Federal Trade Commission

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FEDERAL TRADE COMMISSION

Before The

Mid-America Committee

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The views expressed are those of the Chairman and do not necessarily reflect those of the Federal Trade Commission or the other Commissioners.

It is a pleasure to have an opportunity to discuss recent activities of the Federal Trade Commission. I like to think of the FTC as a consumer protection agency - even though we are an antitrust enforcer as well. Our mandate traditionally has been to safeguard the American consumer from unfair and deceptive business practices. We also guard against unfair methods of competition that rob consumers of an unfettered freedom of choice in the marketplace. Our work is based on the belief that free markets generally work and our law enforcement efforts are aimed at ensuring they can. Recently, our faith in free markets has become an export commodity. Several Eastern European countries have sought United States assistance in establishing their newly emerging economies. They are seeking guidance on appropriate mechanisms for allowing a free market economy to gain a foothold. Together with our friends in the Justice Department's Antitrust Division, we have already begun the important work of technical assistance to these westward facing Eastern nations.

So, I want to offer you this afternoon a global report, beginning here at home, on what the FTC does to benefit consumers, industry, and competition. Namely, how do we establish a level playing field to assure ourselves that the free market works as well as possible to serve the American public? How do we achieve our two general objectives of keeping the nation's marketplace honest and competitive? Finally, how can our experience in competition in the United States serve the

emerging new economies in eastern Europe? Let me note that these remarks reflect my own views and not necessarily those of other Commissioners or the Commission as a whole.

The Commission's size is small in comparison to the scope of its mission. We are a workforce of 925 people with a budget of $75 million. We have responsibilities under 29 separate statutes and authority to act in nearly every sector of the economy.[1] I believe that in the enforcement of these statutes, the Commission has made significant contributions to the well-being of consumers by taking actions that have a sound legal and economic basis and by ensuring that the remedies we obtain are custom-designed to resolve the problems.

A. Competition Program

Let me turn first to our competition program for some examples of those contributions. In fact, our competition program's fundamental mandate is to provide consumer protection. It may sound curious to talk about consumer protection in the antitrust area. Antitrust work often can seem abstract, so I want to discuss not merely the theory of our cases, but some of the remedies we have obtained and how those benefit consumers. Our goal is to preserve competition to provide the lowest prices and highest quality for American consumers.

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[1] The Commission's jurisdiction is limited in areas relating to banks, communications common carriers, airline carriers, and the business of insurance.

The Commission's merger enforcement program has produced immediate and tangible results. Last year, despite nearly a 25% decrease in Hart-Scott-Rodino filings, the Commission investigated 55 proposed transactions, compared to 35 the previous year. We took enforcement actions in 20 cases, a 50% increase from the previous year. So far this year, the Commission has taken 8 merger enforcement actions. Overall, the Commission has successfully obtained relief in 26 of the 28 merger actions it has pursued.

In late 1989, the Commission obtained a preliminary injunction against the proposed acquisition of Optic-Electric Corp. ("OEC") by Imo Industries.[2] The companies were two leading manufacturers of image intensifier tubes, a major component in defense-related night vision devices, such as weapon sights and tank driver's viewers. The Department of Defense, the major customer for these tubes, had forecast that if the acquisition proceeded, it would pay about $1,450 per tube in its upcoming three-year contract. After the parties abandoned the transaction, we learned that Imo had won the DOD contract with a bid price of $950 per tube. Thus, our intervention may have saved the Department of Defense close to $22.5 million.

Our ability to protect consumers from anticompetitive mergers depends largely on our ability to investigate and, if warranted, challenge them before assets have been scrambled.

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[2] FTC v. Imo Industries, Inc. and Optic-Electric Corporation, Civ. Act. No. 89-2955 (D.D.C. Nov. 22, 1989).

Thus, we insist on compliance with the Hart-Scott-Rodino premerger notification program, which generally requires large companies to make a premerger filing with both the Commission and Department of Justice when acquiring over $15 million of assets or securities of another company. Failure to comply with this statutory obligation can subject a party to civil penalties up to $10,000 for each day it is in violation. This year alone, we have taken action in 5 cases where companies violated the premerger notification rules and since 1990 have obtained consent decrees with assessed civil penalties of $3.9 million.

While in the merger area, we are usually concerned with preventing unrealized consumer harm associated with post merger collusion, the Commission's non-merger antitrust actions typically challenge existing restraints that manifest measurable consumer harm. Recent cases involved so-called tying offenses and resale price maintenance, otherwise known as vertical price-fixing.

On the non-merger side, our efforts focus on the actions of individual companies or groups of competitors to fix prices or otherwise inhibit competition. The bulk of the Commission's non-merger antitrust activity involves illegal agreements among competitors. For example, in March 1990 the Commission issued administrative complaints against several New York pharmaceutical societies that were allegedly engaging in an illegal group

boycott of a state insurance plan.[3] The complaints alleged that these actions injured consumers by reducing price competition and coercing the state into raising the prices paid to pharmacies. The Bureau of Competition estimated that this scheme cost the State of New York approximately $7 million over an eighteen month period. The consent decrees prohibit such conduct in the future.

Last year, the Commission issued a complaint against a physician who allegedly required consumers to purchase one service in order to obtain another service that only he provided.[4] Consumers who needed out-patient kidney dialysis services had no practicable alternative to using the doctor's facilities. His price for those out-patient services, however, was limited by Medicare reimbursement rates. He therefore allegedly circumvented Medicare's price regulation by requiring out-patients to use his in-patient services as well, for which he charged a higher than competitive price.

The Supreme Court has held that it is illegal for a manufacturer and distributor to agree on the price a distributor charges for its product. The Commission has recently entered into two consent orders barring price-fixing agreements -- the

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[3] Pharmaceutical Society of the State of New York, Inc. ("PSSNY"), Long Island Pharmaceutical Society, Inc., the Pharmaceutical Society of Orange County, Inc., and Westchester County Pharmaceutical Society Inc., File Nos. C-3292-3295 (July 9, 1990); Empire State Pharmaceutical Society, Inc., D. 9238 (Feb. 5, 1991); Capital Area Pharmaceutical Society and Alan Kadish, the former President of PSSNY, D. 9239 (Feb. 7, 1991).

[4] Gerald S. Friedman, M.D., File No. C-3290 (June 18, 1990).

first such orders in about ten years. Last month, the Commission accepted a consent agreement for public comment with Nintendo, the nation's largest manufacturer of video games,[5] settling allegations that Nintendo fixed the prices at which dealers advertise and sell Nintendo home video-game hardware to consumers. The consent agreement requires Nintendo to refrain from fixing the price at which any dealer advertises or sells any Nintendo products to consumers. This case also represents a milestone in federal-state cooperation. Led by the States of Maryland and New York, a total of 39 states to date accepted a consent requiring the same prospective relief as required by the Commission order. Thus, Nintendo is subject to the same rules nationwide, rather than having separate obligations in each state, and consumers and dealers are afforded the same rights. One of my chief goals has been to foster cooperation between state and federal officials so that businesses and consumers could receive uniform remedies nationwide. I am happy to see progress in this area.

B. Consumer Protection Mission

Let me shift now to a discussion of our Bureau of Consumer Protection's contributions. The Commission's consumer protection mandate is the broadest in the federal arena, and our goal is to ensure that consumers are able to make free and informed purchase

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[5] Nintendo, File No. 901-0028 (accepted for public comment Apr. 10, 1991). See also Kreepy Krauly, File No. 901-0089 (accepted for public comment 1/17/91).

decisions, based on truthful, nondeceptive information. In the health area, for example, these efforts have included cases against diet scams, unsubstantiated "low-cholesterol" claims, a seller of a fortified wine cooler, and allegedly false AIDS treatments.

In the area of telemarketing, the Commission is combatting telemarketing fraud including sophisticated investment frauds in such big-ticket items as rare coins, art, gemstones, and gold mine interests. Almost all these scams share promises that the investment is low risk, will yield a high return, and must be acted upon quickly. The Commission's telemarketing efforts also involve sellers of water purifiers, vacation packages, and the resale of timeshare or recreational property, just to name a few. Telemarketers have a gift for selecting items of timely significance and promoting them vigorously.

The Commission brings these fraud cases in federal court, where we typically seek a Temporary Restraining Order and freeze the proposed defendants' assets, in order to provide redress to consumers at the conclusion of the case. Since 1983, the Commission has stopped the fraudulent telemarketing activities of companies having sales of over $870 million.

Just yesterday, the Commission announced one of the largest settlements in its history. Under the terms of the agreements, $47 million will be distributed to 8,230 consumers. The settlements stem from a complaint alleging that respondents engaged in false and deceptive sales practices in connection with

a federal oil and gas lottery. The complaint alleged that consumers were falsely promised that they would win a valuable lease based on the defendants' expert information and sophisticated computer analysis. In this case, the Commission and the court-appointed receiver eventually drew in numerous parties that had aided and abetted the fraud, such as the accountants, the lawyers, and the insurance companies. The announcement of this settlement sends an important message to those in the financial, legal and accounting communities who may be tempted by the profits of knowingly aiding and abetting a fraud.

A relatively new form of telemarketing is the use of 900 telephone numbers. Although 900 number services can provide valuable information and services, such as weather, sports, and opinion polls, there has been a proliferation of unscrupulous 900 number providers. Although the Commission has no jurisdiction over common carriers, it has brought several actions against some of the information providers.

The targets of the Commission 900 number enforcement efforts to date have involved information providers who fail to disclose in advertising that the call costs money or the full cost of the call. In addition, the Commission actions have involved situations where the consumer is induced to make the call through false promises. In the 900 number area the scam artist makes his money not by getting the consumer to provide their credit card number, but by merely inducing the consumer to make the call.

The Commission recently announced its first settlement in this area. In FTC v. Transworld Courier Service,[6] the defendants ran help wanted classified advertisements for construction workers. Neither the newspaper advertisement nor the tape-recorded message disclosed that there was a charge of $15 to $18 for calling the 900 number. In addition, the complaint alleged that the defendants routinely failed to provide any job information to those consumers who called.

The settlement requires the defendants to pay $1 million in consumer redress. The settlement also requires the defendants to include a complete cost disclosure in future 900 number ads and to include a "preamble" at the beginning of each toll call telling callers they can hang up after hearing the preamble and thereby avoid the charge.

The FTC is also a principal player in enforcing numerous federal credit statutes. These statutes regulate millions of sellers and over $700 billion in consumer installment and other loans. Examples of the statutes the Commission enforces are the Truth In Lending Act, the Equal Credit Opportunity Act, the Fair Debt Collection Act, and the Fair Credit Reporting Act. The Commission also enforces a number of Trade Regulation Rules such as the Mail Order Rule, the Funeral Rule and the Used Car Rule.

Our telemarketing efforts illustrate that the Commission needs to keep pace with a rapidly changing marketplace, where

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[6] FTC v. Transworld Courier Service, No. 1:90-CV-1635-JOF (N.D. Ga. filed July 26, 1990).

consumers may be overwhelmed by unfamiliar or difficult to understand marketing claims. A case in point is the recent proliferation of environmental advertising, or "green" claims. Surveys indicate that consumers care greatly about environmentally superior products, and are willing to pay more for them. On the other hand, only a very small percentage of consumers consider themselves knowledgeable about the environment. This consumer demand presents enormous incentives for innovation in environmental technology -- less wasteful packaging, new material, "ozone safe" products, and so forth. Not surprisingly, manufacturers have been quick to market products bearing "environmentally safe," "degradable," and other environmental claims to address this demand. However, there have been exaggerated and unsubstantiated claims as well, which can only diminish consumer confidence in such "green claims," reducing the incentive of producers to innovate.

The Commission is conducting over 20 active investigations in the environmental-claims area, and these efforts are now bearing fruit in the form of specific settlements. Just last week, the Commission accepted for public comment a settlement with the Zipatone[7] company, which sells adhesive spray cement. The complaint alleged that Zipatone falsely claimed that its product was safe for the environment and failed to disclose that

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[7] Zipatone, Inc., File No. 902-3366. (Accepted for public comment Apr. 22, 1991.)

the ingredient being propelled was itself a Class I ozone depleter as defined in the Amended Clean Air Act.

The Commission has also agreed to participate in a joint task force with the Environmental Protection Agency and the U.S. Office of Consumer Affairs and we will work closely with the states to discuss the federal response to deceptive environmental marketing. In addition, the Commission also has announced it will hold public hearings on whether it should issue guides in the area of environmental claims. All of these efforts, I hope, will provide some guidance to the public on these difficult questions.

C. Assistance to Eastern Europe

The Commission's efforts to meet the challenge to domestic competition and consumer welfare would normally be a full time job, but recent world events have presented us with a remarkable new opportunity to export our thinking and experience. Over the past year the Federal Trade Commission and the Department of Justice have had substantial contact with the newly emerging democracies of Central and Eastern Europe. Reform of competition policy and enforcement of competition and consumer law are crucial aspects of the transition to free market economies. Reform in these areas will not only benefit the citizens of the region, but will enhance the competitiveness of American industry by helping to open new export markets and investment opportunities. It is my opinion that policies and structures

which support the creation and maintenance of free competition would usefully be put in place even before full trade liberalization.

Throughout Central and Eastern Europe there is concern that private monopolies will replace public monopolies. Only competition from other domestic or foreign firms can limit price increases and defeat the persistent call for price controls. The technical assistance we and the Department of Justice have given to the governments of several Central and Eastern European countries to date has concerned the development and implementation of competition law and policy and the establishment of well-functioning institutional and enforcement frameworks.

After a trip by Assistant Attorney General James Rill and myself to Poland, Hungary and Czechoslovakia last May, we received several requests for technical assistance. As a result, in September, our agencies received funding to send to Poland and Czechoslovakia a joint technical assistance team. In Poland, the team of lawyers, economists and administrative personnel talked with officials of the new Polish Antimonopoly Office, other government agencies, and business leaders. We discussed various economic, legal and management questions relevant to the Poles, including privatization and demonopolization.

As many of you know, the Poles have taken strong measures to move toward a market economy. Their antitrust statute is a strong one, the Polish currency is now fully convertible, and the

difficult and complex job of privatization is underway. The Antimonopoly Office, which began operation in April, 1990, and is staffed by extremely competent people committed to creating competition with a focus on consumer welfare rather than on protecting competitors. In addition to a more traditional antitrust law enforcement mission, the office advises the new privatization ministry and the agency in charge of demonopolization.

From Poland, our team travelled to Czechoslovakia, where talks focused on discussing the drafting of a competition law, the pace and scope of putting economic policies and reforms into effect, and the privatization and restructuring of state enterprises. Private enterprises have now been legalized in Czechoslovakia and foreigners may also acquire property. The process of privatization has already begun with auctions of small enterprises, such as restaurants and shops. Since it had been recently decided that the republics will also enforce the competition law, the team met with officials from both the Czech and Slovak Republics. Upon returning home, staff submitted informal comments on draft competition and price regulation legislation. Since the time of the team's visit, both pieces of legislation have been enacted.

We have also been pleased to be involved with recent efforts that Bulgaria is making in this area. High-level Bulgarian officials, academics, and businessmen visited the FTC for a meeting with the Commissioners and FTC and DOJ staff in late

November to discuss competition issues. Also in November, 1990, the two agencies provided the Bulgarians with joint written comments on a draft Bulgarian competition law. The current draft is being debated in legislature. Most recently, in March, an FTC/DOJ mission to Bulgaria was funded by the Agency for International Development to assist appropriate Bulgarian government authorities in further review of the draft competition law and discussions on demonopolization and privatization.

At the request of Deputy Prime Minister Ludjev, DOJ and FTC staff have submitted comments regarding the competitive considerations involved in demonopolization and privatization. Among other things, it was stressed that joint ventures between Bulgarian enterprises and foreign enterprises engaged in the same industry may be a useful method for introducing capital and new technology into Bulgaria. While it is important in rare cases to be careful that such joint ventures do not have the effect of preventing foreign competition, United States competition laws encourage the creation of joint ventures that create new products or expand the output of existing ones.

Finally, on July 18, 1990, Secretary of State Baker presented to the Soviets several technical assistance programs, including an offer from the Department of Justice and the Federal Trade Commission to hold a seminar on competition policy issues for all union as well as regional antimonopoly officials. We have proposed that this seminar be held in Washington this summer.

The governments of Central and Eastern Europe with whom we have had contact appear to recognize the need to develop strong laws and institutions in the area of competition law enforcement, but they are just beginning the process. They are hampered in their efforts by lack of experience and trained personnel. We hope to be able to further assist them in this regard.

Conclusion

As my remarks have outlined, the Commission is engaged in a mission that is at the same time both traditional and somewhat revolutionary - in the best sense of that term. We are vigorously pursuing a pro consumer agenda in our enforcement role as a domestic antitrust and consumer protection agency. We have also accepted the invitation of the emerging nations of Central and Eastern Europe to share the experiences we have accumulated since the FTC was launched in 1915 by the President who pledged to make the world "safe for democracy". If we succeed in our efforts, the benefits of open markets and freedom of consumer choice, so long enjoyed in our country in such rich measure, will also inure to the benefit of those who have so long and patiently awaited the coming of that day.