshop, the FTC announced three law enforcement actions against scammers targeting Hispanics with their unlawful business practices,³² as well as the results of an Hispanic Multi-media Surf conducted by the FTC and 60 partners in the United States and Latin America.³³ On the education front, in January 2007, the FTC released *Read Up! How to be an Informed Consumer* -- a compendium of information for Spanish-speakers and Hispanic organizations on consumer rights, managing finances, making major purchases, avoiding scams and rip-offs, and being safe and secure online.³⁴

I. Workshops

In addition to the workshops on *Protecting Consumers in the Next Tech-Ade* and *Protecting Consumers in the Alternative Mortgage Marketplace*, in January 2007, the FTC

³² *FTC v. QTX, et al.*, No. 06-61429 (S.D. Fla. filed Sept. 27, 2006), available at <http://www.ftc.gov/os/caselist/0623206/060927qtxcomplaint.pdf>; *FTC v. Natural Solution, Inc., et al.*, FTC File No. 062-3156 (C.D. Cal. filed Sept. 27, 2006), available at <http://www.ftc.gov/os/caselist/0623156/060926naturalsolutioncmplt.pdf>; *FTC v. Mortgages Para Hispanos.com Corp., et al.*, No. 4:06-CV-00019-MHS-DDB (E.D. Tex. filed Sept. 27, 2006), available at <http://www.ftc.gov/os/caselist/mortgagesparahispanos/060925mrtgsparahispanosstlmt.pdf>.

³³ Division of Enforcement, Federal Trade Commission, *A Report: Multimedia Hispanic Surf* (Sept. 27, 2006), available at <http://www.ftc.gov/os/2006/09/060927surfreport925.pdf>.

³⁴ FTC microsite, *Read Up! How to Be an Informed Consumer*, available at <http://www.ftc.gov/bcp/edu/microsites/reachout/index.html>. The Spanish version of the site is available at <http://www.ftc.gov/bcp/edu/microsites/reachout/espanol/index.html>.

hosted a workshop analyzing the marketing of goods and services through offers with negative option features -- *i.e.*, offers where sellers interpret a consumer's failure to take an affirmative action to reject goods or services, or to cancel a sales agreement, as acceptance of the offers.³⁵ Participants discussed the costs and benefits of such offers and ways to make effective disclosures when such offers are made online.

On April 27, 2007, the FTC will host a public workshop in San Francisco, California, to discuss the issues surrounding the use of mail-in rebates by manufacturers and retailers.³⁶ The workshop will gather representatives from consumer groups, industry, academia, and government to debate the costs and benefits of rebates from all perspectives. One goal of the workshop will be to explore "best practices" in the offering and fulfillment of rebates.

J. Consumer and Business Education

As noted previously, another method the FTC uses to further its consumer protection mission is its production and distribution of plain-language consumer and business education materials that give practical guidance on topics relevant to day-to-day marketplace activities. Between February 2006 and January 2007, the FTC has distributed more than 11.5 million print publications, and more than 42.6 million unique users logged onto its publications online. In addition, the FTC worked through the media and other partners to reach millions more.

The FTC often tries to reach specific consumer populations with targeted education efforts. For example, the FTC has worked to educate older consumers about issues affecting

³⁵ See FTC Press Release, *FTC to Hold Public Workshop on Negative Option Marketing* (Dec. 21, 2006), available at <http://www.ftc.gov/opa/2006/12/negativeoption.htm>.

³⁶ See FTC Press Release, *FTC to Hold "Rebate Debate" Public Workshop in San Francisco* (Jan. 31, 2007), available at <http://www.ftc.gov/opa/2007/01/rebate.htm>.

their daily lives, including abusive lending practices, telemarketing fraud, bogus health claims, and identity theft. Over the years, the FTC has developed a series of publications, launched dedicated Web pages, and worked with numerous federal agencies and private sector partners to develop and disseminate plain-language materials in English and Spanish for this audience. FTC publications that have particular relevance to older Americans include *Getting Credit When You're Over 62*,³⁷ and *Helping Older Consumers Avoid Charity Fraud*.³⁸ In all of its efforts to educate the elderly, the FTC works closely with organizations like AARP. As just one example, AARP has helped enhance the FTC's Identity Theft campaign by co-branding the publication *ID Theft: What's It All About?* and then printing and distributing 750,000 copies in English and 50,000 copies in Spanish through its state offices and at events, forums, fairs, and senior universities.

In an effort to reach consumers who often turn to their elected representatives for help on consumer protection matters, the FTC's Office of Congressional Relations works with congressional offices to encourage them to provide links on their websites to the Commission's extensive education material, and to assist them in organizing consumer education campaigns. During the 109th Congress, for example, FTC experts attended town hall meetings hosted by Members of Congress throughout the country to address such issues as identity theft, safe computing, and financial literacy.

³⁷ *FTC Facts for Consumers: Getting Credit When You're Over 62* (Apr. 2006), available at <http://www.ftc.gov/bcp/online/pubs/credit/over62.pdf>.

³⁸ *FTC Facts for Consumers: Helping Older Consumers Avoid Charity Fraud* (May 2003) available at <http://www.ftc.gov/bcp/online/pubs/tmarkg/oldercharity.pdf>.

K. Criminal Enforcement

Frauds the FTC pursues civilly are also often crimes. Over the past two years, the FTC's Criminal Liaison Unit, or CLU, has stepped up cooperation with criminal authorities -- a dramatic illustration of the FTC's efforts to bring the collective powers of different government agencies to bear upon serious misconduct in many consumer protection areas. As a result of these cooperative efforts, for example, more than 40 business opportunity con artists targeted during the FTC's 2005 business opportunity sweep -- Project Biz Opp Flop -- have been convicted. And in December, the Commission announced Project Fal\$e Hope\$, another interagency campaign to stamp out business opportunity fraud, in which the FTC, together with the Department of Justice, the United States Postal Inspection Service, and law enforcement agencies in 11 states announced more than 100 business opportunity law enforcement actions.³⁹

During 2006, CLU reported some outstanding developments. Grand juries charged 71 FTC defendants and their close associates with crimes including mail and wire fraud, bank fraud, conspiracy, money laundering, and tax fraud. During the same period, federal prosecutors obtained convictions of 57 FTC defendants and their close associates. And consumer protection-related crimes continued to draw stiff sentences. Thirty-three FTC defendants and their close associates received prison sentences totaling more than 259 years, ranging from one year to more than 17 years in prison. The FTC's criminal referral program continues to be a high priority.

L. Advocacy

Advocacy is another method used by the Commission to advance consumers' interests. The FTC frequently provides comments to legislatures and government agencies on the effect of

³⁹ FTC Press Release, *Federal, State Law Enforcers Complete Bogus Business Opportunity Sweep*, (Dec. 12, 2006), available at <http://www.ftc.gov/opa/2006/12/falsehopes.htm>.

proposed laws and regulations. Although consumers need to be protected from fraud and deception, unduly broad restrictions on the dissemination of truthful and non-misleading information are likely to limit competition and consumer choice.⁴⁰

III. Maintaining Competition

In addition to addressing unfair and deceptive conduct, the Commission is charged with protecting consumers by maintaining competition. Competition is critical to safeguarding and strengthening the free and open markets that are the foundation of a vibrant economy. The goal of the FTC's competition mission is to remove the obstacles that impede competition and prevent its benefits from flowing to consumers. In order to accomplish this, the FTC has focused its enforcement efforts on sectors of the economy that have a significant impact on consumers, such as health care, energy, technology, and real estate. In the past year, the Commission pursued a broad range of merger and nonmerger enforcement actions in these and other industries. The Commission is required by statute to review certain mergers, and it shares this responsibility with the Department of Justice. In 2006, there were 1768 premerger filings, a 28% increase from FY2004. Reflecting an increase in investigative activity, the number of requests for

⁴⁰ Through enforcement and advocacy with the Food and Drug Administration ("FDA"), the FTC has developed substantial expertise in policy issues related to food and drug advertising and labeling. Recently, the FTC staff provided comments to the FDA in response to a request for public comment regarding its draft guidelines for labeling statements about the whole grain content of food products. The staff suggested that the FDA expand on its guidance by reconsidering whether to allow certain claims (such as "good source" of whole grains) to be made by companies, providing additional guidance on the appropriate use of certain claims (such as "100% whole grain"), and conducting further research to determine how best to define whole grain-related terms and reduce consumer confusion.

The FTC also recently has used advocacy to protect children from online child predators. FTC staff filed a comment regarding proposed legislation in Hawaii designed to protect minors from unwanted commercial e-mails (spam) that advertise products or services they are prohibited from buying or that contain adult advertising or links to adult content. The bill would establish a Child Protection Registry and make it illegal to send such messages to registrants. The FTC staff explained that, much as it did in commenting on similar legislation in Illinois in 2005, the registry easily could be abused by online child predators, publishing a list of verified email addresses could unintentionally increase the amount of spam received by registrants, and the bill's substantial compliance costs could hamper Internet competition and prevent consumers from receiving legitimate and wanted information. The Hawaii legislature ultimately did not adopt this bill.

additional information issued by the FTC increased by 40% over the same period. The FTC has also facilitated cooperation and voluntary compliance with the law by promoting transparency in enforcement standards, policies, and decision-making processes.

A. Health Care

The health care industry plays a crucial role in the United States economy in terms of the impact that it has on consumer spending and welfare. Health care expenditures in the U.S. represent almost \$2 trillion and have been increasing steadily for the last 30 years. During the past year, the FTC dedicated substantial resources to protecting consumers by vigorously reviewing proposed merger transactions in the health care industry, investigating potentially anticompetitive conduct that threatens consumer interests, and taking action to prevent anticompetitive effects from manifesting themselves. Specifically, the agency achieved substantial relief in ten mergers it reviewed by obtaining consent decrees in the areas of generic drugs, over-the-counter medications, injectable pharmaceuticals, outpatient kidney dialysis services, and medical devices and diagnostic services. In addition, the agency continued to investigate, and take action against where appropriate, agreements among pharmaceutical companies and physicians.

1. Pharmaceuticals

The Commission is particularly active in enforcing the antitrust laws in the pharmaceutical industry. In December 2006, for example, the FTC approved a consent order regarding Barr Pharmaceuticals' proposed acquisition of Pliva.⁴¹ In settling the Commission's charges that the transaction would have increased concentration and led to higher prices, Barr is

⁴¹ *In the Matter of Barr Pharmaceuticals, Inc.*, FTC Docket No. C-4171 (Dec. 8, 2006) (decision and order), available at http://www.ftc.gov/os/caselist/0610217/0610217barrdo_final.pdf.

required to sell its generic antidepressant, trazodone, and its generic blood pressure medication, triamterene/HCTZ. Barr also is required to divest either Pliva's or Barr's generic drug for use in treating ruptured blood vessels in the brain. Finally, Barr is required to divest Pliva's branded organ preservation solution.

Similarly, the FTC has required revisions of mergers to maintain competition in the drug market, including mergers between Watson Pharmaceuticals and Andrx Corporation,⁴² Teva Pharmaceutical Industries and IVAX Corporation,⁴³ and Johnson & Johnson and Pfizer's consumer health division.⁴⁴ In January 2007, the Commission published a consent order for public comment regarding the proposed acquisition of Mayne Pharma Limited by Hospira, Inc. that requires the sale of certain assets to preserve competition.⁴⁵ In each of these merger investigations, the transactions allegedly would have substantially lessened competition and led to increased prices.

Outside of merger review, the FTC continues to be vigilant in the detection and investigation of agreements between drug companies that delay generic entry. In November

⁴² *In the Matter of Watson Pharmaceuticals, Inc., and Andrx Corporation*, FTC Docket No. C-4172 (Dec. 12, 2006) (decision and order), available at http://www.ftc.gov/os/caselist/0610139/061212do_public_ver0610139.pdf.

⁴³ *In the Matter of Teva Pharmaceutical Industries Ltd. and IVAX Corporation*, FTC Docket No. C-4155 (March 2, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510214/0510214.htm>.

⁴⁴ *In the Matter of Johnson & Johnson and Pfizer Inc.*, FTC Docket No. C-4180 (Jan. 19, 2007) (decision and order), available at http://www.ftc.gov/os/caselist/0610220/0610220c4180decisionorder_publicversion.pdf. See also *In the Matter of Allergan, Inc. and Unnamed Corp.*, FTC Docket No. C-4156 (April 17, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0610031/0610031.htm>.

⁴⁵ FTC Press Release, *FTC Challenges Hospira/Mayne Pharma Deal* (Jan. 18, 2007), available at <http://www.ftc.gov/opa/2007/01/hospiramayne.htm>; *In the Matter of Hospira, Inc. and Mayne Pharma Ltd.*, FTC Docket No. C-4182 (Jan. 18, 2007) (decision and order), available at <http://www.ftc.gov/os/caselist/0710002/070118do0710002.pdf>.

2005, in the case of *FTC v. Warner Chilcott Holdings Company III, Ltd.*, the Commission filed a complaint in federal district court seeking to terminate an agreement between drug manufacturers Warner Chilcott and Barr Laboratories that denied consumers the choice of a lower-priced generic version of Warner Chilcott's Ovcon 35, a branded oral contraceptive.⁴⁶ Under threat of a preliminary injunction sought by the FTC, in September 2006, Warner Chilcott waived the exclusionary provision in its agreement with Barr that prevented Barr from entering with its generic version of Ovcon. The next day, Barr announced its intention to start selling a generic version of the product, and it now has done so.⁴⁷ In October 2006, the district court entered a final order that settled the FTC's charges against Warner Chilcott. As a result of the settlement, Warner Chilcott: (1) must refrain from entering into agreements with generic pharmaceutical companies in which the generic agrees not to compete with Warner Chilcott and there is either a supply agreement between the parties or Warner Chilcott provides the generic with anything of value and the agreement adversely affects competition; (2) must notify the FTC whenever it enters into supply or other agreements with generic pharmaceutical companies; and (3) for three months, had to take interim steps to preserve the market for the tablet form of Ovcon in order to provide Barr the opportunity to compete with its generic version.⁴⁸ The FTC's case against Barr is ongoing.

⁴⁶ *FTC v. Warner Chilcott Holdings Co. III*, No. 1:05-cv-02179-CKK (D.D.C. filed Nov. 7, 2005) (complaint filed), available at <http://www.ftc.gov/os/caselist/0410034/051107comp0410034%20.pdf>.

⁴⁷ FTC Press Release, *Consumers Win as FTC Action Results in Generic Ovcon Launch* (Oct. 23, 2006), available at <http://www.ftc.gov/opa/2006/10/chilcott.htm>.

⁴⁸ *FTC v. Warner Chilcott Holdings Co. III*, No. 1:05-cv-02179-CKK (D.D.C. filed Oct. 23, 2006) (stipulated permanent injunction and final order), available at <http://www.ftc.gov/os/caselist/0410034/finalorder.pdf>.

FTC staff has initiated a study on authorized generic drugs.⁴⁹ The study is intended to help the agency understand the circumstances under which innovator companies launch authorized generics; to provide data and analysis of how competition between generics and authorized generics during the Hatch-Waxman Act's 180-day exclusivity period has affected short-run price competition and long-run prospects for generic entry; and to build on the economic literature about the effect of generic drug entry on prescription drug prices. At this time, the Commission has given public notice regarding its proposed methodology, and staff is reviewing the public comments that have been received.

Perhaps more importantly, the FTC also continues to investigate patent settlement agreements between pharmaceutical companies that are required to be filed with the Commission under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. In the "exclusion payment settlements" (or, to some, "reverse payment settlements"), the brand-name drug firm pays its potential generic competitor to abandon the patent challenge and delay entering the market. Such settlements restrict competition at the expense of consumers, whose access to lower-priced generic drugs is delayed, sometimes for many years.

2. Medical Devices and Diagnostic Systems

This past year, the Commission actively enforced the antitrust laws against transactions that allegedly would have reduced competition for several types of medical devices and diagnostic systems. For example, in July 2006, the FTC approved a final consent order

⁴⁹ FTC Press Release, *FTC Proposes Study of Competitive Impacts of Authorized Generic Drugs* (Mar. 29, 2006), available at <http://www.ftc.gov/opa/2006/03/authgenerics.htm>.

regarding the proposed \$27 billion acquisition of Guidant Corporation by Boston Scientific Corporation. These two companies had large market shares in several coronary medical device markets in the United States, together accounting for 90% of the U.S. PTCA balloon catheter market and 85% of the U.S. coronary guidewire market. The consent order required the divestiture of Guidant's vascular business to an FTC-approved buyer.⁵⁰ In 2006, the FTC also obtained final consent orders in mergers affecting markets for biopsy systems and for centrifugal vacuum evaporators, a tool used in the health care industry.⁵¹

3. Hospitals and Other Institutional Providers

The Commission has worked vigorously to preserve competition among the nation's hospitals. In October 2005, an FTC Administrative Law Judge found that Evanston Northwestern Healthcare Corporation's completed acquisition of an important competitor, Highland Park Hospital, resulted in higher prices and a substantial lessening of competition for acute care inpatient services in parts of Chicago's northern suburbs.⁵² In May 2006, the Commission heard oral arguments on the appeal of this matter.⁵³ Several hospital mergers have been announced within the past several months, and we have active investigations pending.⁵⁴

⁵⁰ *In the Matter of Boston Scientific Corp. and Guidant Corp.*, FTC Docket No. C-4164 (July 25, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0610046/060725do0610046.pdf>.

⁵¹ *In the Matter of Hologic, Inc.*, FTC Docket No. C-4165 (Aug. 9, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510263/0510263decisionandorderpubrecver.pdf>; *In the Matter of Thermo Electron Corp.*, FTC Docket No. C-4170 (Dec. 5, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0610187/061205do0610187.pdf>.

⁵² *In the Matter of Evanston Northwestern Healthcare Corp.*, FTC Docket No. 9315 (Oct. 20, 2005) (initial decision), available at <http://www.ftc.gov/os/adjpro/d9315/051021idtextversion.pdf>.

⁵³ *In the Matter of Evanston Northwestern Healthcare Corp.*, FTC Docket No. 9315 (Apr. 20, 2006) (notice scheduling oral argument), available at <http://www.ftc.gov/os/adjpro/d9315/060420notschedoralargu.pdf>.

⁵⁴ The Commission also challenged the merger of two of the top three operators of outpatient kidney

4. Price Fixing

During the past year, the FTC continued to investigate and challenge unlawful price fixing by physicians and other health care providers. In the past year, the FTC approved final consent orders in four matters settling such charges. For example, the Commission alleged that:

- the members of the Puerto Rico Association of Endodontists had agreed on the prices they would charge dental insurance plans and had refused to deal with plans that would not accept the collectively determined prices, leading to higher costs for consumers; and that⁵⁵
- two independent practice associations and 18 member physician practices in the Kansas City area (New Century Health Quality Alliance) refused to deal with health care plans except on collectively agreed-upon terms, including price.⁵⁶

B. Energy

Few issues are more important to American consumers and businesses than the decisions being made about current and future energy production and use. The FTC plays a key role in

dialysis clinics and required divestiture in 66 markets throughout the United States. *In the Matter of Fresenius AG*, FTC Docket No. C-4159 (June 30, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510154/0510154.htm>.

⁵⁵ *In the Matter of Puerto Rico Ass'n of Endodontists, Corp.*, FTC Docket No. C-4166 (Aug. 24, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510170/0510170c4166praedecisionorder.pdf>.

⁵⁶ *In the Matter of New Century Health Quality Alliance, Inc.*, FTC Docket No. C-4169 (Sept. 29, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510137/0510137nchqaprimedecisionorder.pdf>; see also *In the matter of Advocate Health Partners, et al.*, FTC Docket No. C-4184 (February 7, 2007) (decision and order), available at <http://www.ftc.gov/os/caselist/0310021/0310021.htm>; *In the matter of Health Care Alliance of Laredo, L.C.*, FTC Docket No. C-4158 (March 23, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0410097/0410097.htm>.

maintaining competition and protecting consumers in energy markets. In doing so, the FTC has assembled vast competition policy and enforcement expertise in matters affecting the production and distribution of gasoline and natural gas liquids used in heating and other industrial applications. The agency invokes all of the powers at its disposal -- including challenges of antitrust violations, studies and analyses, and advocacy before other government agencies -- to protect consumers from anticompetitive conduct in the industry.

In November 2006, for example, the FTC challenged EPCO's proposed \$1.1 billion acquisition of TEPPCO's natural gas liquids storage businesses. The consent order allowed the acquisition to be completed only if TEPPCO first divested its interests in the world's largest natural gas liquids storage facility in Mont Belvieu, Texas to an FTC-approved buyer.⁵⁷

In May 2006, the FTC released a report titled *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases*.⁵⁸ This report contained the findings of a Congressionally-mandated Commission investigation into whether gasoline prices nationwide were “artificially manipulated by reducing refinery capacity or by any other form of market manipulation or price gouging practices.” The report also discusses gasoline pricing by refiners, large wholesalers, and retailers in the aftermath of Hurricane Katrina. In its investigation, the FTC examined evidence relating to a broad range of possible forms of manipulation. It found no instances of illegal market manipulation that led to higher prices during the relevant time periods, but found fifteen examples of pricing at the refining, wholesale,

⁵⁷ *In the Matter of EPCO, Inc., and TEPPCO Partners, L.P.*, FTC Docket No. C-4173 (Oct. 31, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510108/0510108c4173do061103.pdf>.

⁵⁸ FTC Press Release, *FTC Releases Report on its “Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases”* (May 22, 2006), available at <http://www.ftc.gov/opa/2006/05/katrinagasprices.htm>.

or retail level that fit the relevant legislation's definition of evidence of "price gouging." Other factors such as regional or local market trends, however, appeared to explain these firms' prices in nearly all cases.⁵⁹

In December 2006, the Commission issued a report that examined the current state of ethanol production in the United States and measured market concentration using capacity and production data.⁶⁰ The study, which is the second in a series of annual reports, concludes that U.S. ethanol production currently is not highly concentrated. According to FTC staff, however, the results cannot preclude the possibility that future mergers within the industry may raise competitive concerns.⁶¹

C. Real Estate

As noted previously, purchasing or selling a home is one of the most significant financial transactions most consumers will ever make. Given this fact, the FTC has actively investigated restrictive practices in the residential real estate industry. In the past year, the agency has brought eight enforcement actions against associations of realtors or brokers who adopted rules that allegedly withheld the valuable benefits of the multiple listing services they control from consumers who chose to enter into non-traditional, and often less expensive, listing contracts with real estate brokers. These association policies allegedly limited the ability of home sellers

⁵⁹ Federal Trade Commission, *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases* (Spring 2006), available at <http://www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf>.

⁶⁰ FTC Press Release, *FTC Issues 2006 Report to Congress on Ethanol Market Concentration; Commission Approves Filing of Amended Complaint in National Support Services Matter; FTC Approves Final Consent Order in Thermo/Fisher Scientific Matter* (Dec. 5, 2006), available at <http://www.ftc.gov/opa/2006/12/fyi0678.htm>.

⁶¹ Federal Trade Commission, *2006 Report on Ethanol Market Concentration* (Dec. 1, 2006), available at http://www.ftc.gov/reports/ethanol/Ethanol_Report_2006.pdf.

to choose a brokerage agreement that best served their specific needs. In seven of these matters, the Commission agreed to settlements prohibiting multiple listing services from discriminating against non-traditional listing arrangements. The eighth matter is currently in administrative litigation.⁶²

D. Technology

Technology is another area in which the Commission has acted to protect consumers by safeguarding competition. In February 2007, the Commission issued a final opinion and order in the legal proceeding against computer technology developer Rambus, Inc.⁶³ Previously, in July 2006, the Commission had determined that Rambus unlawfully monopolized the markets for four computer memory technologies that have been incorporated into industry standards for dynamic random access memory -- DRAM chips. DRAM chips are widely used in personal computers, servers, printers, and cameras⁶⁴. In addition to barring Rambus from making misrepresentations or omissions to standard-setting organizations again in the future, the FTC's 2007 order requires Rambus to license its SDRAM and DDR SDRAM technology and sets maximum allowable royalty rates it can collect for the licenses, bars Rambus from collecting or attempting to collect more than the maximum allowable royalty rates from companies that already may have incorporated its DRAM technology, and requires Rambus to employ a

⁶² See, e.g., FTC Press Release, *FTC Charges Austin Board of Realtors With Illegally Restraining Competition* (July 13, 2006), available at <http://www.ftc.gov/opa/2006/07/austinboard.htm>; see also FTC Press Release, *FTC Charges Real Estate Groups with Anticompetitive Conduct in Limiting Consumers' Choice in Real Estate Services* (Oct. 12, 2006), available at <http://www.ftc.gov/opa/2006/10/realestatesweep.htm>; FTC Press Release, *Commission Receives Application for Proposed Divestiture from Linde AG and The BOC Group plc; FTC Approves Final Consent Orders in Real Estate Competition Matters* (Dec. 1, 2006), available at <http://www.ftc.gov/opa/2006/12/fyi0677.htm>.

⁶³ FTC Press Release, *FTC Issues Final Opinion and Order in Rambus Matter* (Feb. 5, 2007), available at <http://www.ftc.gov/opa/2007/02/070502rambus.htm>.

⁶⁴ *In the Matter of Rambus, Inc.*, Docket No. 9302 (July 31, 2006) (Opinion of the Commission), available at <http://www.ftc.gov/os/adjpro/d9302/060802commissionopinion.pdf>.

Commission-approved compliance officer to ensure that Rambus's patents and patent applications are disclosed to industry standard-setting bodies in which it participates.⁶⁵ The Commission will continue to monitor the technology industry and will challenge conduct that may forestall innovation and harm consumers.

E. Other Industries

In addition to health, real estate, and energy, the Commission has sought to protect consumers by imposing conditions on mergers involving launch services;⁶⁶ the manufacture of ammunition for mortars and artillery;⁶⁷ the nation's two largest funeral home and cemetery chains;⁶⁸ and liquid oxygen and helium.⁶⁹

F. Guidance, Transparency, and Merger Review Process Improvements

During the last year, the FTC implemented two important process reforms that streamlined the merger review process.

⁶⁵ *In the Matter of Rambus Inc.*, Docket No. 9302 (Feb. 5, 2007) (Opinion of the Commission on Remedy), available at <http://www.ftc.gov/os/adjpro/d9302/070205opinion.pdf>; *In the Matter of Rambus Inc.*, Docket No. 9302 (Feb. 2, 2007) (Final Order), available at <http://www.ftc.gov/os/adjpro/d9302/070205finalorder.pdf>.

⁶⁶ *In the Matter of Lockheed Martin Corp. and The Boeing Co.*, FTC File No. 051 0165 (Oct. 3, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0510165/0510165decisionorderpublicv.pdf>; *In the Matter of Lockheed Martin Corporation and The Boeing Company*, FTC File No. 051 0165 (Oct. 3, 2006) (agreement containing consent order), available at <http://www.ftc.gov/os/caselist/0510165/0510165agreement.pdf>.

⁶⁷ *In the Matter of Gen. Dynamics Corp.*, FTC Docket No. C-4181 (Dec. 28, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0610150/0610150decisionorder.pdf>; *In the Matter of General Dynamics Corp.*, FTC Docket No. C-4181 (Dec. 28, 2006) (agreement containing consent orders), available at <http://www.ftc.gov/os/caselist/0610150/0610150agreement.pdf>.

⁶⁸ *In the Matter of Serv. Corp. Int'l and Alderwoods Group Inc.*, FTC Docket No. C-4174 (Dec. 29, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0610156/070105do0610156.pdf>.

⁶⁹ *In the Matter of Linde AG and The BOC Group PLC*, FTC Docket No. C-4163 (Sept. 5, 2006) (decision and order), available at <http://www.ftc.gov/os/caselist/0610114/0610114c4163LindeBOCDOPubRecV.pdf>.

In February 2006, the Commission announced the implementation of significant merger process reforms aimed at reducing the costs borne by both the FTC and merging parties.⁷⁰ In June 2006, the FTC and the Department of Justice Antitrust Division announced that they were implementing an electronic filing system that allows merging parties to submit, via the Internet, premerger notification filings required by the Hart-Scott-Rodino (HSR) Act.⁷¹

G. Competition Advocacy

The Commission frequently provides comments to federal and state legislatures and government agencies, sharing its expertise on the competitive impact of proposed laws and regulations when they explicitly or implicitly impact the antitrust laws, and when they alter the competitive environment through restrictions on price, innovation, or entry conditions. Recent FTC advocacy efforts have contributed to several positive consumer outcomes. In the past year, the FTC has sought to persuade regulators to adopt policies that do not unnecessarily restrict competition in the areas of wine distribution,⁷² patent rules of practice,⁷³ online auction trading

⁷⁰ FTC Press Release, *FTC Chairman Announces Merger Process Reforms* (Feb. 16, 2006), available at http://www.ftc.gov/opa/2006/02/merger_process.htm.

⁷¹ FTC Press Release, *Federal Trade Commission and Department of Justice Allow Electronic Submission of Premerger Notification Filings* (June 20, 2006), available at <http://www.ftc.gov/opa/2006/06/premerger.htm>.

⁷² FTC Staff Comments to The Honorable Paula Dockery (Apr. 10, 2006), available at <http://www.ftc.gov/os/2006/04/V060013FTCStaffCommentReFloridaSenateBill282.pdf>.

⁷³ Comments of the United States Federal Trade Commission Before the United States Patent and Trademark Office, In the Matter of Changes to Practice for Continuing Applications, Requests for Continued Examination Practice, and Applications Containing Patentably Indistinct Claims, Docket No. 2-5-P-066 (May 3, 2006), available at <http://www.ftc.gov/os/2006/05/P052103CommissionCommentsRePTODocketNo2-5-P-066BeforethePatentandTrademarkOfficeText.pdf>.

assistants,⁷⁴ attorney matching services,⁷⁵ real estate legal services,⁷⁶ and pharmacy benefit managers.⁷⁷

H. Hearings, Reports, Conferences, and Workshops

Hearings, conferences, and workshops organized by the FTC represent a unique opportunity for the agency to develop policy and research tools, and help foster a deeper understanding of the complex issues involved in the economic and legal analysis of antitrust law.

Beginning in June 2006, the FTC and the Department of Justice Antitrust Division have held a series of hearings to discuss the boundaries of permissible and impermissible conduct under Section 2 of the Sherman Act.⁷⁸ The primary goal of the hearings is to examine whether and when specific types of single-firm conduct are procompetitive or benign, and when they may harm competition. The Commission expects to complete the hearings in the second quarter of 2007.

The Commission and the Department of Justice are nearing completion of a second report addressing issues that arise at the intersection of antitrust and intellectual property law and

⁷⁴ FTC Staff Comments to The Honorable Noble E. Ellington, Louisiana State Senate (May 26, 2006), available at <http://www.ftc.gov/os/2006/06/VO60015CommentstoLouisianaStateSenateImage.pdf>.

⁷⁵ FTC Staff Comments to Mr. W. John Glancy, Chairman, Professional Ethics Committee for the State Bar of Texas (May 26, 2006), available at <http://www.ftc.gov/os/2006/05/V060017CommentsonaRequestforAnEthicsOpinionImage.pdf>.

⁷⁶ Federal Trade Commission and United States Department of Justice Comments to Assemblywoman Helene E. Weinstein, Chair, Committee on Judiciary, New York State Assembly (June 21, 2006), available at <http://www.ftc.gov/os/2006/06/V060016NYUplFinal.pdf>.

⁷⁷ FTC Staff Comments to Terry G. Kilgore, Member, Commonwealth of Virginia House of Delegates (Oct. 2, 2006), available at <http://www.ftc.gov/be/V060018.pdf>.

⁷⁸ FTC Press Release, *FTC and DOJ to Host Joint Public Hearings on Single-Firm Conduct as Related to Competition* (Nov. 28, 2005), available at <http://www.ftc.gov/opa/2005/11/unilateral.htm>.

policy. This second report follows an initial report issued in 2003 following extensive hearings on this important topic.

In August 2006, the FTC convened the Internet Access Task Force to examine issues raised by converging technologies and regulatory developments, and to inform the enforcement, advocacy, and education initiatives of the Commission. Under the leadership of the Internet Access Task Force, the FTC recently addressed two issues of great interest to policy makers.

First, in October 2006, the FTC released a staff report, *Municipal Provision of Wireless Internet*, which provides a decision-tree framework for policymakers considering whether and how municipalities should provide Internet service. The report identifies the potential benefits and risks to competition and consumers associated with municipal provision of wireless Internet service.

Second, in February 2007, the FTC hosted a two-day workshop to explore the many competition and consumer protection issues relating to broadband Internet access, including so-called “network neutrality.” Among the topics discussed at the workshop were the current and future state of competition in the market for broadband Internet access; the capabilities and incentives of broadband Internet service providers to discriminate against, degrade, block, or charge fees for prioritized delivery of unaffiliated content and applications; and the potential effects of network neutrality regulation on innovation and competition in the market for broadband Internet access. The FTC intends to release a report of this workshop later this year.

In April 2007, the Commission will hold a three-day conference on *Energy Markets in the 21st Century: Competition Policy in Perspective*.⁷⁹ The conference will bring together

⁷⁹ FTC Conference, *Energy Markets in the 21st Century: Competition Policy in Perspective* (Apr.

leading experts from government, the energy industry, consumer groups, and the academic community to participate on panels to examine such topics as: (1) the relationship between market forces and government policy in energy markets; (2) the dependence of the U.S. transportation sector on petroleum; (3) the effects of the electric power industry restructuring on competition and consumers; (4) what energy producers and consumers may expect in the way of technological developments in the industry; (5) the security of U.S. energy supplies; and (6) the government's role in maintaining competition and protecting energy consumers.

I. Competition Education Initiatives

The FTC is committed to enhancing consumer confidence in the marketplace through enforcement and education. This year, Commission staff launched a multi-dimensional outreach campaign, targeting new and bigger audiences, with the message that antitrust enforcement helps consumers reap the benefits of competitive markets by keeping prices low and services and innovation high, as well as by encouraging more choices in the marketplace. The Commission is building a library of brochures, fact sheets, articles, reports and other products - both in print and online - in its efforts to reach consumers, attorneys, and business people, and is planning to leverage its limited resources through a "wholesale/retail" approach to outreach that involves partnering with other organizations to disseminate information on its behalf.

The Commission's website, www.ftc.gov, continues to grow in size and scope with resources on competition policy in a variety of vital industries. This year, the FTC launched new industry-specific websites for Oil & Gas, Health Care, Real Estate, and Technology. These minisites serve as a one-stop shop for consumers and businesses who want to know what the

10-12, 2007), available at <http://www.ftc.gov/bcp/workshops/energymarkets/index.html>.

FTC is doing to promote competition in these important business sectors. In the past year, the FTC also issued practical tips for consumers on buying and selling real estate, funeral services, and generic drugs, as well as “plain language” columns on oil and gas availability and pricing.

IV. International

The FTC’s Office of International Affairs (OIA), created in January 2007, brings together the international functions formerly handled in the Bureaus of Competition and Consumer Protection and the Office of General Counsel. OIA will bring increased prominence to the FTC’s international work, and will enhance the FTC’s ability to coordinate its enforcement efforts effectively to promote convergence toward best practices with our counterpart agencies around the world.

The FTC has built a strong network of cooperative relationships with its counterparts abroad, and plays a leading role in key multilateral fora. The growth of communication media and electronic commerce presents new challenges to law enforcement -- fraud and deception now know no borders. We work with other nations to protect American consumers who can be harmed by anticompetitive conduct and frauds perpetrated outside the United States. The FTC also actively assists new democracies moving toward market-based economies with developing competition and consumer protection laws and policies.

A. Consumer Protection

Rapid increases in technology and globalization have accelerated the pace of new consumer protection challenges, such as spam, spyware, telemarketing fraud, and data security and privacy, that cross national borders and raise both enforcement and policy issues. The Internet and modern communications devices, such as Voice over Internet Protocol, have provided tremendous benefits to consumers but have also aided telemarketing fraud and raised

fresh privacy concerns. As explained below, the FTC has a comprehensive international consumer protection program of enforcement, networking, and policy initiatives to address these new challenges.

In the coming year, the FTC will implement the U.S. SAFE WEB Act of 2006, which was signed into law in December 2006. Thanks to the action of Congress, the U.S. SAFE WEB Act provides the FTC with updated tools for the 21st century. It allows the FTC to cooperate more fully with foreign law enforcement authorities in the area of cross-border fraud and other practices, such as fraudulent spam, spyware, misleading health and safety advertising, privacy and security breaches, and telemarketing fraud, that are global and that harm consumers. As the FTC begins to take advantage of these new tools, cooperation with foreign law enforcement agencies regarding information sharing and investigative assistance will be greatly improved, diminishing fundamental roadblocks to effective cooperation.

The FTC works directly with consumer protection and other law enforcement officials in foreign countries to achieve its goals. In particular, in response to the amount of fraud across the U.S.-Canadian border, the FTC continues to build its relationship with its Canadian counterparts. We have worked hard to expand partnerships with Canadian regional entities to fight telemarketing fraud by Canadians targeting U.S. and Canadian consumers.

Increased globalization also requires the FTC to participate actively in international policy efforts to develop flexible, market-oriented standards, backed by aggressive enforcement, to address emerging consumer protection issues. In 2006, for example, the FTC, working with its foreign partners through the Organization for Economic Cooperation and Development (OECD) and through the London Action Plan, the international spam enforcement network, called for increased cross-border law enforcement cooperation and increased public/private

sector cooperation to combat spam. The FTC will also continue to focus the international community on the importance of enforcement as a key component of privacy protection in the OECD, the Asia Pacific Economic Cooperation (APEC), and other multilateral organizations. The FTC also continues to participate actively in APEC's Electronic Commerce Steering Group and several OECD committees, including the Committee on Consumer Policy, and in the International Consumer Protection Enforcement Network (ICPEN). The FTC supported the ICPEN's operations this year by hosting its Secretariat.

B. Competition

The FTC's cooperation with competition agencies around the world is a vital component of our enforcement and policy programs, facilitating our ability to collaborate on cross-border cases, and promoting convergence toward sound, consumer welfare-based competition policies.

FTC staff routinely coordinate with colleagues in foreign agencies on mergers and anticompetitive conduct cases of mutual concern. The FTC promotes policy convergence through formal and informal working arrangements with other agencies, many of which seek the FTC's views in connection with developing new policy initiatives. For example, during the past year, the FTC consulted with the European Commission regarding its review of policies on abuse of dominance and remedies, with the Canadian Competition Bureau on merger remedies and health care issues, and with the Japan Fair Trade Commission on abuse of dominance and revisions to its merger guidelines. We will also be consulting with the European Commission on its new draft guidelines for the review of non-horizontal mergers. The FTC participated in consultations in Washington and in foreign capitals with top officials of, among others, the European Commission, the Japan and Korea Fair Trade Commissions, and the Mexican Federal Competition Commission. Chairman Majoras became the first FTC Chairman to visit China,

establishing important relationships with officials involved in developing the first comprehensive competition law in China, and underscoring the importance of the FTC and Antitrust Division's work to provide input into the drafting process.

The FTC is an active participant in key multilateral fora that provide important opportunities for competition agencies to enhance mutual understanding in order to promote cooperation and convergence, including the International Competition Network (ICN), the OECD, the United Nations Conference on Trade and Development (UNCTAD), and APEC. For example, over the past year, the FTC has served on the ICN's Steering Group, co-chaired its Unilateral Conduct working group and related objectives subgroup, chaired its Merger Notification and Procedures subgroup, and played a lead role in its working group on Competition Policy Implementation. In addition, the FTC also participates in U.S. delegations that negotiate competition chapters of proposed free trade agreements, including in connection with negotiations with Korea, Thailand, and Malaysia during the last year.

C. International Technical Assistance

The FTC assists developing nations as they move toward market-based economies with developing and implementing competition and consumer protection laws and policies. These activities, funded mainly by the United States Agency for International Development and conducted in cooperation with the Department of Justice's Antitrust Division, are an important part of the FTC's efforts to promote sound competition and consumer protection policies around the world. In 2006, the FTC sent 34 different staff experts on 30 technical assistance missions to 17 countries, including the ten-nation ASEAN community, India, Russia, Azerbaijan, South Africa, Central America, and Egypt. We also conducted missions in Jordan and Ethiopia, and concluded a highly successful program in Mexico.

V. Needed Resources for Fiscal Year 2008

To accomplish the agency's mission in FY 2008, the FTC requests \$240,239,000 and 1,084 FTE. This level of resources is needed to allow the FTC to continue to build on its past record of accomplishments in enhancing consumer protection and protecting competition in the United States and, increasingly, abroad. The FY 2008 request represents an increase of \$17,239,000 over the FTC's FY 2007 budget request before Congress. The increase includes:

- \$8,839,000 in mandatory salary and contract expenses;
- \$1,400,000 for 10 new FTE for the Consumer Protection Mission's Privacy and Identity Protection Program;
- \$4,500,000 for the Consumer Protection Mission's outreach and enforcement efforts including:
 - ▶ \$2,000,000 for the "Media literacy" initiative;
 - ▶ \$1,300,000 for Do Not Call registration renewals and outreach;
 - ▶ \$100,000 to increase enforcement efforts to combat spyware; and,
 - ▶ \$100,000 to support our Congressionally-endorsed efforts to promote industry self-regulation in the marketing of entertainment and food to children;
- \$1,600,000 for electronic litigation support and E-Gov and information technology initiatives; and
- \$900,000 for facility reconditioning, equipment replacement, records management, and human capital and support needs.

The FTC's FY 2008 budget request is comprised of three funding sources. The majority of the funding will be derived from offsetting collections: HSR filing fees and Do Not Call fees

will provide the agency with an estimated \$163,600,000 in FY 2008. The FTC anticipates that the remaining funding needed for the agency's operations will be funded through a direct appropriation of \$76,639,000 from the General Fund in the U.S. Treasury.

VI. Conclusion

Mr. Chairman and Members of the Subcommittee. We want to ensure that the quality of our work is maintained despite the breadth of our mission and the challenges that we have described involving technological change and an evolving global economy. In the last several years, however, Congress has passed a variety of significant new laws that the FTC is charged, at least in part, with implementing and enforcing, such as the CAN-SPAM Act, the Fair and Accurate Credit Transactions Act (FACTA), the Children's Online Privacy Protection Act (COPPA), the Gramm-Leach-Bliley Act, and the U.S. SAFE WEB Act. In light of these new laws and challenges, we will continue to assess our personnel and resource needs to ensure that the agency vigorously protects American consumers and promotes a vibrant marketplace.

The FTC appreciates the strong support it has received from Congress to serve its critical mission of protecting consumers and maintaining competition. I would be happy to answer any questions that you and other Members may have about the FTC's programs and budget request.