SELECT ACTIVITIES OF THE FEDERAL TRADE COMMISSION’S
BUREAU OF COMPETITION
(2013-14)

Part I: MERGERS

The Federal Trade Commission is committed to preventing mergers and acquisitions that are likely to reduce competition and lead to higher prices, lower quality goods or services, or less innovation. In most cases, the Commission receives notice of proposed mergers under the Hart-Scott-Rodino (HSR) Amendments to the Clayton Act. Bureau lawyers, along with economists from the Commission’s Bureau of Economics, investigate market dynamics to determine if the proposed merger will harm consumers. More information available at http://www.ftc.gov/enforcement/merger-review.

Litigated Mergers

When necessary, the Commission may take formal legal action to stop a merger, either in federal court or before an FTC administrative law judge (ALJ). The Commission’s litigation efforts demonstrate that it is committed to protecting consumers and preserving competition through vigorous merger enforcement.

- In re Ardagh Group S.A. The FTC issued an administrative complaint, in July 2013, seeking to block Ardagh’s proposed $1.7 billion acquisition of Saint-Gobain Containers. According to the complaint, the acquisition would likely substantially reduce competition in U.S. markets for glass containers for beer and spirits, resulting in higher prices for those customers. In April 2014, Ardagh agreed to settle the complaint by selling six of its manufacturing plants and related assets. The Commission will decide whether to approve the proposed divestiture after a 30-day public comment period, which will expire on May 28, 2014. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/131-0087/ardagh-group-sa-saint-gobain-containers-inc-compagnie-de.

- FTC and State of Idaho v. St. Luke’s Health System, Ltd. The FTC and the Idaho Attorney General filed a complaint in federal district court, in March 2013, seeking to block St. Luke’s Health System’s acquisition of Idaho’s largest independent, multi-speciality physician practice group, Saltzer Medical Group. According to the complaint, the combination of St. Luke’s and Saltzer would give it the market power to demand higher rates for health care services provided by primary care physicians in Nampa, Idaho and surrounding areas, ultimately leading to higher health care costs for consumers. The federal district court held that the acquisition violated Section 7 of the Clayton Act and the Idaho Competition Act, and ordered St. Luke’s to fully divest itself of Saltzer’s physicians and assets. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/121-0069/st-lukes-health-system-ltd-saltzer-medical-group-pa.
• **In re Polypore International, Inc.** The FTC challenged Polypore’s acquisition of Microporous in a September 2008 administrative complaint, charging that the merger had resulted in decreased competition and higher prices in four North American markets for battery separators, a key component in flooded lead-acid batteries. On February 22, 2010, following an administrative trial, an ALJ found that the consummated deal was anticompetitive, and that complete divestiture of the acquired assets was needed to restore competition in the affected markets. On November 5, 2010, the Commission upheld the ALJ’s Initial Decision. Polypore appealed the Commission’s decision to the Eleventh Circuit U.S. Court of Appeals, which affirmed the FTC’s final decision and order. Polypore then appealed the case to the Supreme Court, which declined to hear it. On December 17, 2013, following a public comment period, the Commission approved the divestiture of the Microporous assets to a new buyer, restoring competition for different types of battery separators to its pre-merger state. Documents related to the case available at [http://www.ftc.gov/enforcement/cases-proceedings/081-0131/polypore-international-inc-matter](http://www.ftc.gov/enforcement/cases-proceedings/081-0131/polypore-international-inc-matter).

• **In re Phoebe Putney Health System, Inc.** In April 2011, the FTC challenged Phoebe Putney Health System’s proposed acquisition of rival Palmyra Park Hospital from HCA, in Albany, Georgia. The FTC’s administrative complaint alleges that the deal will reduce competition significantly and allow the combined Phoebe/Palmyra to raise prices for general acute-care hospital services charged to commercial health plans, substantially harming patients and local employers and employees. In July 2011, the FTC stayed the administrative case pending resolution of federal court litigation regarding the applicability of state action immunity to the proposed acquisition. The Eleventh Circuit U.S. Court of Appeals ruled that state action immunity prevented federal antitrust review, but the Supreme Court reversed the Court of Appeals in a unanimous ruling in the FTC’s favor in February 2013, and remanded the case for further proceedings. The Commission preliminarily accepted a settlement, and is now determining whether to make that order final. Documents related to the case available at [http://www.ftc.gov/enforcement/cases-proceedings/111-0067/phoebe-putney-health-system-inc-phoebe-putney-memorial](http://www.ftc.gov/enforcement/cases-proceedings/111-0067/phoebe-putney-health-system-inc-phoebe-putney-memorial).

• **In re ProMedica Health System, Inc.** In January 2011, the FTC challenged ProMedica Health System’s consummated acquisition of rival St. Luke’s Hospital in Lucas County, Ohio. The administrative complaint alleged that the loss of competition would significantly harm patients, employers, and employees in the Toledo area by eliminating significant, beneficial competition between ProMedica and St. Luke’s through the creation of a combined hospital system with an increased ability to obtain supra-competitive reimbursement rates from commercial health plans, and, ultimately, from their members. In a January 2012 Initial Decision, an ALJ ruled that the consummated acquisition harmed competition in violation of U.S. antitrust law. In March 2012, the Commission upheld the ALJ’s Initial Decision. Subsequently, on April 22, 2014, the Sixth Circuit U.S. Court of Appeals upheld the Commission’s decision and divestiture.

**Merger Settlements**

Consent orders provide guidance about how the Commission analyzes mergers. In addition to a press release announcing a Commission settlement, the Complaint, Agreement Containing Consent Order, and Analysis to Aid Public Comment are available on the FTC’s website. These documents provide important details about the facts and legal analysis behind the Commission’s conclusion that a merger would likely substantially lessen competition.

- **In the Matter of Valeant Pharmaceuticals International and Precision Dermatology.** The FTC accepted an Agreement Containing Consent Orders from Valeant Pharmaceuticals International, Inc. (“Valeant”), which is designed to remedy the anticompetitive effects of Valeant’s acquisition of Precision Dermatology, Inc. (“Precision”). To resolve the anticompetitive effects of the transaction, Valeant and Precision agreed to sell or relinquish rights to Precision’s branded single-agent topical tretinoins and generic Retin-A, common acne treatments. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/141-0101/valeant-pharmaceuticals-international-precision-dermatology.

- **In re Tesoro Corporation.** The FTC challenged Tesoro’s $335 million acquisition of Chevron Corporation’s Northwest Products Pipeline system and associated terminals, alleging that the acquisition would give Tesoro ownership of two of the three refined light petroleum products terminals in the Boise, Idaho area. To resolve concerns that the acquisition would give Tesoro control over most of the terminal capacity in Boise, the Commission required Tesoro to sell a refined light petroleum products terminal in Boise to a Commission-approved buyer. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/131-0052/tesoro-corporation-tesoro-logistics-operations-llc-matter.

- **In re Bi-Lo Holdings, Inc.** The FTC required 12 supermarket divestitures in 11 cities in Florida, Georgia, and South Carolina as a condition of Bi-Lo Holdings’ acquisition of three Delhaize America banners: Sweetbay, Harveys, and Reid’s. Bi-Lo operates stores under the BI-LO and Winn Dixie banners. Delhaize operates six supermarket chains: Sweetbay, Harveys, Reid’s, Hannaford, Bottom Dollar Food, and its primary banner, Food Lion. The Commission alleged that the acquisition would result in an effective merger-to-monopoly in two relevant areas, Madison, Florida and Sylvania, Georgia, and an effective merger-to-duopoly in nine other cities: Arcadia, Dunnellon, Lake Placid, and Wauchula, Florida; Bainbridge, Statesboro, Vidalia, and Waynesboro, Georgia; and Batesburg, South Carolina. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/131-0162/bi-lo-holdings-llc.
• **In re CoreLogic, Inc.** CoreLogic agreed to settle charges that its proposed $661 million acquisition of DataQuick Information Systems would likely substantially lessen competition and eliminate one of only three providers in the market for national assessor and recorder bulk data, which includes current and historical public record data related to real property in a standardized bulk format. The FTC’s proposed settlement order requires CoreLogic to license to Renwood RealtyTrac its national assessor and recorder bulk data, as well as several ancillary data sets that DataQuick provides to its customers. Documents related to the case available at [http://www.ftc.gov/enforcement/cases-proceedings/131-0199/corelogic-inc-matter](http://www.ftc.gov/enforcement/cases-proceedings/131-0199/corelogic-inc-matter).

• **In re Community Health Systems, Inc.** The FTC charged that the acquisition of Health Management Associates by Community Health Systems, the second largest hospital operator in the U.S., would substantially reduce competition for general acute-care inpatient services sold to commercial health plans and provided to commercially insured patients in Gadsden, Alabama and Hartsville, South Carolina. The Commission accepted a settlement that permitted most of the acquisition to proceed, after the parties agreed to hold separate and divest hospitals in the two overlap areas. Documents related to the case available at [http://www.ftc.gov/enforcement/cases-proceedings/131-0202/community-health-systems-health-management-associates-matter](http://www.ftc.gov/enforcement/cases-proceedings/131-0202/community-health-systems-health-management-associates-matter).

• **In re: Thermo Fisher Scientific Inc.** Thermo Fisher Scientific, a leading manufacturer of products used in scientific research, agreed to sell assets to settle FTC charges that its proposed $13.6 billion acquisition of Life Technologies Corporation would have eliminated close competition between the companies in the markets for short/small interfering ribonucleic acid (siRNA) reagents, cell culture media, and cell culture sera. According to the FTC, both the cell culture media and sera markets are highly concentrated, and the acquisition would substantially increase concentration by combining two of the most significant competitors. In the market for siRNA reagents, Thermo Fisher and Life Technologies are two of only four significant competitors, in large part because only these four firms have licenses for the intellectual property necessary to compete effectively. In the investigation, Commission staff cooperated with antitrust agencies in Australia, Canada, China, the European Union, Japan, and Korea. Documents related to the case available at [http://www.ftc.gov/news-events/press-releases/2014/01/ftc-puts-conditions-thermo-fisher-scientific-incs-proposed](http://www.ftc.gov/news-events/press-releases/2014/01/ftc-puts-conditions-thermo-fisher-scientific-incs-proposed).

• **In re Actavis.** The FTC challenged Actavis’s proposed $8.5 billion acquisition of Warner Chilcott, claiming that the acquisition would substantially reduce competition in markets for four current and future pharmaceutical products. According to the Commission, Actavis and Warner Chilcott were the only two significant manufacturers of generic Femcon FE, and the proposed acquisition would eliminate current competition between them in the market for this drug. In three other markets, Warner Chilcott sells a branded drug, but no company was
selling a generic version of Loestrin 24 FE, Lo Loestrin FE, or Atelvia. The FTC’s complaint alleged that Actavis was likely to be the first generic supplier to compete with Warner Chilcott’s branded version. The FTC alleged that the proposed acquisition would likely lead to higher prices for U.S. consumers, because the merged firm would have the ability to delay entry of Actavis’s generic product in each of the three markets. To resolve these concerns, the Commission required Actavis to sell all rights and assets to the four drugs to Amneal Pharmaceuticals. Actavis was also required to relinquish its claim to first-filer marketing exclusivity for two of the generic products. By relinquishing its first-filer status, the merged firm could not act to delay the introduction of a generic version of these two products. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/131-0152/actavis-inc-warner-chilcott-plc-matter.

• In re Endo Health Solutions, Inc. The FTC required divestitures to settle charges that the merger of Endo Health Solutions and Boca Life Science Holdings would reduce future competition in two generic markets that do not yet exist, but will be highly concentrated at the time Endo and Boca enter. According to the Commission, when generic entry occurs, the acquisition would harm competition by reducing the number of likely future suppliers in the market for generic formulations of Bromfed-DM and Zamicet. The Commission also required divestitures to resolve competitive concerns in four generic markets where both firms had existing products, and in one additional market where Endo had a currently-approved product and Boca was poised to be the next entrant. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/131-0225/endo-health-solutions-inc-boca-life-science-holdings-llc-boca.

• In re Mylan Inc. The FTC challenged Mylan’s proposed $1.85 billion acquisition of Agila Specialties Global Pte. Limited and Agila Specialties Private Limited from Strides Arcolab Limited, alleging that the acquisition would cause significant harm to U.S. consumers in eleven generic injectable pharmaceutical product markets, either by eliminating current or imminent competition in concentrated existing markets, or by eliminating potential competition among a small number of likely competitors in a future market. The Commission was especially concerned about these products because injectable generic products are highly susceptible to supply disruptions caused by the inherent difficulties of producing sterile liquid drugs. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/131-0112/mylan-inc-agila-specialties-global-pte-limited-agila.

• In re Nielsen Holdings, N.V. The FTC alleged that the merger of Nielsen Holdings and Arbitron would eliminate future competition between the two firms in the emerging market for national syndicated cross-platform audience measurement services. Nielsen is a global media measurement and research firm, and the dominant provider of U.S. television audience measurement services.
Arbitron also is a media measurement and research firm, and provides audience ratings for radio that are similar to Nielsen’s television ratings. In response to customer interest, both firms were working to develop national syndicated cross-platform audience measurement services, which would allow audiences to be measured accurately across multiple platforms, such as television and online. The Commission alleged that the elimination of future competition between Nielsen and Arbitron in this market would increase the likelihood that Nielsen would exercise market power and cause U.S. advertisers, advertisement agencies, and media programmers to pay higher prices for national syndicated cross-platform audience measurement services. To resolve these concerns, the Commission required Nielsen to divest assets related to Arbitron’s cross-platform audience measurement business to a Commission-approved acquirer. Documents related to the case available at [http://www.ftc.gov/enforcement/cases-proceedings/131-0058/nielsen-holdings-nv-arbitron-inc-matter](http://www.ftc.gov/enforcement/cases-proceedings/131-0058/nielsen-holdings-nv-arbitron-inc-matter).

- **In re Pinnacle Entertainment, Inc.** The FTC filed suit in 2013 to block Pinnacle Entertainment’s proposed acquisition of Ameristar Casinos because the acquisition would reduce competition for casino customers in St. Louis and in the Lake Charles, Louisiana market where Pinnacle already operated a casino, but Ameristar did not. Ameristar, however, had begun building a new casino, which was scheduled to open by the third quarter of 2014. To settle claims of likely anticompetitive effects in Lake Charles, Pinnacle agreed to sell all of the assets associated with the development and construction of its new casino to an FTC-approved buyer. Pinnacle also agreed to divest a St. Louis casino to resolve the issues in that market. Documents related to the case available at [http://www.ftc.gov/enforcement/cases-proceedings/131-0064/pinnacle-entertainment-inc-ameristar-casinos-inc-matter](http://www.ftc.gov/enforcement/cases-proceedings/131-0064/pinnacle-entertainment-inc-ameristar-casinos-inc-matter).

- **In re General Electric Co.** The FTC required a consent to allow General Electric Company’s $4.3 billion acquisition of the aviation business of Avio S.p.A to proceed. GE, through its joint venture CFM International, and Pratt & Whitney are the only engine manufacturers for Airbus’s A320neo aircraft; they compete head-to-head for A320neo sales. Avio is the sole designer for the accessory gearbox (“AGB”) on the Pratt & Whitney PW1100G engine for the Airbus A320neo aircraft. The Commission alleged that the acquisition would substantially lessen competition by giving GE the ability and incentive to disrupt the design and certification of an engine component designed by Avio for rival aircraft manufacturer Pratt & Whitney, thereby reducing competition in the sale of engines for the A320neo. The Commission’s consent order prohibits GE from interfering with Avio’s design and development work on the AGB for the Pratt & Whitney PW1100G engine, or accessing Pratt & Whitney’s proprietary information about the AGB that is shared with Avio. Commission staff worked closely with the European Commission throughout the investigation. Documents related to the case available at [http://www.ftc.gov/enforcement/cases-proceedings/131-0069/general-electric-company-matter](http://www.ftc.gov/enforcement/cases-proceedings/131-0069/general-electric-company-matter).
Closed Matters

The Commission reviews a large number of proposed mergers, but only a small percentage of those reviewed raise anticompetitive concerns. In 2013, as in most years, the Commission granted early termination of the waiting period to the majority of transactions that involved an HSR filing, with fewer than four percent of filings resulting in a Second Request. In some cases, where the Commission finds that a proposed merger is unlikely to substantially lessen competition, it will issue a closing statement, explaining the reasoning behind its decision to close the investigation.

- Office Depot, Inc./OfficeMax, Inc. On November 1, 2013, the FTC unanimously voted to close its seven-month investigation into the proposed $1.2 billion merger of office supply superstores Office Depot and OfficeMax. The Commission issued a statement detailing the basis for its finding that the proposed merger was unlikely to substantially less competition in the sale of consumable office supplies to retail or contract customers. In its closing statement, the Commission explained that customers now look beyond office supply superstores when buying office supplies. Additionally, Internet retailers of office supplies have grown quickly and significantly to compete with office supply superstores. The Commission’s Closing Statement is available at http://www.ftc.gov/sites/default/files/documents/closing_letters/office-depot-inc./officemax-inc./131101officedepotofficemaxstatement.pdf.

- Tesoro Corporation/BP p.l.c. The Commission issued a closing statement explaining its decision to close its nine-month investigation into Tesoro’s acquisition of BP’s southern California marketing and refining assets, including BP’s Carson Refinery near Los Angeles. The Commission explained that demand for California-grade gasoline has declined over the last decade and is projected to continue to do so. Moreover, while the transaction did increase concentration modestly by shifting capacity from BP to Tesoro, it did not reduce the number of refiners with the ability and incentive to use their excess capacity to respond to any effort by Tesoro or any other market participant to exercise market power. Seven refiners supplied the market before the transaction and seven would continue to do so after the transaction. The Commission’s Closing Statement is available at http://www.ftc.gov/sites/default/files/documents/closing_letters/tesoro-corporation/bp-p.l.c./130517tesoro_bpstmtofcomm.pdf.

Part II: NON-MERGER MATTERS

The Commission seeks to identify conduct that interferes with the fundamental give-and-take of competitive rivalry without offering countervailing benefits to consumers, and to take appropriate action to stop and prevent its recurrence.

Litigation
• **FTC v. Actavis, Inc.** The Supreme Court held that pay-for-delay agreements between brand and generic drug companies are subject to antitrust scrutiny. This decision overturned the so-called “scope-of-the-patent” test, which some courts had adopted and virtually immunized pay-for-delay settlements from antitrust scrutiny. The Court’s decision stemmed from the FTC’s appeal of a ruling by the U.S. Court of Appeals for the Eleventh Circuit, which had dismissed the agency’s challenge to an alleged pay-for-delay agreement involving the testosterone-replacement drug AndroGel. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/071-0060/watson-pharmaceuticals-inc-et-al.

• **FTC v. Cephalon.** The FTC brought suit against Cephalon in a case now pending in federal district court. The Commission is seeking equitable relief, including monetary disgorgement, to deny Cephalon its ill-gotten gains. Additionally, the Commission is seeking prospective injunctive relief to prevent Cephalon from entering into similar anticompetitive arrangements in the future. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/061-0182/cephalon-inc.

• **In re North Carolina Board of Dental Examiners.** The Supreme Court agreed to review a ruling by the U.S. Court of Appeals for the Fourth Circuit that upheld the FTC’s finding that state action immunity did not apply to the North Carolina State Board of Dental Examiners, a self-interested regulatory board. The Commission found that the Board of Dental Examiners, comprised of dentists, violated Section 1 by excluding non-dentists from providing teeth whitening services, principally through cease and desist orders. This case raises the question of whether a state professional board comprised of private actors can obtain antitrust immunity for its anticompetitive acts without making a showing of active supervision under the state action doctrine. The Supreme Court granted certiorari on March 3, 2014, to decide: Whether, for purposes of the state-action exemption from federal antitrust law, an official state regulatory board created by state law may properly be treated as a private actor simply because, pursuant to state law, a majority of the board’s members are also market participants who are elected to their official positions by other market participants. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/081-0137/north-carolina-board-dental-examiners-matter.

• **In re McWane, Inc.** The FTC brought a number of charges against three U.S. makers of ductile iron pipe fittings for unlawful collusion, information exchange, and exclusionary conduct. In 2012, the Commission issued an administrative complaint against McWane and Star Pipe Products, after the third pipe maker, Sigma Corporation, entered into a consent agreement with the Commission. Star subsequently settled, and McWane contested the charges in an administrative trial. The complaint charged that McWane illegally conspired with Sigma and Star to raise and stabilize prices in the fittings market. It also charged that McWane violated the antitrust laws by excluding competitors from a separate
market limited to domestic fittings. Last May, the ALJ found that the evidence did not support the conspiracy charges, but ruled that McWane had reached an anticompetitive agreement that led Sigma to abandon its efforts to enter the market for domestic fittings, and that McWane illegally pressured distributors to exclude Star Pipe from the domestic fittings market. On review, the Commission dismissed the conspiracy complaint counts and determined that McWane’s entry into a master distribution agreement with Sigma was not anticompetitive. However, the Commission, like the ALJ, found liability under Count Six of the administrative complaint, which alleged that McWane willfully engaged in anticompetitive conduct that allowed it to maintain its monopoly in the domestic fittings market. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/101-0080b/mcwane-inc-star-pipe-products-ltd-matter.

**Settlements**

- **In the Matter of Mr. Jacob J. Alifraghis, Also Doing Business As InstantUPCCodes.com, and In the Matter of 680 Digital, Inc., Also Doing Business As Nationwide Barcode, and Philip B. Peretz.** Two Internet resellers of UPC barcodes used by retailers for price scanning and inventory purposes, settled charges that they violated the Federal Trade Commission Act by inviting competitors to join in a collusive scheme to raise the prices charged for barcodes sold online. Under the terms of the proposed Consent Agreements, respondents are required to cease and desist from communicating with their competitors about rates or prices. They are also barred from entering into, participating in, inviting, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/141-0036/nationwide-barcode-matter.

- **In re Music Teachers National Association Inc.** The FTC charged that the Music Teachers National Association, Inc. (MTNA), which represents over 20,000 music teachers nationwide, restrained competition through code of ethics provisions that restricted members from soliciting clients from rival music teachers. MTNA is an umbrella organization for more than 500 state and local music teaching association affiliates throughout the country. Some of these affiliates have code of ethics provisions that restrain their members from charging fees that are lower than the average in the community, offering free lessons or scholarships, or advertising free scholarships or tuition. The proposed settlement requires MTNA to, among other things, stop affiliating with any association that MTNA knows is restricting solicitation, advertising, or price-related competition by its members. Documents related to the case available at http://www.ftc.gov/enforcement/cases-proceedings/131-0118/music-teachers-national-association-inc-matter.
- **In re California Association of Legal Support Professionals.** The FTC charged that the California Association of Legal Support Professionals, which represents companies and individuals that provide legal support services in California, violated the antitrust laws through code of ethics provisions that restrained its members from competing against each other on price, disparaging each other through advertising, and soliciting legal support professionals for employment. Documents related to the case available at [http://www.ftc.gov/enforcement/cases-proceedings/131-0205/california-association-legal-support-professionals-matter](http://www.ftc.gov/enforcement/cases-proceedings/131-0205/california-association-legal-support-professionals-matter).

- **In re Bosley, Inc., Aderans America Holdings, Inc., and Aderans Co., Ltd.**: The FTC sought relief for a standalone Section 5 violation involving improper exchange of information between two competing providers of hair restoration services. The FTC alleged that for at least four years, Bosley had exchanged competitively sensitive, nonpublic information about its business operations with Hair Club, a competing manager of medical and surgical hair restoration services. Both firms had a nationwide geographic presence and national brand recognition. The information exchanged by the companies’ CEOs included details about future product offerings, surgical hair transplantation price floors and discounts, plans for business expansion and contraction, and current business operations and performance. The FTC charged that directly and repeatedly exchanging competitively sensitive, nonpublic information was an unfair method of competition in violation of Section 5 of the FTC Act. According to the FTC’s complaint, without a legitimate business justification, the exchange of such information could facilitate coordination between Bosley and Hair Club by reducing uncertainty regarding each other’s product offerings, prices, and strategic plans. Documents related to the case available at [http://www.ftc.gov/enforcement/cases-proceedings/1210184/bosley-inc-aderans-america-holdings-inc-aderans-co-ltd](http://www.ftc.gov/enforcement/cases-proceedings/1210184/bosley-inc-aderans-america-holdings-inc-aderans-co-ltd).

**Part III: ADVOCACY**

In addition to enforcement, the Commission engages in competition advocacy through amicus curiae briefs, advocacy filings, and reports and analyses aimed at promoting policies that enhance consumer welfare. Examples of some of the Commission’s recent advocacy actions are noted below. More information available at [http://www.ftc.gov/policy/advocacy](http://www.ftc.gov/policy/advocacy).

**Amicus Curiae Briefs**

- **Mylan Pharmaceuticals, Inc. v. Celgene Corporation.** Brief of the Federal Trade Commission before the U.S. District Court for the District of New Jersey addressing the proper application of antitrust principles to a pharmaceutical company’s refusal to sell samples to potential generic competitors. The brief opposes the defendant’s motion to dismiss the case, and takes the position that: (a) a brand pharmaceutical company’s refusal to sell samples to a generic company
can constitute exclusionary conduct under established Supreme Court precedent; (b) a brand company’s distribution agreements are not immune from antitrust scrutiny; and (c) a brand company’s patents alone do not establish a lack of antitrust injury. Available at http://www.ftc.gov/policy/advocacy/amicus-briefs/2014/06/mylan-pharmaceuticals-inc-v-celgene-corporation.

- In re Lamictal Direct Purchaser Antitrust Litigation. Brief of the Commission as amicus curiae urging the U.S. Court of Appeals for the Third Circuit to reverse a district court determination that a drug manufacturer’s commitment not to introduce an authorized generic version of its own brand-name drug, in exchange for a generic drug company’s promise to drop a patent challenge to the brand-name drug, was not a reverse-payment under the Supreme Court’s Actavis decision. Also arguing that, not only can an agreement containing a no-authorized-generic commitment constitute a potentially anticompetitive reverse payment under Actavis, but the parties’ mutual agreements not to compete in each other’s markets may also violate the antitrust laws as unlawful market allocation. Available at http://www.ftc.gov/system/files/documents/amicus_briefs/re-lamictal-direct-purchaser-antitrust-litigation/140428lamictalbrief.pdf.

- In re Effexor XR Antitrust Litigation. Brief of the Commission as amicus curiae before the U.S. District Court for the District of New Jersey, addressing the question of whether a branded company’s commitment not to launch an authorized generic in competition with a generic company can be a reverse payment under the Supreme Court’s ruling in Actavis. Available at http://www.ftc.gov/sites/default/files/documents/amicus_briefs/re-effexor-xr-antitrust-litigation/130816effexoramicusbrief.pdf.

- Actelion Pharmaceuticals Ltd., et al. v. Apotex Inc. Brief of the Commission as amicus curiae before the U.S. District Court for the District of New Jersey, addressing the question of whether a branded pharmaceutical company’s refusal to sell product samples to potential generic competitors may violate the antitrust laws. Available at http://www.ftc.gov/sites/default/files/documents/amicus_briefs/actelion-pharmaceuticals-ltd.et-al.v.apotex-inc./130311actelionamicusbrief.pdf.

**Advocacy Filings**

The Commission regularly submits comments to state legislative and regulatory bodies. Two recent examples are related to proposals to amend scope of practice laws, which determine the range of procedures and services that health care professional licenses cover under state law. Commission staff provided comments on a Massachusetts proposal that would eliminate physician supervision requirements for nurse practitioners (NPs) and nurse anesthetists (NAs). According to the comment, the bill would permit NPs and NAs to order tests and therapeutics, and issue written prescriptions, without a
supervisory agreement with a Massachusetts physician.\(^1\) Commission staff also submitted a comment to the American Dental Association regarding proposed accreditation standards for Dental Therapy Education Programs. Dental therapists are a relatively new type of provider that differ from other allied dental health professionals, such as dental hygienists, in that they are trained and licensed to provide some, but not all, services traditionally carried out only by licensed dentists.\(^2\) In both cases, the proposals could improve access to, and enhance competition for, health care services.

**Reports and Papers**

The Commission’s Office of Policy Planning recently spearheaded an effort to publish a policy paper on scope of practice rules for Advanced Practice Registered Nurses.\(^3\) This policy paper builds on a series of competition advocacy comments by Commission staff on a variety of state proposals, but the policy paper provides more detail and addresses the proposals in a more comprehensive manner. As such, this policy paper and ones like it that the staff may do in the future, will serve as another mechanism for the FTC to share its expertise and learning on competition and consumer protection matters outside the context of specific legislative or regulatory proposals.

Bureau staff members are part of a Commission-wide team undertaking a 6(b) study into the activities of patent assertion entities (PAEs), a subject that the FTC first examined in its 2011 Report, “The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition.” In that report, the Commission defined a PAE as a firm with a business model focused primarily on purchasing patents and then attempting to generate revenue by asserting the intellectual property against persons who are already practicing the patented technology. The Commission distinguishes PAEs from other non-practicing entities that primarily seek to develop and transfer technology, such as universities, research entities, and design firms.

At a joint FTC/DOJ workshop in December 2012, panelists and commenters provided anecdotal evidence of potential harms and efficiencies of PAE activity, but many stressed the lack of more comprehensive empirical evidence. In an attempt to collect such data, the Commission invited public comments on a proposed study using its authority under Section 6(b) of the Federal Trade Commission Act to gather qualitative and quantitative information on PAE acquisition, litigation, and licensing practices. As a

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result of this study, the Commission hopes to gain a more accurate picture of PAE activity, which it can then share with Congress, other government agencies, academics, and industry.