Federal Trade Commission/Regulation

Background

The Federal Trade Commission (FTC) works to ensure that the nation's markets are efficient and free of practices which might harm consumers. To ensure the smooth operation of our free market system, the FTC enforces federal CONSUMER PROTECTION laws that prevent FRAUD, deception, and unfair business practices. The Commission also enforces federal antitrust laws that prohibit anticompetitive mergers and other business practices that restrict competition and harm consumers.

The FTC was created in 1914 to prevent unfair methods of competition in commerce. In 1938, Congress passed the Wheeler-Lea Amendment, which included a broad prohibition against "unfair and deceptive acts or practices." After that, the FTC was directed to administer a wide variety of other consumer protection laws, including the Telemarketing Sales Rule, the Pay-Per-Call Rule and the Equal Credit Opportunity Act. In 1975, Congress passed the Magnuson-Moss Act which gave the FTC the authority to adopt trade regulation rules which define unfair or deceptive acts in particular industries. Trade regulation rules have the force of law.

Today, the FTC is an independent agency which reports directly to Congress. The commission is headed by five commissioners, nominated by the president and confirmed by the Senate, each serving a seven-year term. The president chooses one commissioner to act as chairman. No more than three commissioners can be of the same political party. The commission is further divided into bureaus and divisions, which are responsible for various aspects of FTC operations.

Bureau of Consumer Protection

Bureau of Consumer Protection's mandate is to protect consumers against unfair, deceptive, or FRAUDULENT practices. The bureau enforces a variety of consumer protection laws enacted by Congress, as well as trade regulation rules issued by the commission. Its actions include individual company and industry-wide investigations, administrative and federal court LITIGATION, rulemaking proceedings, and consumer and business education. In addition, the Bureau contributes to the commission's on-going efforts to inform Congress and other government entities of the impact that proposed actions could have on consumers. The Bureau of Consumer Protection is divided into six divisions and programs, each with its own areas of expertise.

The Division of Advertising Practices

The Division of Advertising Practices is the nation's enforcer of federal truth-in-advertising laws. Its law enforcement activities focus on claims for foods, drugs, dietary supplements, and other products promising health benefits, health fraud on the Internet, weight-loss advertising and marketing directed to children, performance claims for computers, ISPs and other high-tech products and services, tobacco and alcohol advertising, children's privacy online, claims about product performance made in national or regional newspapers and magazines; in radio and TV commercials, including infomercials, through direct mail to consumers, or on the Internet.

The Division of Enforcement

The Division of Enforcement conducts a wide variety of law enforcement activities to protect consumers, including ensuring compliance with administrative and federal court orders entered in consumer protection cases, conducting investigations and prosecuting civil actions to stop fraudulent, unfair or deceptive marketing and advertising practices, and enforcing consumer protection laws, rules and guidelines. This division monitors compliance with commission cease and desist orders and federal court injunctive orders, investigates violations of consumer protection laws, and enforces a number of trade laws, rules and guides, including:

The Mail or Telephone Order Merchandise Rule, which requires companies to ship purchases when promised (or within 30 days if no time is specified) or to give consumers the option to cancel their orders for a refund.

The Textile, Wool, Fur and Care Labeling Rules, which require proper origin and fiber content labeling of textile, wool, and fur products, and care label instructions attached to clothing and fabrics.

Energy Rules, which require the disclosure of energy costs of home appliances (the Appliance Labeling Rule), octane ratings of gasoline (the Fuel Rating Rule), and the efficiency rating of home insulation (the R-Value Rule).

Green Guides, which govern claims that consumer products are environmentally safe, recycled, recyclable, ozone-friendly, or biodegradable.

The Division of Financial Practices

The Division of Financial Practices is responsible for developing policy and enforcing laws related to financial and lending practices affecting consumers. It also is responsible for most of the agency's consumer privacy program. Its duties include enforcement of the **F**AIR **C**REDIT **R**EPORTING **A**CT (FCRA) which ensures the accuracy and privacy of information kept by credit bureaus and other consumer reporting agencies and gives consumers the right to know what information these entities are distributing about them to creditors, insurance companies, and employers. This division also enforces the Gramm-Leach-Bliley Act (GLBA). The GLBA requires financial institutions to provide notice to consumers about their information practices and to give consumers an opportunity to direct that their personal information not be shared with non-affiliated third parties.

The Division of Financial Practices monitors the Truth in Lending Act, which requires creditors to disclose in writing certain cost information, such as the ANNUAL PERCENTAGE RATE (APR), before consumers enter into credit transactions, the Consumer Leasing Act, which requires lessors to give consumers information on LEASE costs and terms, and the Fair Debt Collection Practices Act, which prohibits debt collectors from engaging in unfair, deceptive, or abusive practices, including over-charging, harassment, and disclosing consumers' debt to third parties.

The Division of Marketing Practices

The Division of Marketing Practices enforces federal consumer protection laws by filing actions in federal district court on behalf of the commission to stop scams, prevent scam artists from repeating their fraudulent schemes in the future, freeze assets, and obtain compensation for scam victims. The division also is responsible for enforcement of the Telemarketing Sales Rule, which prohibits deceptive sales pitches and protects consumers from abusive, unwanted, and late-night sales calls, the 900 Number Rule, which requires sellers of pay-per-call (900 numbers) to clearly disclose the price of services, and the Funeral Rule, which requires funeral directors to disclose price and other information about their services to consumers.

The Division of Planning and Information

The Division of Planning and Information helps consumers get information. This Division runs the Consumer Response Center, with counselors who respond to consumer complaints and requests for information. It also supervises the Identity Theft Data Clearinghouse, with staff who tell consumers how to protect themselves from identity theft and what to do if their identity has been stolen. Additionally, this division manages the Consumer Sentinel, a secure, online database and cyber tool available to hundreds of civil and criminal law enforcement agencies in the United States and abroad.

Bureau of Economics

The Bureau of Economics helps the FTC evaluate the economic impact of its actions. To do so, the Bureau provides economic analysis and support to antitrust and consumer protection investigations and rulemakings. It also analyzes the impact of government regulation on competition and consumers and provides Congress, the **E**XECUTIVE **B**RANCH and the public with economic analysis of market processes as they relate to antitrust, consumer protection, and regulation.

This Bureau provides guidance and support to the agency's antitrust and consumer protection enforcement activities. In the antitrust area, the Bureau participates in the investigation of alleged anticompetitive acts or practices and provides advice on the economic merits of alternative antitrust actions. If an enforcement action is initiated, the Bureau integrates economic analysis into the proceeding (sometimes providing the expert witness at trial) and works with the Bureau of Competition to devise appropriate remedies. In the consumer protection area, this bureau provides economic support and analysis of potential commission actions in both cases and rulemakings handled by the Bureau of Consumer Protection. Bureau economists also provide analysis of appropriate PENALTY levels to deter activity that harms consumers.

The Bureau of Economics also conducts economic analysis of various markets and industries. This work focuses on the economic effects of regulation and on issues important to antitrust and consumer protection policy. Many of these analyses are published as staff reports.

Bureau Of Competition

The Bureau of Competition prevents anticompetitive mergers and other anticompetitive business practices in the marketplace. The bureau fulfills this role by reviewing proposed mergers and other business practices for possible anticompetitive effects, and, when appropriate, recommending that the commission take formal law enforcement action to protect consumers. The bureau also serves as a research and policy resource on competition topics and provides guidance to business on complying with the antitrust laws.

Antitrust Laws

The bureau protects competition through enforcement of the antitrust laws. These laws include: Section 5 of the Federal Trade Commission Act, which prohibits unfair methods of competition, Section 1 of the Sherman Act, which outlaws every contract, combination, or CONSPIRACY, in restraint of trade, Section 2 of the Sherman Act, which makes it unlawful for a company to monopolize, or attempt to monopolize, trade or commerce, Section 7 of the **C**LAYTON **A**CT, which prohibits mergers and acquisitions the effect of which may be substantially to lessen competition or to tend to create a MONOPOLY, and Section 7A of the Clayton Act (added in 1976 by the Hart-Scott-Rodino Antitrust Improvements Act), which requires companies to notify antitrust agencies before certain planned mergers.

Mergers

Most mergers actually benefit competition and consumers by allowing firms to operate more efficiently. In a competitive market, firms pass on these lower costs to consumers. But some mergers, by reducing competition, can cost consumers many millions of dollars every year in the form of higher prices and reduced product quality, consumer choice, and innovation. The Bureau of Competition reviews mergers to determine which ones have the potential to harm consumers; thoroughly investigates those that may be troublesome; and recommends enforcement action to the commission when necessary to protect competition and consumers. The FTC challenges only a small percentage of mergers each year. Various remedies may be suitable for transactions that pose antitrust concerns. These include SETTLEMENT, litigation, or ABANDONMENT of the transaction by the parties.

FTC Litigation

Typically, FTC investigations are non-public to protect both the investigation and the companies involved. If the FTC believes that a person or company has violated the law or that a proposed merger may violate the law, the agency may attempt to obtain voluntary compliance by entering into a consent order with the company. A company that signs a consent order need not admit that it violated the law, but it must agree to stop the disputed practices outlined in an accompanying complaint or undertake certain obligations to resolve the anticompetitive aspects of its proposed merger. If a consent agreement cannot be reached, the FTC may issue an administrative complaint or seek injunctive relief in the federal courts. The FTC's administrative complaints initiate a formal proceeding that is much like a federal court trial but before an administrative law judge. **E**VIDENCE is submitted, TESTIMONY is heard, and witnesses are examined and cross-examined. If a law violation is found, a CEASE AND DESIST ORDER may be issued. Initial decisions by administrative law judges may be appealed to the full commission. Final decisions issued by the commission may be appealed to the U.S. Court of Appeals and, ultimately, to the U.S. Supreme Court.

In some circumstances, the FTC can go directly to court to obtain an injunction, civil penalties, or consumer REDRESS. In the merger enforcement arena, the FTC may seek a PRELIMINARY INJUNCTION to block a proposed merger pending a full EXAMINATION of the proposed transaction in an administrative proceeding. The injunction preserves the market's competitive status quo. The FTC seeks federal court injunctions in consumer protection matters typically in cases of ongoing consumer fraud.

Additional Resources

Antitrust Enforcement Agencies: The Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission: Congressional Hearing. Hyde, Henry, DIANE Publishing, 2000.

Organizations

American Antitrust Institute
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