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**Contribution
by
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The Benefits of Competition Policy for Consumers

Submission by the United States

Introduction

The United States Federal Trade Commission and the Antitrust Division of the Department of Justice (“the U.S. antitrust agencies”) are responsible for maintaining competition and thereby safeguarding the interests of consumers. Both agencies enforce antitrust laws regarding mergers and anticompetitive conduct that harm consumers and use their competition expertise to engage in competition advocacy supporting legislation and regulatory policies favoring competition and consumer welfare.¹ In addition, the Federal Trade Commission enforces consumer protection laws that seek to ensure that the benefits of competition are not undermined by unfair and deceptive practices.

Whether through enforcement or advocacy, these efforts are intended to advance/improve consumer welfare. Consumer welfare is advanced by lower prices for consumer, improved choices in the market, and encouragement of innovation that brings new and more efficient products and services to consumers.

The goals of competition and consumer protection are mutually reinforcing. While competition law and policy creates conditions under which consumers can benefit from competition among suppliers to produce what consumers want, consumer protection law and policy protects the competitive process from demand side distortions in the form of unfair and deceptive marketing that might undermine the ability of consumers to make informed choices based on competitive merit.

Competition Law Enforcement Benefits Consumer Welfare

Given the central focus of the U.S. antitrust agencies’ enforcement efforts on consumer welfare, the task of identifying examples is really one of selecting a handful of cases that best illustrate how the relationship between competition law enforcement and consumer welfare works.

Groceries: One recent example of a competition enforcement action that illustrates the consumer benefits of competition work involves the Federal Trade Commission’s challenge to the merger between two supermarket chains both operating in Texas. According to the FTC’s complaint, the proposed merger of Albertson’s and United was likely to reduce competition in local grocery markets within the Texas cities of Amarillo and Wichita Falls, harming consumers through higher prices, lower quality, and reduced service levels. To preserve competition in these markets, a consent order required Albertson’s to sell its stores in Amarillo and Wichita Falls to a different buyers,² preserving competition that will continue to benefit consumers through lower prices and competitive product offerings.

¹ In addition, the FTC also engages in policy research to inform the U.S. antitrust agencies, Congress, regulators, and other stakeholders about the costs and benefits of public policies on competition and consumer welfare.

² Links to all relevant documents can be found at <http://www.ftc.gov/news-events/press-releases/2013/12/ftc-requires-albertsons-supermarkets-sell-two-texas-stores>.

Hospitals: Another example is the FTC’s challenge to the acquisition by Phoebe Putney Health System, one of two hospitals in Albany, Georgia, to acquire Palmyra Park Hospital from HCA, Inc. Albany is in one of the poorest counties in the United States. Post-transaction, the combined entity would have a market share in excess of 85 percent. The FTC alleged that the transaction would enhance Phoebe Putney’s ability and incentive to increase reimbursement rates charged to commercial health plans and their members, leading to higher health care costs in the area. Phoebe and Palmyra had been close rivals that competed for patients in the general acute-care hospital services market. That competition spurred each to increase the quality of its patient care but this important “non-price” competition would be eliminated by the proposed transaction. While the court agreed with the FTC’s assertion that the merger would reduce competition, the court concluded that the merger was immune from challenge because a regulatory scheme under Georgia law immunized the transaction from federal antitrust review under the state action exemption. While that conclusion was ultimately overturned by the U.S. Supreme Court, the refusal of the lower court to enjoin the acquisition during litigation allowed the hospitals to complete the transaction and combine their operations.³ Since then, health insurance prices in Albany have been reported to be the highest in the United States, with the cost ultimately being passed on to the consumers in the form of higher prices.⁴ It is this kind of injury to consumer welfare that the FTC’s enforcement action seeks to prevent.

Real Estate: A third example is in the real estate industry. A home is typically the single most expensive and complicated purchase consumers make in their lifetimes. Individual consumers purchase real estate infrequently, and many are relatively uninformed about the process. Consequently, most consumers engage real estate service providers, including real estate brokers, to help them. Traditionally, brokers charge around six percent of the sales price, which by agreement among brokers is usually apportioned evenly between the buyer’s broker and the seller’s broker. Thus, under the traditional model, even a modestly priced home of \$100,000 will result in additional costs of around \$6,000.

In recent years the Internet has enabled new forms of lower service real estate broker that allow consumers to substitute some of their own efforts for those of brokers, which consequently cost less than traditional full-service brokerage. These include “limited service brokers” who provide a limited range of services, often for a reduced commission or on a fee-for-service basis, “virtual office websites” through which brokers give clients direct access to on-line multiple listing service (“MLS”) listings, and services for sellers who market their homes without a broker. However, as alternative forms of lower-cost real estate brokerage have emerged, some traditional brokers have sought collectively to exclude lower cost brokerage options by imposing requirements that effectively excluded them from using the MLS to sell properties. Given the importance of the MLS as a tool for buying and selling real estate, these requirements seriously threaten consumer access to low-cost brokerage options.

The U.S. antitrust agencies have challenged several of these MLS operators on the grounds that such requirements constituted anticompetitive horizontal agreements among competing

³ Documents concerning this case can be found at <http://www.ftc.gov/enforcement/cases-proceedings/111-0067/phoebe-putney-health-system-inc-phoebe-putney-memorial>.

⁴ *In Southwest Georgia, The Affordable Care Act Is Having Trouble Living Up To Its Name*, Kaiser Health News (Feb. 3, 2014), available at http://www.washingtonpost.com/national/health-science/in-southwest-georgia-the-affordable-care-act-is-having-trouble-living-up-to-its-name/2014/02/03/4c6d4234-8cc2-11e3-9ed8-259977a48789_story.html.

brokers. Early cases challenged requirements that, among other things, permitted MLS listings only when the seller agreed to pay the listing broker a commission regardless of whether the home was sold through the broker's efforts, fixed the amount of commission that would be shared with a buyer's broker, and prevented part-time brokers and brokers from outside the area from participating. More recently, the agencies successfully intervened when MLS operators took steps to prevent MLS listings by limited service brokers from appearing on the Internet.⁵

Consumer Protection Reinforces the Benefits of Competition to Consumers

Similarly, consumer protection initiatives help to reinforce the competitive process.⁶ Competition policy and consumer protection policy are key elements of the American economic system. Together, they enhance consumer welfare by fostering a vigorous, competitive marketplace that gives consumers greater informed choice and leads to greater availability of products with the qualities desired by consumers at the lowest prices. Strong competition benefits consumers by encouraging new market entrants, creating incentives for innovation, and by motivating sellers to provide more truthful, useful information about their products. Consumer protection policy supports those goals by ensuring the empowerment of consumers to participate in the marketplace by enabling them to make well-informed decisions about their choices.

Environmental Marketing: In 2012, for example, the FTC issued a revised version of its guides for environmental marketing, popularly known as the "Green Guides." The Green Guides were originally issued in response to concerns about firms making misleading representations regarding the environmental attributes of their products. Rather than prohibit broad classes of advertising claims about how a product affects the environment, the Green

⁵ These cases are described in more detail in a 2009 OECD submission on the interface between competition and consumer policy, found at <http://www.oecd.org/unitedstates/39915760.pdf>. Since that submission was prepared, the U.S. Court of Appeals for the Sixth Circuit upheld the Commission decision in *Realcomp II*, finding that Realcomp II violated federal law by restricting the ability of member real estate agents to offer consumers lower-priced alternatives to traditional real estate services by refusing to transmit discount real estate listings to its own and other publicly available websites and excluded such listings from the default searches within its own database. See <http://www.ftc.gov/sites/default/files/documents/cases/2010/04/110408realcompopinion.pdf>.

⁶ The FTC has made three submissions to the OECD on the relationship between competition and consumer protection. They can be found at:

- http://www.ftc.gov/sites/default/files/attachments/us-submissions-oecd-and-other-international-competition-fora/Comp-ConsumerPro%20jnt%20rndtbl_2003%20Oct_US%20paper.pdf;
 - <http://www.ftc.gov/sites/default/files/attachments/us-submissions-oecd-and-other-international-competition-fora/US%20FTC%20paper%20on%20identifying%20and%20tackling%20dysfunctional%20markets.pdf>;
- and
- <http://www.oecd.org/dataoecd/18/4/39915760.pdf>.

Submissions and speeches on this topic by current and former FTC officials can be found at:

- http://www.ftc.gov/sites/default/files/documents/public_statements/interface-competition-and-consumer-protection/021031fordham.pdf;
- http://www.ftc.gov/sites/default/files/documents/public_statements/competition-law-and-consumer-protection-law-two-wings-same-house/041022learyarticle.pdf;
- <http://www.ftc.gov/sites/default/files/attachments/key-speeches-presentations/majorasresponsedti.pdf>;
- http://www.ftc.gov/sites/default/files/documents/public_statements/future-ftc-jurisdiction-over-antitrust-and-consumer-protection-commentary/121127futureftcjurisdiction.pdf; and
- <http://www.kkv.se/upload/Filer/ENG/Research/Pros%20and%20Cons/2011/4a%20-%20Russell%20Damtoft.pdf>.

Guides encourage competition based on advertising of truthful attributes. They inform sellers as to the degree of substantiation that is needed before a claim can be made. In that way, sellers who can properly substantiate their claims can freely compete on the basis of the environment attributes of their products. When firms are able to advertise those attributes, they then have incentives to invest in making their products more environmentally friendly.

For example, some manufacturers advertise that their products are biodegradable. However, there are wide differences in how long it takes a product to biodegrade, whether all components biodegrade, and the circumstances in which they will biodegrade. The Green Guides advise marketers not to make an unqualified degradable claim for a solid waste product unless they can prove that the entire product or package will completely break down and return to nature within one year after customary disposal, in light of evidence about how consumers perceive such claims. With this approach, firms are encouraged to compete on the basis of biodegradability, and consequently, to develop products that are biodegradable.⁷ Rather than decreasing incentives to compete by restricting the flow of truthful information to consumers, which a more regulatory approach might do, the Green Guides encourage firms to compete on the basis of truthful information.

Nutritional Claims for Food: An older example illustrates how sound consumer policy can support competition in a way that promotes innovation and the development of consumer choice. Several years ago, consumers began to become more aware of the value of good nutrition. Firms responded by making health claims for their food offerings in advertising. While in most cases these claims provided valuable information for consumers, there were some instances of deception. Instead of banning health claims entirely, the FTC promotes policies that permit and encourage health claims for food in advertising while prohibiting only those that were false or deceptive.⁸ The FTC's approach recognizes that if a product attribute cannot be promoted, firms would have no incentive to invest in the research and development necessary to bring products with those attributes to the market. Because of the FTC's policy, consumers obtained more information and demanded healthier products. This consumer demand, in turn, caused competitors to make a broader array of nutritious products available. Without advertising and competition, consumers would not have had as broad a range of healthy food options available as they do today.

Competition Advocacy Efforts Benefit Consumer Welfare

In addition to their law enforcement work, the U.S. antitrust agencies often analyze regulatory or legislative proposals that may affect competition, economic efficiency, or consumer protection. In addition, the FTC also engages in considerable consumer education through its Division of Consumer and Business Education.

The U.S. antitrust agencies have served as advocates for pro-competition, pro-consumer approaches in the form of comments and policy papers prepared for Congress, state legislatures, federal agencies (such as the Federal Energy Regulatory Commission, which oversees wholesale electricity markets in the United States), and state public utility

⁷ Links to the Green Guides can be found at <http://www.ftc.gov/news-events/press-releases/2012/10/ftc-issues-revised-green-guides>.

⁸ *E.g.*, FTC Staff Comment Before the Department of Health and Human Services, Food and Drug Administration In the Matter of Request for Comments on Nutrient Content Claims Concerning Nutrient Claims (July 2004), available at <http://www.ftc.gov/be/V040020.pdf>.

commissions. In this role, the U.S. agencies have advocated for statutes, regulations, and other federal and state government approaches that maximize competition and consumer welfare. The U.S. agencies have no authority, however, to make changes to any statute or to alter another agency's regulatory decisions, nor do they directly engage in "privatization" or "deregulation" of regulated utilities. Rather, in support of competition and consumers, they provide analysis to the legislative and regulatory bodies empowered to take these actions.

Health Care Practitioners: One recent example involves the use of competition advocacy to seek to eliminate anticompetitive regulations that reduced consumer choices among health care practitioners and which made it more difficult for lower-cost health care practitioners to serve low income patients. In many rural and underserved areas of the United States, there is a shortage of physicians, and some patients may have trouble seeing a doctor or paying for a doctor's services. Traditionally, nurses have been especially important in delivering primary health care to these areas. In recent decades, many states have allowed nurses with advanced training to provide basic health care services more independently. Physician groups, however, have often opposed this type of independent practice, and in some states have sought, through regulation, to limit the ability of these lower-cost professionals to provide services without physician oversight or supervision. The effect of those regulations would have been to give doctors the opportunity to block entry by nurses who they might see as competitors, or add costs to nurses' services by demanding high fees for such agreements. Because the regulations themselves would have been acts of the state, which are beyond the reach of our competition laws, the FTC staff wrote to the state legislatures to advocate in support of removing these requirements and to recommend that the legislature carefully consider the facts to determine whether such formal regulations are in fact necessary to assure patient safety.⁹

Another example emerged from a 2000 action by the South Carolina legislature, which eliminated a statutory requirement that a dentist examine each child before a hygienist could perform preventive dental care in a public health setting. The goal was to allow schoolchildren, particularly those from low-income families, to receive preventive dental care. In July 2001, however, the South Carolina Board of Dentistry adopted an emergency regulation that reimposed the dentist examination requirement. As a result of the Board's actions, a hygienist-owned company that had begun sending hygienists to schools to provide preventive care was forced to change its business model and was able to serve far fewer patients. The FTC challenged the Board's action, alleging that they "hindered competition in the delivery of preventive dental services to school-aged children and deprived thousands of school children – particularly economically disadvantaged children – of the benefits of preventive oral health care." The case was resolved by a consent order that required the Board to publicly announce its support for the current state policy – that hygienists can provide such care in public health settings without a dentist's examination.¹⁰

⁹ Links to selected advocacies on this point can be found at <http://www.ftc.gov/news-events/press-releases/2014/01/ftc-staff-massachusetts-should-consider-removing-physician>, <http://www.ftc.gov/news-events/press-releases/2013/03/ftc-staff-connecticut-should-consider-expanding-advance-practice>, <http://www.ftc.gov/news-events/press-releases/2013/04/ftc-approves-final-order-settling-competition-charges-against> (scroll to second item).

¹⁰ Documents related to this case can be found at <http://www.ftc.gov/enforcement/cases-proceedings/0210128/south-carolina-state-board-dentistry-matter>.

Public Utilities: In general, U.S. consumers have benefited from an increase in competition in formerly regulated aspects of utility operations. This seems to be the case particularly when the utility is no longer viewed or treated in whole or in part as a natural monopoly. In some cases this was because technological advances caused services to lose their natural monopoly characteristics (such as some telecommunications services); in other cases it was because of improvements in economic understanding of what constituted a natural monopoly (such as airline and trucking services). Less successful deregulation initiatives have generally run into difficulties when they involved efforts to deregulate aspects of utility operations that retained the characteristics of natural monopolies. For example, consumers experienced substantial increases in the costs of cable TV service when the service was deregulated but only one cable operator remained authorized to provide the service. Some commentators believe that the increases in programming variety following deregulation were worth the increased rates for cable service, while others find that many customers are paying for more programming variety than they would prefer.

Other problems with deregulation have occurred where insufficient attention was paid to local circumstances in which market power could be exercised without detection. A well-known example is the California Energy Crisis of 1999-2000. Subsequent litigation turned up evidence of market manipulation by some suppliers that regulators did not initially detect. This initial electricity restructuring effort also suffered from a poorly conceived plan to spread administrative costs by forcing most electricity procurement to take place on a specific spot market energy exchange (rather than allowing long-term procurement contracts to predominate as they do in successful wholesale markets for electricity). Electricity restructuring also has run into difficulties when retail prices are not allowed to vary to match fluctuations in wholesale market prices. This regulatory structure leads to extremely inelastic demand that makes it easier for suppliers to exercise market power (as opposed to the situation where short-term variations in wholesale prices flow through to ultimate consumers).

An additional problem in some utility deregulation efforts is that consumer protection rules were not developed and applied in a timely fashion. This delay resulted in harm to some consumers through “slamming” (unauthorized switching to a new supplier) or “cramming” (unauthorized services added to a customer’s bill). Deceptive marketing tactics also can create particular problems for consumers who are unfamiliar with the concepts and terms used in a newly opened market.

In 2013, the DOJ Antitrust Division filed comments with the Federal Energy Regulatory Commission (FERC) on the agency’s possible changes to natural gas market transparency provisions and public dissemination of detailed transaction-specific information. The Division recommended careful consideration the characteristics of and existing degree of transparency in natural gas markets to avoid unnecessarily increasing the risk of coordination among suppliers, and suggested certain practical safeguards (e.g., aggregation, masking, and lagging) to eliminate or reduce this risk.¹¹

The US Agencies’ comments to federal energy agencies and state public utility agencies have helped alert those agencies to these competition and consumer protection issues.

¹¹ See <http://www.justice.gov/atr/public/comments/292131.htm>

Intellectual Property: The relationship between intellectual property rights and competition law is a central focus for the U.S. antitrust agencies. They engage with federal agencies, industry representatives, and other groups on key issues like standards-setting activities and patent assertion entities. For example, beginning in 2002, the U.S. antitrust agencies held a series of hearings that culminated in a comprehensive report on the application of antitrust law to particular activities involving intellectual property rights.¹² The report emphasizes that antitrust and intellectual property are properly viewed as complementary bodies of law that work together to bring innovation to consumers. For several years, the U.S. antitrust agencies have worked with standards-setting organizations to help them develop IP licensing policies that minimize the potential for anticompetitive abuse of patents incorporated in standards.¹³

The U.S. Antitrust Agencies also assist policy makers and judicial bodies in addressing important IP-antitrust issues. For example, in January 2013, the Department and the U.S. Patent and Trademark Office (PTO) released a joint Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments.¹⁴ This statement addressed how federal district courts and the U.S. International Trade Commission (ITC) should resolve cases involving standards-essential patents which owners have committed to licensing on fair, reasonable, and nondiscriminatory (F/RAND) terms. In particular, the joint statement explained how excluding foreign imports as a trade remedy for infringement of SEPs could, in some circumstances, have anticompetitive effects. In August 2013, the U.S. Trade Representative relied on the policy statement in disapproving an ITC exclusion order barring the importation of certain Apple Inc. products into the United States. The Trade Representative echoed concerns in the policy statement about the potential harms from owners of F/RAND-encumbered, standards-essential patents gaining undue leverage and engaging in hold-up.

The FTC has also been involved with issues at the intersection of IP and antitrust advocacy, issuing numerous reports and amicus curiae briefs on a range of issues aimed at advancing and protecting consumer welfare.¹⁵ On the issue of remedies for SEPs subject to voluntary F/RAND commitments, the FTC has filed several amicus briefs supporting the denial of injunctive relief for a F/RAND-encumbered SEP holder on the grounds that such relief could

¹² DEP'T OF JUSTICE & FED. TRADE COMM'N, ANTITRUST ENFORCEMENT AND INTELLECTUAL PROPERTY RIGHTS: PROMOTING INNOVATION AND COMPETITION (2007), available at <http://www.ftc.gov/reports/innovation/P040101PromotingInnovationandCompetitionrpt0704.pdf>. The FTC has also issued two other reports on IP, one in 2003 and one in 2011. See FTC, *To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy* (Oct. 2003), available at <http://www.ftc.gov/os/2003/10/innovationrpt.pdf> and FTC, *The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition* (March 2011), available at <http://www.ftc.gov/os/2011/03/110307patentreport.pdf>.

¹³ See, e.g., Renata Hesse, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, *The Art of Persuasion: Competition Advocacy at the Intersection of Antitrust and Intellectual Property* 4–6 (November 8, 2013), available at <http://www.justice.gov/atr/public/speeches/301596.pdf>.

¹⁴ available at <http://www.justice.gov/atr/public/guidelines/290994.pdf>.

¹⁵ See, e.g., Third Party United States Federal Trade Commission's Statement On The Public Interest, In the Matter of Certain Gaming And Entertainment Consoles, Related Software, And Components Thereof, available at http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-comment-united-states-international-trade-commission-concerning-certain-gaming-and-entertaining/1206ftcgamingconsole.pdf; Third Party United States Federal Trade Commission's Statement On The Public Interest, In The Matter Of Certain Wireless Communication Devices, Portable Music And Data Processing Devices, Computers And Components Thereof, available at http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-comment-united-states-international-trade-commission-concerning-certain-wireless-communication/1206ftcwirelesscom.pdf.

substantially harm consumers.¹⁶ In its briefs, the FTC argued that, not only would consumers be harmed by the immediate impact of being deprived of a popular product, but they would also suffer in the longer run because an injunction would reduce the returns to innovation by those who have patents that are essential to the same standard or otherwise read on the excluded products.

Postal Services: We also note two postal deregulation events of importance to consumers. First, a comment from the FTC helped the U.S. Postal Rate Commission to reject the U.S. Postal Service's early attempt to stretch the statutory monopoly on letters to include email. Second, a longstanding exemption for high-value packages and letters formed the basis for private firms to establish expedited delivery services in competition with the Postal Service. Private firms have developed innovative and customized ways of providing package delivery service and expedited delivery service to customers who prefer such services.

Telecommunications: The Antitrust Division also advocates actively for competition in the telecommunications sector. On April 11, 2013, the Division filed comments in a Federal Communications Commission (FCC) proceeding regarding mobile spectrum holdings. The comments urged that rules for spectrum auctions ensure that smaller nationwide networks have the opportunity to acquire low-frequency spectrum and thereby improve the competitive dynamics among nationwide carriers and benefit consumers.¹⁷

Pharmaceuticals. In the United States, "pay for delay" patent settlements offer significant opportunity to improve consumer welfare. These settlements involve payments by brand-name drug companies to a generic competitor, resulting in the competitor's abandonment of a patent challenge and delayed entry of the generic version of the drug, thereby effectively blocking generic drug competition for the branded drug. Consumer harm from pay-for-delay settlements is significant. In its 2009 study, the FTC estimated that under relatively conservative assumptions, the annual savings to purchasers of drugs that would result from a ban on such settlements would be approximately \$3.5 billion. This calculation takes into account four factors: (1) the consumer savings that result from generic competition in any given month; (2) the likelihood that a generic manufacturer and brand-name manufacturer will reach a settlement that delays entry in return for compensation; (3) the length of entry delay resulting from such settlement; and 4) the combined sales volume of drugs for which settlements are likely.¹⁸ Scholars have noted that the resulting higher cost of prescriptions has a direct effect on consumer health and well-being, in terms of access to medicine and an individual's ability to pay for, and thus follow recommended treatments.¹⁹

¹⁶ See, e.g., Brief for FTC as Amicus Curiae Supporting Neither Party, *Apple Inc. and NeXT Software, Inc. v. Motorola, Inc. and Motorola Mobility, Inc.*, Nos. 2012-1548, 2012-1549 at 7 (Fed. Cir. Dec. 4, 2012), available at <http://www.ftc.gov/os/2012/12/121205apple-motorolaamicusbrief.pdf>;

¹⁷ See <http://www.justice.gov/atr/public/comments/295780.pdf>.

¹⁸ See Jon Leibowitz, Speech at Center For American Progress, "Pay-for-Delay Settlements in the Pharmaceutical Industry: How Congress Can Stop Anticompetitive Conduct, Protect Consumers' Wallets, and Help Pay for Health Care Reform (The \$35 Billion Solution)" (June 23, 2009), at 12, available at <http://ftc.gov/speeches/leibowitz/090623payfordelayspeech.pdf>.

¹⁹ See W. Sage, D.A. Hyman & W. Greenburg, *Why Competition Law Matters to Health Care Quality*, 22 Health Affairs 31, 35 (Mar./Apr. 2003). ("When costs are high, people who cannot afford something find substitutes or do without. The higher the cost of health insurance, the more people are uninsured. The higher the cost of pharmaceuticals, the more people skip doses or do not fill their prescriptions.")

For the past fifteen years, the FTC has employed the combination of its litigation, competition advocacy and research tools to stop and/or remedy these agreements.²⁰ Following years of persistent work in the area, the FTC achieved a significant victory in the U.S. Supreme Court in 2013. In *FTC v. Actavis*, the Court held that pay-for-delay agreements are subject to antitrust scrutiny, reversing a lower court dismissal of the case.²¹ Yet work remains. Recently, in April 2014, the FTC filed an amicus brief in a pay-for-delay case, branded drug company not to launch an authorized generic drug constitute a payment. The FTC reasoned that such agreements function as a payment that can induce a generic company to accept a delayed drug entry date to the detriment of consumers, who end up paying far more than they otherwise would for the product.²² The FTC will continue to focus its resources on investigating and challenging anticompetitive settlements likely to cause the most consumer harm, relying on the full range of its tools to do so.²³

²⁰For a more complete description of the FTC's activities in this area, see <http://www.ftc.gov/news-events/media-resources/mergers-and-competition/pay-delay>. This includes the recent U.S. note for the OECD roundtable on generic pharmaceuticals, which provides background and citations to the FTC's studies in the area, including its first report, FEDERAL TRADE COMMISSION, GENERIC DRUG ENTRY PRIOR TO PATENT EXPIRATION (July 2002) ("Generic Drug Study"), through its monitoring reports, including the Bureau of Competition's 2013 report on Agreements Filed with the Federal Trade Commission under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and describes the history of the FTC's litigation in the area.

²¹ *FTC v. Actavis, Inc.*, 133 S. Ct. 2223, 570 U.S. ___ (2013).

²² See FTC Amicus Brief, In re: Lamictal Direct Purchaser Antitrust Litig., No. 14-1243 (April 28, 2014) at 13-14, available at http://www.ftc.gov/system/files/documents/amicus_briefs/re-lamictal-direct-purchaser-antitrust-litigation/140428lamictalbrief.pdf.

²³ See Statement of Chairwoman Edith Ramirez, Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, U.S. Senate, July 23, 2013, available at http://www.ftc.gov/sites/default/files/documents/public_statements/statement-chairwoman-edith-ramirez-pay-delay-settlements/130923pfdopeningstatement_0.pdf.