

**PREPARED STATEMENT
of
THE FEDERAL TRADE COMMISSION
on
REAUTHORIZATION**

Before the

**SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE AND
TOURISM**

of the

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

UNITED STATES SENATE

Washington, D.C.

February 9, 2000

Mr. Chairman, the Federal Trade Commission (FTC) is pleased to appear before the Subcommittee to present its views on the agency's reauthorization. Since our last reauthorization hearing in 1996, the FTC has continued to protect American consumers in dynamic domestic and world marketplaces. The FTC is the only federal agency with both consumer protection and competition jurisdiction over broad sectors of the economy.⁽¹⁾ Congress has charged the FTC with maintaining a free and fair marketplace by, among other things, protecting American consumers and businesses from unfair methods of competition and unfair or deceptive acts or practices. Our national experience demonstrates that competition among producers and accurate information in the hands of consumers yield the best products at the lowest prices, spur innovation, and strengthen the economy.

As a deliberative body and an independent agency, the FTC is well situated to study and respond to a changing marketplace, and to champion consumer interests in this dynamic setting. The FTC has investigatory power and often serves as a research resource for Congress. The FTC also has limited regulatory power, which it uses sparingly to address specific, widespread problems, often in response to express Congressional mandates. First and foremost, however, the FTC is a law enforcement agency. It is a small agency, but one with a record of achievement for American consumers.

Highlights of recent accomplishments include:

- Saving consumers an estimated \$1.6 billion in fiscal year 1999 from law enforcement actions brought in our consumer protection and competition missions,

achieving an estimated consumer savings of \$14 for every \$1 spent on agency operations.

- Protecting consumers and business from anticompetitive mergers before they occur by reviewing the increasing number of proposed merger transactions filed under the Hart-Scott-Rodino provisions of the Clayton Act. Reported transactions have tripled from 1,529 in fiscal year 1991 to 4,642 in fiscal year 1999 and have increased eleven-fold in total value during this period, from \$169 billion to \$1.9 trillion.
- Targeting 78 percent of FTC antitrust resources in fiscal year 1999 to four sectors of the economy -- energy and natural resources, information and technology, health care and pharmaceuticals, and consumer goods and services, thus focusing on industries with major pocketbook benefits for consumers.
- Fighting Internet-related fraud since 1994 by bringing 100-plus enforcement actions, which have targeted 300 corporate and individual defendants on behalf of millions of online consumers and small business. The FTC's enforcement actions have collected over \$20 million in redress, obtained orders freezing another \$65 million, and stopped Internet schemes with estimated annual sales of over \$250 million.
- Offering consumers and business toll-free access to the FTC through a consumer helpline. Launched in July 1999 with additional funds appropriated by Congress, 1-877-FTC-HELP allows people from anywhere in the United States to call with questions or complaints and speak to trained counselors. The FTC now receives more than 9,000 consumer inquiries or complaints per week.
- Operating *Consumer Sentinel*, a secure database developed by the FTC and now shared with over 220 law enforcement agencies in the U.S. and Canada. Currently containing more than 225,000 entries, the database allows law enforcement to identify companies and individuals engaging in fraud and to stop scams as they emerge.
- Safeguarding consumer privacy by implementing the Children's Online Privacy Protection Act and by bolstering industry self-regulation through educational efforts. The FTC continues to monitor consumer privacy in cyberspace by, among other things, conducting surveys to reassess how websites are implementing fair information practices.
- Educating consumers and businesses about their rights and responsibilities, and alerting them to potential frauds, by distributing 8.6 million educational publications in print and online during fiscal year 1999.

Increased Resources to Meet Growing Challenges. To meet the growing challenges in protecting consumers and keeping the marketplace competitive, we request that our reauthorization include an increase in resources. Over the past decade, the FTC has performed its mission in the face of a rapidly changing marketplace. We have done so

primarily by stretching our resources, re-inventing our processes, and simply doing more with less. But if we are to keep up with the growing demands that will be imposed by the 21st Century marketplace, we need significant additional resources.

Two marketplace developments have greatly increased the demands on the FTC -- the explosive growth of the Internet and the dramatic increase in corporate mergers. Use of the Internet has grown exponentially since commercial web browsers first became available in 1994 -- 123 million Americans now have access to the Internet.⁽²⁾ Internet purchasing also is skyrocketing, forecasted to rise from \$20 billion in 1999 to \$184 billion in 2004.⁽³⁾ Developing Internet-related policies and halting cyberfraud during just the few years of the Internet's existence already has taxed the FTC's resources. In 1996, the FTC's Bureau of Consumer Protection (BCP) devoted 14 FTEs, about 4 percent of BCP total resources, to Internet-related activities. In 1999, the workload required 79 FTEs, or about 23 percent of the BCP workforce, which overall remained at about the same level as 1996.⁽⁴⁾

Similarly, the corporate merger wave continues into its tenth straight year and strains FTC resources. *The Washington Post* recently characterized the merger wave as "a frenzy of merger madness, capping a dramatic wave of global corporate consolidation that has been gaining momentum through much of this decade," quoting merger experts who note that a key force driving merger activity is the Internet.⁽⁵⁾ This restructuring may be necessary for companies to compete in the new global, high-tech marketplace. At the same time, antitrust review is necessary to identify and stop those combinations that could diminish competition in specific markets as this restructuring proceeds.

While the number of Hart-Scott-Rodino mergers has tripled in the past decade, the dollar value of commerce affected by these mergers is on an even steeper trajectory, increasing eleven-fold.⁽⁶⁾ Overall, merger transactions are increasingly larger and significantly more complex, requiring more exacting analysis when they raise competitive issues. As a result, merger investigation and litigation are more resource-intensive than before.⁽⁷⁾

The FTC is working cooperatively with industry and the antitrust bar to assess what changes can be made in Hart-Scott-Rodino merger investigations to minimize burden and make the process work as efficiently as possible. The FTC already has undertaken a number of internal reforms to expedite merger investigations and to provide parties with more complete information on the issues that give rise to an investigation.

Finally, several other significant initiatives are straining FTC resources. Two current examples are studying the marketing of violent entertainment materials to children and creating an identity theft database. Late in fiscal year 1999, several Senators and the White House both asked the FTC to study the marketing of violent entertainment materials to children in the aftermath of school shootings in Littleton, Conyers, Jonesboro, West Paducah, and Pearl.⁽⁸⁾ The entertainment industry is large (over \$40 billion a year in sales and rentals of movies, video games, and music recordings), and this undertaking is substantial: FTC staff is seeking relevant information from industry members, parents' and children's advocacy groups, other consumer groups, academics, and parents and children

themselves, and the Commission will issue a report.

The FTC also has devoted resources to issues involving identity theft -- using someone else's personal identifying information to commit fraud, such as opening a credit card account using the stolen name. Congress passed the Identity Theft and Assumption Act of 1998,⁽⁹⁾ which directs the FTC to establish a "centralized complaint and consumer education service" for victims of identity theft. The FTC has implemented three parts of the program: establishment of a toll-free number (877-ID THEFT) for reporting and seeking information on identity theft; a database to track these complaints; and a consumer education program, including a soon-to-be-published booklet and a website devoted to identity theft issues -- www.consumer.gov/idtheft.

The FTC has been both innovative and aggressive in meeting its expanding responsibilities. We reorganized and streamlined our workforce by hiring cost-efficient paralegals to perform tasks previously performed by attorneys, and by moving positions, wherever possible, out of administrative offices and into front-line law enforcement. We have prioritized our cases, shifting resources, to the extent possible, to areas of highest need and with greatest consumer impact. We have leveraged our efforts through cooperative arrangements with the states and the private sector to obtain the greatest benefit for each dollar spent.

Nonetheless, the growing demands of the marketplace are exceeding the FTC's ability at current resource levels to maintain its missions adequately. We need additional staff and funds to do the work effectively. An increase to the FTC's resources would be a sound investment, reaping abundant dividends for American consumers and business.

Forward-Looking Law Enforcement for American Consumers and Business. At the brink of a new century, the FTC's law enforcement is forward-looking and innovative. We are pleased to describe our accomplishments in (1) keeping pace with the dynamic growth of electronic commerce, (2) anticipating and responding to the changing marketplace to promote consumer and business welfare, and (3) promoting efficient law enforcement.

1. Keeping Pace with the Dynamic Growth of Electronic Commerce. The FTC is working to keep pace with rapidly expanding Internet activity through a multitude of programs and law enforcement efforts.

Fighting Electronic Fraud. The FTC is fighting to protect consumers and business against new high-tech frauds, ingenious scams that exploit the design and architecture of the Internet to defraud consumers. FTC staff identified two tricks, "pagejacking" and "mousetrapping," in *FTC v. Carlos Pereira*,⁽¹⁰⁾ in which defendants in Portugal and Australia allegedly captured unauthorized copies of U.S.-based websites, including those of Paine Webber and *The Harvard Law Review*, and produced look-alike versions that were indexed by major search engines. The defendants then diverted unsuspecting consumers to a sequence of pornography sites from which they could not exit, essentially trapping them at the site. The FTC obtained a court order stopping the scheme and suspending the defendants' website registrations.

The FTC also protects consumers from more traditional scams that have found new life on the Internet. In fact, most of the FTC's 100-plus cases challenging Internet fraud concern old frauds on a new medium -- 28 cases challenge credit repair schemes, 13 cases challenge deceptive business opportunities, and 11 cases challenge pyramid schemes. The Internet can give these old scams a sleek new veneer as well as provide access to vastly more victims at little cost.

Among the most pernicious of old frauds finding a new home on the Internet are health-related frauds. The Internet offers consumers immediate, free access to health information and a convenient and (sometimes) less expensive source for health products. Not surprisingly, consumers are turning to the Internet more and more for their health needs.⁽¹¹⁾ Yet, there are potential risks: the quality of Internet information varies widely, and it can be difficult to distinguish reliable sites from inaccurate or even fraudulent ones. To address the proliferation of health claims on the Internet, the FTC implemented Operation Cure.All, which began with two comprehensive "surfs" of the Internet for suspicious health products and ended with cease-and-desist actions -- four to date.⁽¹²⁾ To educate consumers, the FTC publishes online brochures on how to spot health scams, linked the FTC website to reliable Internet health sites, and posted several "teaser" Internet sites that mimic health scams and alert consumers to potential online health fraud.

Maintaining the Competitive Promise of the Internet. Just as the work of the FTC's consumer protection mission strives to keep the Internet free from fraud, the work of its competition mission strives to secure the competitive promise of the Internet. In just a few years, the Internet has changed traditional sales and distribution patterns for products of all types, promising faster, cheaper, and more efficient ways to deliver goods and services. Antitrust scrutiny is necessary to ensure that anticompetitive practices do not stunt development of these innovations. In 1998, for example, the FTC charged 25 Chrysler dealers with an illegal boycott designed to limit sales by car dealers that marketed on the Internet. The dealers allegedly had planned to boycott Chrysler if it did not change its distribution methods to disadvantage Internet sellers.⁽¹³⁾ A successful boycott could have limited the use of the Internet to promote price competition and could have reduced consumers' ability to shop from dealers serving a wider geographic area via the Internet.

Using Electronic Tools to Detect, Deter, and Educate about Fraud. To stay on top of Internet developments, and to stop cyberfraud in its incipiency, the FTC has developed innovative tools. Two of the most effective tools are *Consumer Sentinel*, the comprehensive fraud database,⁽¹⁴⁾ and 1-877-FTC-HELP, the toll-free consumer helpline.

The FTC also holds "Surf Days" to use new technology to detect and analyze emerging problems in the online marketplace. Through organized Internet surfing, FTC staff and its law enforcement partners learn about online practices and identify possible targets for law enforcement. To date, the FTC and 250 partners have conducted 20 Surf Days on topics ranging from pyramid schemes to health claims to environmental marketing claims, and have identified over 4,000 sites making dubious claims. One way that FTC staff responds when it discovers questionable claims is to use e-mail simply to warn website operators that their sites appear to violate the law -- some operators are new entrepreneurs unaware of

existing laws. Although the results vary, the warnings appear generally effective in prompting operators to correct or remove their websites without any formal FTC enforcement action.

Second, the FTC has created "teaser sites" to educate consumers about exercising caution in dealing with website enterprises. Now numbering over a dozen, these sites mimic common Internet scams, such as pyramid schemes and business opportunities, and contain the customary glowing testimonials and false promises. After a few "clicks" from the home page, the FTC teaser sites warn consumers that they could be defrauded by participating in similar schemes and provide tips on how to distinguish fraudulent pitches from legitimate ones.

Finally, the FTC organized the development of www.consumer.gov to educate consumers. With more than 100 federal agencies contributing information, the website is a one-stop shop for consumers turning to the federal government seeking information, from health to money to technology.⁽¹⁵⁾

Protecting Privacy Online. Since 1995, the FTC has been at the forefront of issues involving online privacy. Among other activities, the FTC has held public workshops; examined website practices on the collection, use, and transfer of personal information; and commented on self-regulatory efforts and technological developments intended to enhance consumer privacy. The FTC has issued three reports to Congress based on its initiatives in the privacy area.⁽¹⁶⁾ The most recent, *Self-Regulation and Privacy Online*,⁽¹⁷⁾ issued in July 1999, examined website collection of consumer information, consumer concerns about online privacy, and the state of self-regulation. The report recommended effective self-regulation at that time instead of legislation, but called for further efforts to implement "fair information principles" and continued FTC monitoring.

The FTC is particularly concerned about issues involving the online collection of personal information from children. In its 1998 privacy report, the FTC documented the widespread collection of children's information, and recommended that Congress adopt legislation setting forth standards on online collection. Four months after the report was issued, Congress enacted the Children's Online Privacy Protection Act of 1998.⁽¹⁸⁾ As required by the Act, the FTC issued a rule to implement the Act's fair information standards for commercial websites collecting information from children under 13.⁽¹⁹⁾ The rule, which takes effect in April 2000, describes what constitutes "verifiable parental consent" in the collection of information from children.

The FTC also has brought law enforcement actions to protect privacy online. One action challenged the allegedly false representations by the operator of a "Young Investors" website that information collected from children in an online survey would be maintained anonymously,⁽²⁰⁾ and another challenged the practices of an online auction site that allegedly obtained consumers' personal identifying information from a competitor site (eBay.com) and then sent deceptive, unsolicited e-mail messages to those consumers seeking their business.⁽²¹⁾

Since the 1999 privacy report, the FTC, together with the Department of Commerce, held a public workshop on "online profiling"⁽²²⁾ to educate the public about this practice and its privacy implications, and to examine current industry efforts to implement fair information practices. The FTC also has convened an advisory committee of e-commerce experts, industry representatives, security specialists, and consumer and privacy advocates to examine the costs and benefits of implementing online the fair information practices of "access" and "security."⁽²³⁾ This advisory committee, convened pursuant to the Federal Advisory Committee Act,⁽²⁴⁾ will provide a written report to the FTC in May 2000. Later this month, the FTC will conduct another survey on commercial website practices of personal information collection and their use of fair information practices of notice, choice, access, and security.

Working to Protect Consumers and Businesses in International E-Commerce Markets.

The FTC participates in international forums on e-commerce with two major goals: tackling cross-border fraud, and developing e-commerce policies that facilitate a safe and predictable commercial environment for businesses and consumers. To stop international fraud, the FTC works with both domestic and foreign law enforcement partners to shut down offshore scam artists who target U.S. consumers, to repatriate ill-gotten gains moved offshore, and to combat cross-border fraud. We enhance international cooperative efforts through our involvement in international organizations, such as the 29-nation International Marketing Supervision Network; and task forces, such as the U.S.-Canada Telemarketing Task Force and the Mexico-U.S.-Canada Health Fraud Task Force. We also participate in information sharing arrangements, such as through *Consumer Sentinel*.

To develop e-commerce policies, the FTC is active in the public policy debate on international consumer protection principles that should govern the global electronic marketplace.⁽²⁵⁾ The FTC sponsored a June 1999 international workshop addressing these issues. Additionally, the FTC just announced that it will host, together with the Department of Commerce, a workshop this spring on the use of alternative dispute resolution mechanisms for consumer transactions in the borderless online marketplace.

2. Anticipating and Responding to the Changing Marketplace to Promote Consumer and Business Welfare. Electronic commerce, deregulation, and globalization are transforming the American economy. The FTC is responding to these changes by shifting resources to those areas where consumers and business are at increasing risk from fraud, deception, or anticompetitive practices.

Responding to the Retail Revolution. The United States, indeed the world, is undergoing a "retail revolution." To remain competitive, retailers -- whether brick and mortar or online -- are restructuring and merging, and seeking new ways to market both new and old products to a growing consumer market. Food retailing is experiencing just such a period of consolidation. The number of supermarket mergers increased from 20 in 1996, to 25 in 1997, to 35 in 1998.⁽²⁶⁾ While most supermarket mergers do not raise competitive concerns, some do appear to threaten consumers' food bills, and the FTC has responded. Five supermarket mergers reviewed by the FTC in the past 12 months have involved firms with total annual sales of over \$110 billion, including Albertson's acquisition of American Stores

(the second and fourth largest chains in the U.S.) and Kroger's acquisition of Fred Meyer, which created the largest U.S. supermarket chain. In the last four years, the FTC has brought more than 10 enforcement actions involving supermarket mergers, requiring divestitures of nearly 300 stores, in order to maintain competition in local markets spread across the U.S.⁽²⁷⁾

The FTC is addressing not only anticompetitive mergers, but also anticompetitive practices that could hinder consumers from reaping the full benefits of retail restructuring. For example, the Commission sued Toys R Us, the nation's largest toy retailer, alleging abuse of market power by trying to stop warehouse clubs from selling popular toys, such as Barbie dolls. Although new to selling toys, warehouse clubs, such as Costco, were selling them at lower prices and beginning to take market share from more traditional retailers, including Toys R Us. In response, Toys R Us allegedly pressured toy manufacturers to deny popular toys to warehouse clubs or to sell to them only on less favorable terms. The FTC issued an administrative order to stop these practices, and the matter is now on appeal in the U.S. Court of Appeals for the Seventh Circuit.⁽²⁸⁾

Protecting Competition and Consumers in Electric Power Deregulation. Deregulation is transforming the huge electric power industry, which has annual sales of over \$200 billion. The FTC is working to ensure that consumers receive the benefits of deregulation and that formerly regulated monopolists do not use their market power to impede competition. The FTC has provided testimony and other comments to Congress on issues of electric power deregulation. FTC staff has participated in various industry forums and has provided comments to the Federal Energy Regulatory Commission and 13 state governments to assist in the transition to a competitive market. The FTC also conducted a workshop for state utility regulators and Attorneys General on market power and consumer protection issues that states are likely to face as they deregulate and restructure the electricity industry. The FTC continues to emphasize the need to (1) adopt policies that lessen the market power held by the formerly regulated monopolies to promote competition, (2) ensure that consumers receive accurate and non-deceptive information to make informed decisions among the choices that the competitive market should offer; and (3) ensure fair and non-deceptive billing practices.⁽²⁹⁾

Protecting Consumers from Deceptive Telecommunications Practices. The FTC is addressing consumer protection issues in another deregulating industry -- telecommunications. While deregulation can bring consumers substantial benefits in the form of greater choice in products, services, and prices, it also has brought new opportunities for fraud and deception. Among the most serious fraudulent practice is "cramming" - placing charges for unauthorized purchases of goods and services on consumers' telephone bills. In 1998, cramming ranked second among complaints received by the FTC's Consumer Response Center, with almost 10,000 complaints.⁽³⁰⁾ Along with State Attorneys General, the FTC has filed law enforcement actions against crammers, seeking injunctions and restitution for injured consumers.⁽³¹⁾ The FTC also amended its Pay-Per-Call Rule⁽³²⁾ to require, among other things, express verifiable authorization for charges placed on consumer telephone bills.⁽³³⁾ Finally, the FTC commented on the Federal Communications Commission's "Truth-in-Billing" initiative, designed to make it difficult to

cram unauthorized charges on to consumers' phone bills by making the bills easier to read and understand.⁽³⁴⁾

The FTC also has worked closely with the FCC on "dial-around" long distance telephone services, another innovation of the deregulated environment. Dial-around allows consumers to bypass their pre-subscribed long-distance provider by using access codes -- a "10-10-XXX" number.⁽³⁵⁾ Through national advertising, long-distance carriers, both large and small, heavily promote dial-around services, which now gross approximately \$3 billion per year.⁽³⁶⁾ Nearly all of this advertising focuses on price claims, and, unfortunately, much of it appears deceptive. Early in fiscal year 2000, the FTC and the FCC jointly sponsored a public workshop to focus attention on deceptive advertising and to examine how both agencies might provide additional guidance to industry on advertising these services non-deceptively.

Safeguarding Consumer Privacy as Financial Markets Restructure. Financial markets also will be restructuring in the wake of the Gramm-Leach-Bliley Act,⁽³⁷⁾ which dismantled Depression-era legal walls between the banking, insurance, and securities industries. Despite the promise of more efficient financial markets, the new law raises concerns about the privacy of personal financial information, given the technology available to collect and distribute this information. The Act directs the FTC and the bank regulatory agencies to develop rules to implement privacy protections, including requiring notice of an entity's privacy policies and providing an opportunity, in certain circumstances, to restrict the sharing of non-public personal information. Release of the FTC's rule is scheduled for May 2000, just six months after the President signed the Act.

Providing Expertise on the Evolving Pharmaceutical Market. As part of its program to study evolving industries, the FTC's Bureau of Economics completed a detailed report on the rapidly changing pharmaceutical industry,⁽³⁸⁾ an industry of increasing importance to the nation's aging consumers. Developments in information technology, new state drug substitution laws, federal legislation, and the emergence of market institutions such as health maintenance organizations and pharmacy benefit management firms all have contributed to a rapid pace of change in this market. The industry also has undergone significant structural changes that include growth of the generic drug segment and substantial horizontal and vertical consolidation. The report attempts to provide a more complete understanding of the competitive dynamics of this market and discusses possible anticompetitive concerns and procompetitive explanations for new pricing strategies and other evolving industry practices.

In preparing the report, FTC staff drew upon its experience in reviewing mergers in the pharmaceutical and health care industries. These industries have been in the midst of a merger wave in the last several years, and during that time, the FTC has brought 11 enforcement actions challenging several of these mergers.⁽³⁹⁾ Antitrust scrutiny is vital because these transactions could have a substantial and immediate impact on large numbers of consumers, possibly threatening higher prices and slowing innovation of new life-enhancing products.

Investigating Mergers in a Globalized Economy. Globalization means that increasing numbers of the FTC's merger investigations involve companies with international ties and require cooperation with foreign competition authorities to resolve concerns. For example, in the \$80 billion oil mega-merger of Exxon Corporation and Mobil Corporation, the FTC closely coordinated its investigation, not only with the Attorneys General of several states, but also with the European Commission. Actions brought by United Kingdom and German authorities closely track the proposed FTC order. Upon completion of its review, the FTC's order would require the largest retail divestiture in FTC history -- the sale or assignment of 2,431 Exxon and Mobil gas stations in the Northeast and Mid-Atlantic, as well as in California, Texas and Guam. In addition, certain assets would be sold, including an Exxon refinery in California, terminals, and a pipeline.⁽⁴⁰⁾

Similarly, the FTC coordinated with foreign authorities in the investigation and eventual settlement of an international pharmaceutical merger, of Zeneca Group PLC, based in the United Kingdom, and Astra AB, based in Sweden. The parties agreed to divest rights to a long-acting local anesthetic to a third party to ensure continued competition in this important drug market. The European Commission and FTC staff shared their respective analyses of the case, and the parties facilitated the process by waiving confidentiality rights to permit full communication among FTC and EC staff and the parties.⁽⁴¹⁾

Formulating Guidelines on Competitor Collaborations. Globalization and new technologies are driving companies toward a variety of complex collaborations enabling them to expand into foreign markets, fund innovation, or lower costs. The increasing use and variety of these collaborations among competitors have led to requests for greater clarity regarding their treatment under the antitrust laws. In response, the FTC and the Department of Justice have issued, in draft, the first set of joint guidelines that comprehensively address horizontal agreements among competitors.⁽⁴²⁾ The draft guidelines seek to enhance understanding of the possible antitrust implications of a wide range of joint ventures, strategic alliances, and other collaborations among competitors, thus encouraging procompetitive collaboration and deterring collaboration likely to harm competition and consumers.

3. Promoting Efficient Enforcement. The FTC attempts to leverage resources to obtain the greatest efficiency by, among other things, working cooperatively with other law enforcement agencies, at both the state and federal levels. The FTC also attempts to promote direct and immediate benefits for consumers by seeking disgorgement or restitution remedies in appropriate cases to put money back in their pockets. Finally, the FTC seeks to minimize burden on business throughout its enforcement and compliance programs.

Coordinating "Sweeps" to Fight Consumer Fraud. An important innovation in the fight against consumer fraud is the "sweep" -- a cooperative and concentrated fraud crackdown by federal, state, and private groups. These efforts have led to multiple law enforcement actions targeting a certain type of fraud, often with extensive press coverage, and are more likely to reduce fraud than isolated actions by the various state and federal groups. Since 1995, the FTC has partnered with state and federal agencies and formed alliances to lead 49 sweeps culminating in 1,321 law enforcement actions on a variety of scams. These actions include

306 brought by the FTC itself, which have prevented an estimated \$500 million in consumer injury.⁽⁴³⁾ The FTC also partners with private sector organizations in education campaigns on how consumers can avoid being defrauded.

Redressing Anticompetitive Price Increases. The FTC won a preliminary motion in its effort to give money back to millions of American consumers who were faced with sudden and huge price increases when they filled prescriptions for two generic drugs for treating anxiety. In late 1998, the FTC, along with 10 State Attorneys General, filed charges against Mylan Laboratories, Inc., the nation's second largest generic drug manufacturer, and others, alleging that the company had anticompetitively eliminated much of its competition by tying up the key active ingredients for the two drugs.⁽⁴⁴⁾ The complaint charges that Mylan's actions allowed it to raise prices of two drugs: for one drug, the price increase was 25 times the initial level; for the other, more than 30 times. In total, the price increases allegedly cost American consumers over \$120 million. Trial is set for fall 2000.

Saving Homes and Stopping Abusive Lending Practices. The dramatic growth of subprime lending - lending to higher-risk borrowers - has been accompanied by reports of abusive lending practices. The abusive practices often involve lower-income elderly and minority borrowers and threaten their biggest assets - their homes. The FTC has made abusive lending practices an enforcement priority, and last July announced settlements⁽⁴⁵⁾ with seven subprime mortgage lenders from across the country charged with violating the Home Ownership and Equity Protection Act (HOEPA)⁽⁴⁶⁾. The FTC alleged these lenders made loans without regard to the consumers' ability to repay the loans, included prohibited terms in the loan agreements, increased interest rates after default, or imposed illegal prepayment penalties or balloon payments. The settlements included injunctive and other relief and consumer redress totaling \$572,500 with injured consumers receiving an average of \$2,100 each.

The FTC also is prosecuting an action against Capital City Mortgage Corporation,⁽⁴⁷⁾ a Washington D.C. area mortgage lender. Filed in 1998, the complaint alleges that the defendants made high-interest loans (up to 24%), many to elderly and minority home owners living on fixed or low incomes, without fully disclosing their terms. The loans were often interest-only balloon loans, with the full principal amount due at the end, allegedly leading to foreclosure and loss of homes when poor borrowers could not raise tens of thousands of dollars quickly to make these unexpected payments. The action seeks to obtain redress for hundreds of victimized homeowners.

Reducing Burden on Business. While protecting consumer interests, the FTC has taken steps to minimize burden on business in the following ways:

- Maintained a comprehensive regulatory review program that covers all FTC rules and industry guides since 1992. The program provides for review of every rule and guide at least every ten years.
- To date, the FTC has repealed roughly half of the guides and discretionary trade

regulation rules in effect in 1992 (21 of 40 guides and 12 of 25 rules).

- The FTC has revised other rules to simplify disclosure requirements, provide more flexible compliance options, or promote international harmonization to facilitate trade. For example, the FTC revised its Rule on Care Labeling of Textile Wearing Apparel to permit the use of symbols in place of words, relieving manufacturers and distributors of the need to translate care instructions into multiple languages for trade purposes among NAFTA counties.
- Rules currently under review include those concerning the funeral industry,⁽⁴⁸⁾ franchise and business opportunity ventures, pay-per-call services,⁽⁴⁹⁾ amplifiers used in home entertainment products,⁽⁵⁰⁾ home insulation products,⁽⁵¹⁾ and textile wearing apparel.⁽⁵²⁾
- Maintained an extensive program of business education and outreach to achieve compliance without the burden of formal legal action. The efforts have included public workshops, online and hard copy business guides, general and individual compliance advice, "Surf Day" follow-up alerts, trade association and trade press contacts, speeches and other presentations.
- Streamlined its administrative trial procedures, establishing a one-year start-to-finish procedure for certain matters.⁽⁵³⁾
- Sunsetting over 10,000 administrative orders, with automatic sunsetting of all such orders more than 20 years old.
- Reduced the average time to grant "early termination" on H-S-R mergers to less than 20 days, even though the statute allows a 30-day review period.

Mr. Chairman, we appreciate the opportunity to provide our views on the Commission's reauthorization and to report on our accomplishments on behalf of American businesses and consumers. We would be pleased to respond to any questions you or the other Members may have.

Endnotes:

1. 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 sector of the economy. Certain entities, such as depository institutions and common carriers, as well as the business of insurance, are wholly or partially exempt from FTC jurisdiction. In addition to the FTC Act, the FTC has enforcement responsibilities under more than 40 additional statutes and more than 30 rules governing specific industries and practices.

2. Nielson Media Research and NetRatings Inc., *The Nielson/Netratings Reporter* (visited Jan. 13, 1999) <http://www.nielson-netratings.com/press_releases/pr_000113.htm>.

3. Forrester Research Inc., *Online Retail to Reach \$184 Billion by 2004 as Post-Web Retail Era Unfolds*

(visited Sept. 28, 1999) <<http://www.forrester.com/ER/Press/Release/0,1769,164,FF.html>>.

4. See Attachment 1. Internet-related initiatives include anti-fraud law enforcement, consumer and business education, online privacy initiatives, and the development of international consumer protection guidelines for commerce.

5. Sandra Sugawara, *Merger Wave Accelerated in '99; Economy, Internet Driving Acquisitions*, Wash. Post, Dec. 31, 1999 at E1.

6. See Attachment 2.

7. The demands from the merger wave and the requirements and statutory deadlines under Hart-Scott-Rodino have forced a diversion of resources from the FTC's nonmerger responsibilities, such as potentially anticompetitive agreements in health care and other industries. While in 1991, the FTC spent 56 percent of competition resources on merger matters and 44 percent on nonmerger matters; in 1999, that ratio changed to 67 percent for mergers and only 33 percent for nonmergers. The nonmerger cases that have been opened in the past several years are proceeding more slowly because of the lack of resources.

8. S. 254, 106th Cong. (1999). The specific provision of the proposed legislation, Amendment No. 329, passed by a vote of 98-0.

9. 18 U.S.C. § 1028.

10. *FTC v. Carlos Periera d/b/a atariz.com*, No. 99-1367-A (E.D. Va., Sept. 14, 1999).

11. One recent poll reveals that 80 million American adults went online for health information during the previous 12 months. Harris Poll (Aug. 1999).

12. *Magnetic Therapeutic Technologies, Inc.*, C-3897 (FTC Sept. 7, 1999); *Pain Stops Here!, Inc.*, C-3898 (FTC Sept. 7, 1999); *Melinda R. Sneed and John L. Sneed d/b/a Arthritis Pain Care Center*, C-3896 (FTC Sept. 7, 1999); *Body Systems Technology, Inc.*, C-3895 (FTC Sept. 7, 1999).

13. *Fair Allocation System, Inc.*, C-3832 (FTC Oct. 30, 1998).

14. In 1998, *Consumer Sentinel* received the Interagency Resources Management Conference Award as an exceptional initiative to improve government service.

15. In 1999, www.consumer.gov received the Vice President's Hammer Award, which recognized the site's innovative approach to providing online links to the websites of federal agencies.

16. *Self-Regulation and Privacy Online: A Report to Congress* (FTC July 1999) <<http://www.ftc.gov/os/1999/9907/index.htm#13>>; *Privacy Online: A Report to Congress* (FTC June 1998) <<http://www.ftc.gov/reports/privacy3/toc.htm>>; *Individual Reference Services: A Report to Congress* (FTC Dec. 1997) <<http://www.ftc.gov/bcp/privacy/wkshp97/irsdoc1.htm>>.

17. -

18. 15 U.S.C. § 6501. The Final Rule is available at <<http://www.ftc.gov/opa/1999/9910/childfinal>>.

19. 16 C.F.R. Part 312.

20. *Liberty Financial Companies, Inc.*, No. C-3891 (FTC Aug. 12, 1999).
21. *FTC v. Reverse Auction.com, Inc.*, No. 00-0032 (D.D.C. Jan. 6, 2000).
22. '
23. "" ' "" '
24. 5 U.S.C. App. § 9(c).
25. Attachment 3 lists the international working groups on electronic commerce to which the FTC belongs.
26. "How Big is Too Big? The Role of the FTC in Supermarket Industry Mergers," 2 *Grocery Headquarters* 24 (Feb. 1, 1999).
27. *Red Apple/Sloan*, C-9266 (FTC Mar. 29, 1995); *Schnucks/National*, C-3584 (FTC June 8, 1995); *Schwegman/National* 119FTC 783 (July 5, 1995); *Stop & Shop/Purity Supreme*, C-3649 (FTC April 2, 1996); *Ahold/Stop & Shop*, C-3687 (FTC July 7, 1996); *Jitney Jungle/Delchamps* C-3784 (FTC Sept. 23, 1998); *Albertson's/Buttrey*, C-3838 (FTC Dec. 8, 1998); *Ahold/Giant*, C-3861 (FTC Oct. 20, 1998); *Kroger/Fred Meyer*, C- 3917 (FTC June 7, 1999); *Albertson's/American Stores*, No.981-0339 (June 30, 1999); *Shaw's/Star*, No. 991-0075 (FTC July 6, 1999); *Kroger/John C. Groub*, C-3905 (Nov. 8, 1999).
28. *Toys R Us, Inc.*, No. 9278 (FTC 1998) *appeal docketed*, No. 98-4107 (7th Cir. Apr. 16, 1999).
29. The FTC also has reviewed mergers that affect the delivery of electricity to consumers and has taken action when concerned about the merger's impact on competition and prices. *See PacifiCorp*, No. 9710091 (FTC consent agreement, Feb. 18, 1998) (transaction subsequently abandoned); *Dominion/Consolidated Natural Gas Co.* C-3901 (FTC Dec. 9, 1999).
30. *Telecommunications - State and Federal Actions to Curb Slamming and Cramming*, (GAO/RCED-99-193, July 1999) .
31. *FTC v. Interactive Audiotext Services, Inc.*, No. 98-3049 CBM (C.D. Cal., Apr. 22, 1999); *FTC v. International Telemedia Associates, Inc.* No. 1-98-CV-1935 (N.D. Ga., July 10, 1998); *FTC v. Hold Billing Services, Ltd.*, No. SA-98-CA-0629-FB (W.D. Tex., July 15, 1998). See also *FTC v. American TelNet* No. 99-1597-CIV-King (S.D. Fla. June 14, 1999); *FTC v. Communication Concepts & Investments, Inc.*, No. 98-7450 (S.D. Fla., Dec. 22, 1998).
32. 16 C.F.R. Part 30 (1999).
33. 63 Fed. Reg. 58,524 (Oct. 30, 1998).
34. Truth-in-Billing and Billing Format First Report and Order and Further Notice of Proposed Rulemaking, 63 Fed. Reg. 55,077 (Oct. 14, 1998).
35. Every long-distance carrier has an access or "10-10" code that allows callers to access that carrier's network, even if callers have previously chosen a different carrier to be their regular long-distance company.
36. *10-10 Long Distance Calling*, Consumer Reports, May 1999, at 64.
37. Pub. L. No. 106-102, 113 Stat. 1338 (1999)

38. Roy Levy, FTC Bureau of Economics Staff Report, *The Pharmaceutical Industry: A Discussion of Competitive and Antitrust Issues in an Environment of Change* (March 1999).
39. *Hoechst AG*, 120 F.T.C. 1010 (Dec. 5, 1995); *Glaxo PLC*, 119 F.T.C. 815 (June 14, 1995); *Upjohn Co.*, 121 F.T.C. 44 (Feb. 8, 1996); *Johnson & Johnson*, 121 F.T.C. 149 (Mar. 16, 1996); *Ciba-Geigy Ltd.*, 123 F.T.C. 842 (Mar. 24, 1997); *Baxter Int'l, Inc.*, 123 F.T.C. 904 (Mar. 24, 1997); *American Home Products Corporation*, 123 F.T.C. 1279 (May 16, 1997); *Roche Holding Ltd.*, C-3809 (May 22, 1998); *Zeneca Group PLC*, C-3880 (June 7, 1999); *Medtronic, Inc.*, C-3879 (June 10, 1999).
40. *Exxon Corporation*, No. 9910077 (proposed consent order, Nov. 30, 1999).
41. *Zeneca Group PLC*, C-3880 (FTC June 7, 1999).
42. 64 Fed. Reg. 54,483 (1999).
43. Attachment 4 provides the list of sweeps the FTC has participated in since 1995.
44. *FTC v. Mylan Laboratories, Inc.*, CV-98-3115 (D.D.C. 1999) (mem).
45. *FTC v. Barry Cooper Properties*, No. 99-07782 WDK (Ex)(C.D. Cal. July 30, 1999); *FTC v. Capitol Mortgage Corp.*, No. 2-99-CV-580G (D. Utah July 28, 1999); *FTC v. CLS Financial Services, Inc.*, No. C-99-1215 (W.D. Wash. July 30, 1999); *FTC v. Granite Mortgage LLC*, No. 99-289 (E.D. Ky. July 28, 1999); *FTC v. Interstate Resource Corp.*, No. 99-CIV-5988 (S.D.N.Y. July 30, 1999); *FTC v. LAP Financial Services, Inc.*, No. 3:99-CV-496-H (W.D. Ky. July 28, 1999); *FTC v. Wasatch Credit Corp.*, No. 2-99-CV-579 (D. Utah July 28, 1999).
46. 15 U.S.C. § 1639.
47. *FTC v. Capital City Mortgage, Inc.*, No. 1:98 CV 00237 (D.D.C., Jan. 29, 1998).
48. *See* Funeral Industry Practices Rule, 16 C.F.R. Part 453 (1999), Request for Comments, 64 Fed. Reg. 24,250 (May 5, 1999).
49. *See* Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F.R. Part 308 (1999), Notice of Proposed Rulemaking, 63 Fed. Reg. 58,524 (Oct. 30, 1998).
50. *See* Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 C.F.R. Part 432 (1999), Advance Notice of Proposed Rulemaking, 63 Fed. Reg. 37,237; *see also* Notice of Proposed Rulemaking, 64 Fed. Reg. 38,610 (July 19, 1999).
51. *See* Labeling and Advertising of Home Insulation, 16 C.F.R. Part 460 (1999), Advance Notice of Proposed Rulemaking, 64 Fed. Reg. 48,025 (Sept. 1, 1999).
52. *See* Care Labeling of Textile Wearing Apparel and Certain Piece Goods As Amended, 16 C.F.R. Part 423 (1999), Advance Notice of Proposed Rulemaking, 60 Fed. Reg. 67,102 (Dec. 28, 1995); *see also* Notice of Proposed Rulemaking, 64 Fed. Reg. 38,610 (July 19, 1999).
53. 16 C.F.R. § 3.11A (1999).