

Federal Civil Enforcement Newsletter

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Editor's Note

Dear Committee Members:

For this Spring 2017 edition, we look at a recent business review letter from DOJ related to pricing aggregation service, a program re-cap from "Integration v. (?) Consolidation in Health Care," and round-up the agencies' competition and consumer protection activity from the last quarter of 2016 and the first quarter of 2017.

We are always looking for newsletter articles and ideas, so please reach out to any member of Committee leadership if you would like to contribute.

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Software Services and Information Sharing: A Review of the DOJ's Business Response Letter to Amadeus and Mystic on their Proposal to Offer a Pricing Aggregation Service

By Dan Graulich¹

On December 13, 2016 the Department of Justice ("Department" or "DOJ") announced that it would not challenge a proposal by corporate affiliates of Mystic Logistics Holdings LLC ("Mystic Holdings") to operate a pricing aggregation service for its subscribers. The software service allows subscribers involved in the commercial mailing business to calculate charges and fees associated with different travel and postage methods for purposes of packaging and transporting commercial mailings. The DOJ's response letter is one of the first to address the antitrust risks surrounding the use of online-based tools that process potentially sensitive pricing information and ways companies can design such tools without running afoul of the antitrust laws.

This article explores the challenges e-commerce tools present for enforcement officials through the lens of the Amadeus business review letter and the DOJ's subsequent response. It offers background on the business review procedure and the Amadeus pricing aggregation service. It then reviews the legal issues surrounding online pricing tools and the DOJ's response letter.

The Business Review Procedure

A company with concerns about the legality of its proposed business plan or conduct under the antitrust laws may submit a business request letter to the Department. See 28 C.F.R. § 50.6. Upon submitting a business review request letter, the company will receive a statement from the DOJ Antitrust Division ("the Division") as to whether the Division currently intends to challenge the conduct or practice under the antitrust laws based on the information provided. While such letters are not definitive statements of law, they provide insights into the Division's current

enforcement priorities and how it may analyze certain proposed conduct in a concrete, specific factual setting. On September 26, 2016, Amadeus and Mystic submitted its business review request to the DOJ regarding its proposed pricing engine technology tool.

The Amadeus Pricing Aggregation Tool

Amadeus LLC ("Amadeus") and Mystic Logistics LLC ("Mystic") are wholly-owned subsidiaries of Mystic Holdings. Mystic specializes in transportation support services for commercial mailings, including direct logistics, mail consolidation, and other support services in areas such as tracking, dispatch, planning, customer service, and operations. Amadeus offers a software service (i.e., a pricing engine aggregation tool) that allows subscribers to calculate charges and fees associated with different travel and postage methods for purposes of packaging and transporting commercial mailings. In this way, subscribers can determine the most cost-effective transportation and postage methods for its bulk commercial mailings. Mystic assisted Amadeus in the development of this software service and continues to work closely with Amadeus as an affiliate.

According to the parties' letter, the Amadeus software would allow subscribers to upload details for a specific commercial mailing job. To use the tool, the subscriber must upload service information and cost parameters for a specific job request. This data includes both subscriber-specific data and confidential pricing (and related cost information) from third parties that offer transportation support services, some of which compete with those offered by Mystic.

¹ Dan Graulich is an associate with Hogan Lovells US LLP in Washington DC.

Using the information uploaded by the subscriber, the Amadeus software calculates different postage, packaging, and transportation cost scenarios for a subscriber's job request. The subscriber can use the side-by-side price quotes produced by the software to compare logistics costs and pricing for its bulk commercial mailing. In turn, the subscriber can use these quotes to bid for jobs more effectively.

The Legal Issues Posed by Online Tools and Information Exchanges

As e-commerce and online services have developed, the use of algorithms, information aggregators, and other online tools with advanced computing capabilities have become more widespread. These tools offer many potential benefits to companies because they allow firms to compare prices and adjust production in real time according to changes in costs and consumer purchasing patterns. In addition, comparison shopping can lead to more intense price competition between suppliers and lower search and transaction costs for firms.

Such tools can be used to process large amounts of pricing and other competitively-sensitive information in real time. To the extent these tools are used by competitors to exchange competitively-sensitive information, such activities can violate the antitrust laws. "Competitively-sensitive information" can include information that is proprietary, confidential and/or not publicly available (particularly if the information relates to current pricing or pricing strategies and is firm specific in nature).²

As explained in the FTC/DOJ Competitor Collaboration Guidelines, the reasonableness of an information exchange depends primarily on the nature of the information that is shared. Therefore, exchanges of competitively-sensitive information between competitors, even when they occur through third-party intermediaries, can lead to antitrust violations unless certain safeguards are in place.

The DOJ's Legal Analysis

In evaluating the Amadeus pricing aggregation tool and the information provided by the parties in their business request letter, the DOJ found that the software service contained numerous safeguards designed to prevent improper information exchanges between (1) competing subscribers, and (2) Mystic and third parties that offer competing transportation support services. As a result, the DOJ concluded that "[a]lthough the aggregation and exchange of price and other competitive information can facilitate anticompetitive coordination among competitors, there does not appear to be a substantial risk of that result in this case."³

The Department pointed to the following features and procedures surrounding the Amadeus pricing aggregation tool in making its determination:

1. *The software service would not share subscriber-specific data uploaded through the pricing aggregation tool with other subscribers or third parties.* The Amadeus software would limit access to any nonpublic information and parameters uploaded through the pricing aggregation tool to the individual subscriber.
2. *The software service would only allow subscribers to access their own results.* The transportation, package, and postage scenarios provided by the Amadeus software would be restricted to the individual subscriber and are not provided to other subscribers or third parties.
3. *The parties would institute and maintain firewalls that prevent subscribers and third parties from accessing information about other subscribers.* The Amadeus service agreement requires subscribers and any contractors or employees who work with the subscribers to obtain consent from relevant third parties prior to sharing any information with the

Amadeus software. Employees that work with the software service are also held to a strict standard of confidentiality.

4. *Participation in the software service would be nonexclusive and voluntary.* Each participating subscriber would be required to commit to use the software service for at least one year, which would automatically renew unless either party gives the other notice of non-renewal. However, renewal would not be required, and there would be no restrictions on the ability of a subscriber to participate in competing services.

5. *The tool has encryption features that prevent either Amadeus or Mystic from accessing any data and pricing information that a subscriber provides from third parties that compete with Mystic.* The parties proposed using public key cryptography that would prevent either Amadeus or Mystic from accessing third-party transportation data. The parties also indicated that they would limit access to unencrypted data to a third-party service provider with which Amadeus would contract.

Conclusion

Pricing aggregation services and algorithms continue

to present antitrust enforcement officials with new challenges. Companies that offer such services should consider the extent to which their own offerings can facilitate information sharing between users of the service and confirm that proper safeguards are in place that limit access to competitively-sensitive information — particularly if users upload information about a company's own competitors or those of its affiliates. These considerations can assist companies in the crafting of more effective tools and procedures that allow for the successful implementation and introduction of new information technologies and software service offerings.

Endnotes

¹ See, e.g., *In the Matter of Bosley, Inc., Aderans America Holdings, Inc., and Aderans Co., Ltd.*, Docket No. C-4404, Complaint.

² Department of Justice's Business Response Letter to Amadeus and Mystic Logistics, dated December 13, 2016, <https://www.justice.gov/opa/pr/department-justice-will-not-challenge-commercial-mailing-pricing-aggregation-service>.

Program Recap: “Integration v. (?) Consolidation in Health Care”

By Ashley McMahon²

On October 27, 2016, the American Health Lawyers Association, the Health Care and Pharmaceuticals Committee, and the State Enforcement Committee co-sponsored a panel discussion entitled “Integration v. (?) Consolidation in Health Care.” The discussion was moderated by Elinor R. Hoffman, Deputy Chief of the New York Attorney General's Antitrust Bureau. The panel featured Lawton (Rob) Burns, professor and chair of Health Care Management at the Wharton School; Fran Ganz-Lord, MD, Chief Quality and

Population Health Officer at Valley Health System; Richard Donohue, Senior Vice President for Strategy, Planning and Business Development at NYU Langone Medical Center; and Martin Gaynor, professor of economics and health policy at Carnegie Mellon University. The discussion focused on health care system integration and its benefits and drawbacks, both presumed and actual.

² Ashley McMahon is an antitrust associate in the Washington, D.C. office of McDermott Will & Emery, LLP.

At the beginning of the discussion Elinor Hoffman outlined common beliefs of the benefits of health care integration: that it reduces unnecessary services, increases data sharing, lowers costs, improves quality and access, and promotes innovation. The discussion sought to question these benefits, focusing more on fact than law to examine: Is meaningful integration happening? Where is the evidence? How can the system achieve these goals?

The panel discussed some “palpable” benefits of integrated systems. Fran Ganz-Lord noted the increase in information sharing. With integration, there is a wider base of data, and integrated data and infrastructure improve efficiency and promote the flow of information. Physicians can easily obtain more information, monitor patients, and there is a decrease in reporting burdens.

However, the discussion quickly turned to the failures of health care integration. Rick Donohue discussed the failed NYU/Mount Sinai merger, and explained why the combination of two academic centers may not be the best path for clinical integration. Martin Gaynor explained that there is more information on horizontal mergers than vertical integration, given the over 1,200 mergers since 1994. He noted skepticism of whether the benefits claimed by mergers bear out in the results.

One theme that pervaded the discussion was the lack of specific data to help evaluate health care integration. Rob Burns noted that the existing evidence is speculative and has not always reflected benefits. For example, electronic medical records seem to have increased costs, not lessened them. Furthermore, patient data are more difficult to manipulate and interpret than financial data.

A second theme was that the system keeps evolving. Donohue noted the changes the U.S. has seen in the

health care system as a whole and that the evolution is incredibly slow. Where at one time physicians would monitor patient recovery in a hospital stay for two weeks; now patients spend two days in the hospital before discharge and ongoing care often happens outside of facilities. Ganz-Lord explained that when previously a physician may have called a specialist and discussed a patient referral, the information is now entered electronically in a report, showing more disconnect than unity. The evolution of the system—including the technology—has changed the role of physicians and the needs of patients, both of which affect integration and consolidation.

The panel discussed that a fundamental difficulty in combining health care organizations is the nature of the finances. Gaynor explained that in a single entity one party's costs can be another's income, so it's difficult to see decreases in spending without seeing these decreases affect the bottom line. The panel also discussed the potential for harm to competition. When integration creates an entity that controls a large portion of the market, there can be reduced incentive to innovate and price services competitively. This is a reason to examine markets carefully.

Donohue explained that every market is different, but that in New York City the system has gone from 100 facilities to 50 and is moving toward only six systems. Though this reduction may raise eyebrows, he has seen the benefits borne out in improved quality and costs, and lower hospitalization and readmission rates, leading him to conclude that consolidation may just be part of the evolutionary process. Additionally, Ganz-Lord noted that integrated systems can be less dependent on waiting for information to come to them, and can resist certain pressures from outside payors, for example. While smaller systems can be nimble, they may be forced to “cobble together” services without the funds of a larger facility.

With integration or consolidation, including alliances between hospitals and physicians, the panel agreed that we may need to wait and see whether the benefits truly manifest. However, the external structure of a merger may not always be the key; the internal coordination and infrastructure decisions at

facility- and physician-level may make a bigger difference in seeing the benefits of health care integration.

Federal Trade Commission Competition Round-ups October 2016 through February 15, 2017

- October 3, 2016 – FTC staff presented oral remarks to the Southwest Virginia Health Authority and Virginia Department of Health opposing the proposed merger of Mountain States Health Alliance and Wellmont Health System.
- October 5, 2016 – The FTC has approved a final order settling charges that ON Semiconductor Corp.'s \$2.4 billion acquisition of Fairchild Semiconductor International, Inc. would harm competition. Pursuant to the order, the merged entity must sell ON's Ignition IGBT business to Littelfuse, Inc. within 10 days of the close of the transaction.
- October 6, 2016 – The FTC released a report titled "Patent Assertion Entity Activity: An FTC Study."
- October 6, 2016 – The FTC announced that St. Cloud, MN-based CentraCare Health agreed to release certain physicians from non-compete clauses in order to proceed with its proposed merger with St. Cloud Medical Group (SCMG). The merger would combine the two largest providers of adult primary care, pediatric, and OB/GYN services in the St. Cloud area, but the FTC is permitting the merger to proceed in light of SCMG's failing financial status.
- October 6, 2016 – FTC Commissioner Terrell McSweeney delivered the keynote remarks at the Washington Center for Equitable Growth's meeting titled "Making Antitrust Work for the 21st Century."
- October 13, 2016 – FTC Commissioner Terrell McSweeney delivered opening remarks at the Public Policy Forum on the FTC Study on Patent Assertion Entities.
- Air Liquide Holdings, Inc. to sell to Reliant Processing, Ltd. certain assets related to production of bulk liquid carbon dioxide at facilities in Galva, and Sergeant Bluff, Iowa. This petition replaces one submitted in July by American Air Liquide Holdings, Inc. – and later withdrawn – to sell these assets to Aspen Air U.S. Corp. The divestiture is required by the FTC's July 2016 final order settling charges that the \$13.4 billion merger of industrial gas producers American Air Liquide Holdings, Inc. and Airgas, Inc. would likely harm competition in several U.S. and regional markets.
- October 28 – The FTC has joined the DOJ's Antitrust Division in an amicus brief filed by the Solicitor General in the cases of *Visa Inc., et al. v. Osborn and Visa Inc., et al. v. Stoumbos*, Nos. 15-961 and 15-962, pending before the U.S. Supreme Court. The amicus brief urges the Court to affirm the U.S. Court of Appeals for the District of Columbia Circuit, which held that the plaintiffs' complaints adequately alleged an agreement among Visa and MasterCard's member banks and reversed a district court ruling holding otherwise.
- October 31 – Following a public comment period, the FTC has approved a modified final order settling charges that the \$28 billion merger of Koninklijke Ahold and Delhaize Group, which together own five well-known U.S. grocery store chains, would likely be anticompetitive. Under the

proposed order, first announced in July 2016, the companies are required to sell 81 stores to seven divestiture buyers. The proposed order calls for prior Commission approval before one of the divestiture buyers, Supervalu, transfers or sells an ownership interest in an acquired store to another party. This modified final order approves Supervalu's proposed joint venture transaction with Donstekim Enterprises, LLC, regarding its acquired stores.

- November 1, 2016 – The DOJ and FTC seek public comment on proposed Antitrust Guidelines for International Enforcement and Cooperation. The proposed guidelines will update the 1995 Antitrust Enforcement Guidelines for International Operations and will provide guidance on international business activities and the agencies' international enforcement policy.
- November 7, 2016 – The FTC announced that Valeant Pharmaceuticals International, Inc., parent of Bausch + Lomb, has agreed to divest Paragon Holdings I, Inc. to settle FTC charges that its acquisition of Paragon violated the antitrust laws. Both companies produced polymer discs used to make rigid gas permeable, or "GP," contact lenses.
- November 8, 2016 – The FTC filed an amicus brief with the U.S. District Court of Appeals for the First Circuit urging the court to reverse the district court's dismissal of the complaint in Amphastar Pharmaceuticals, Inc. v. Momenta Pharmaceuticals, Inc. The FTC argued that the Noerr-Pennington doctrine, exempting from antitrust scrutiny attempts to influence the passage or enforcement of laws, was erroneously applied by the district court.
- November 15, 2016 – The FTC approved an application from HeidelbergCement AG and Italcementi S.p.A. to sell the Essroc cement plant in Martinsburg, WV, eight mid-Atlantic cement terminals, and related assets to Argos USA LLC, a subsidiary of Cementos Argos S.A. The divestiture was required by the FTC's order settling charges that the merger of Heidelberg and Italcementi would likely harm competition in five regional markets for cement in the U.S.
- November 15, 2016 – The FTC issued its Fiscal Year 2016 Agency Financial Report.
- November 15, 2016 – Following a public comment period, the FTC has approved an application from HeidelbergCement AG and Italcementi S.p.A. to sell the Essroc cement plant in Martinsburg, West Virginia, eight cement terminals in the mid-Atlantic, and related assets to Argos USA LLC, a subsidiary of Cementos Argos S.A. The divestiture is required by the FTC's August 2016 final order settling charges that the \$4.2 billion merger of Heidelberg and Italcementi would likely harm competition in five regional markets for cement in the United States.
- November 23, 2016 – The FTC staff submitted a comment to the Tennessee Department of Health that opposes issuing a certificate of public advantage (COPA) to Mountain States Health Alliance and Wellmont Health System. If approved, the COPA could allow the merger of Mountain States and Wellmont, the two largest healthcare systems in northeast Tennessee and southwest Virginia, to proceed with regulatory oversight from the State of Tennessee.

- November 28, 2016 – The DOJ's Antitrust Division and the FTC have submitted a comment in response to the U.S. Federal Energy Regulatory Commission's Notice of Inquiry addressing how FERC assesses market power with respect to mergers and electricity sales at market-based rates.
- November 30, 2016 – The FTC has issued its 2016 Report on Ethanol Market Concentration, an annual report required by the Energy Policy Act of 2005 "to determine whether there is sufficient competition among industry participants to avoid price-setting and other anticompetitive behavior." As in prior years, the 2016 report concludes that "the low level of concentration and large number of market participants in the U.S. ethanol production industry continue to suggest that the exercise of market power to set prices, or coordination on price and output levels, is unlikely."
- December 6, 2016 – FTC Commissioner Terrell McSweeney delivered remarks at the MLex Market Insight Seminar: What is Next in Innovation, Intellectual Property and Standard Essential Patents?" titled "Intellectual Property, Competition, and Innovation: U.S. Developments"
- December 20, 2016 – Following a public comment period, the FTC approved an application from American Air Liquide Holdings, Inc. to sell to Reliant Holdings, Ltd. certain assets related to production of bulk liquid carbon dioxide and dry ice at facilities in Galva, and Sergeant Bluff, Iowa. The divestiture is required by the FTC's July 2016 final order settling charges that the \$13.4 billion merger of industrial gas producers American Air Liquide Holdings, Inc. and Airgas, Inc. would likely harm competition in several U.S. and regional markets.
- December 27, 2016 – U.S.-based global healthcare company Abbott Laboratories has agreed to divest two medical device businesses to settle FTC charges that its proposed \$25 billion acquisition of St. Jude Medical, Inc. would likely harm competition in the U.S. markets for vascular closure devices, which are used to close holes in arteries from the insertion of catheters, and for "steerable" sheaths, which are used to guide catheters for treating heart arrhythmias. The proposed consent order requires the parties to divest to Tokyo-based medical device maker Terumo Corporation all rights and assets related to St. Jude's vascular closure device business and Abbott's steerable sheath business and to notify the FTC if it intends to acquire lesion-assessing ablation catheter assets from Advanced Cardiac Therapeutics.
- December 28, 2016 – German pharmaceutical company Boehringer Ingelheim has agreed to divest five types of animal health products in the United States in order to settle FTC charges that its proposed asset swap with Paris-based Sanofi would likely harm competition in the U.S. markets for various vaccines for pets and certain parasite control products for cattle and sheep. Under the proposed swap, Boehringer Ingelheim will acquire Sanofi's animal care subsidiary, Merial, valued at \$13.53 billion, and Sanofi will obtain Boehringer Ingelheim's consumer health care business unit, valued at \$7.98 billion, as well as cash compensation of \$5.54 billion. The proposed consent order requires Boehringer Ingelheim to divest the companion animal vaccines to Eli Lilly and the company's Elanco Animal Health division, and the parasite control products to Bayer AG.

- January 6, 2017 – The FTC staff submitted a supplemental comment and analysis to the Tennessee Department of Health opposing issuing a Certificate of Public Advantage to Mountain States Health Alliance and Wellmont Health System. Following the staff's December 19, 2016 letter, the staff expressed concern that the proposed merger would lead to significant harm to patients in northwest Tennessee and southwest Virginia.
- January 9, 2017 – The FTC approved a final order settling charges that CentraCare's acquisition of St. Cloud Medical Group would result in competitive harm. To allow the acquisition to proceed, CentraCare will be required to allow a number of physicians to leave the health system despite non-compete agreements in current contracts.
- January 13, 2017 – The DOJ and FTC issued updated Antitrust Guidelines for the Licensing of Intellectual Property. This update modernized the IP Licensing Guidelines, initially issued by the agencies in 1995.
- January 13, 2017 – The DOJ and FTC issued revised Antitrust Guidelines for International Enforcement and Cooperation. This update modernized the Antitrust Enforcement Guidelines for International Operations, initially issued by the agencies in 1995.
- January 13, 2017 – The FTC staff submitted a supplemental comment and analysis to the Virginia Department of Health opposing issuing a letter authorizing a cooperative agreement to Mountain States Health Alliance and Wellmont Health System. This letter followed the staff's previous letter issued September 30, 2016.
- January 17, 2017 – Hedge fund founder Ahmet H. Okumus has agreed to pay \$180,000 in civil penalties to resolve FTC allegations that he violated the Hart-Scott-Rodino Act by failing to report his purchases of voting securities in the internet services company Web.com Group Inc. In a separate action, entrepreneur Mitchell P. Rales has agreed to pay \$720,000 in civil penalties to resolve FTC allegations that he violated the Hart-Scott-Rodino Act by failing to report his purchases of shares in two industrial companies, Colfax Corporation and Danaher Corporation.
- January 17, 2017 – The FTC filed a complaint in federal district court charging Qualcomm Inc. with using anticompetitive tactics to maintain its monopoly in the supply of a key semiconductor device used in cell phones and other consumer products. The FTC alleges that Qualcomm has used its dominant position as a supplier of certain baseband processors to impose onerous and anticompetitive supply and licensing terms on cell phone manufacturers and to weaken competitors.
- January 18, 2017 – Mallinckrodt ARD Inc., formerly known as Questcor Pharmaceuticals, Inc., and its parent company, Mallinckrodt plc, have agreed to pay \$100 million to settle FTC charges that they violated the antitrust laws when Questcor acquired the rights to a drug that threatened its monopoly in the U.S. market for adrenocorticotrophic hormone drugs. Acthar is a specialty drug used as a treatment for infantile spasms, a rare seizure disorder afflicting infants, as well a drug of last resort used to treat other serious medical conditions.

- January 19, 2017 – OFTACOOP, a Puerto Rico ophthalmologist cooperative, has agreed to settle FTC charges that its actions harmed competition. The complaint charges that OFTACOOP – also known as Cooperativa de Médico Oftalmólogos de Puerto Rico – unlawfully orchestrated an agreement among competing ophthalmologists to refuse to deal with a health plan, MCS Advantage, Inc., and its network administrator, Eye Management of Puerto Rico, LLC. OFTACOOP's concerted refusal to deal forced MCS to abandon its plan to engage Eye Management to create a lower-cost network of ophthalmologists. MCS was also forced to maintain its then-current reimbursement rates paid to ophthalmologists.
- January 19, 2017 – For 2017, the size-of-transaction threshold for reporting proposed mergers and acquisitions under Section 7A of the Clayton Act will increase from \$78.2 million to \$80.8 million. The new 2017 thresholds under Section 8 of the Act that trigger prohibitions on certain interlocking memberships on corporate boards of directors are \$32,914,000 for Section 8(a)(1) and \$3,291,400 for Section 8(a)(2)(A).
- January 23, 2017 – The FTC has refiled a complaint and filed a proposed stipulated order in federal court to resolve charges that Endo Pharmaceuticals Inc. and Endo International plc violated the antitrust laws by using pay-for-delay settlements to block consumers' access to lower-cost generic versions of its two top-selling branded drugs, Lidoderm and Opana ER, in order to preserve its monopoly profits. Lidoderm is a topical patch used to relieve pain associated with a complication of shingles known as post-herpetic neuralgia, and Opana ER is an extended-release opioid used to relieve moderate to severe pain. In a related matter, the FTC refiled charges against Watson Laboratories, Inc., and its former parent, Allergan plc, for illegally blocking a lower-cost generic version of Lidoderm when it entered into a pay-for-delay agreement with Endo. The agency also issued an administrative complaint against Impax Laboratories, Inc. for engaging in similar conduct with regard to Opana ER.
- February 3, 2017 – The FTC issued a report titled "The FTC's Merger Remedies 2006-2012: A Report of the Bureaus of Competition and Economics." The report concluded that the FTC's remedies are generally successful in protecting or restoring competition in the affected markets.
- February 3, 2017 – Acting FTC Chairwoman Maureen K. Ohlhausen made remarks at the GCR Live 6th Annual Antitrust Law Leaders Forum in Miami, Florida titled "The FTC's Path Ahead."
- February 7, 2017 – The FTC filed a complaint against Shire ViroPharma Inc. alleging that the company violated antitrust laws by repeatedly abusing government processes to delay generic competition to its branded prescription drug, Vancocin HCl Capsules. The complaint alleges that Shire submitted 43 filings with the FDA and filed three lawsuits against the FDA between 2006 and 2012, far beyond that which other drug companies submitted related to other generic drugs.
- February 8, 2017 – The FTC approved a final order settling charges that Bausch + Lomb parent company Valeant Pharmaceuticals International, Inc. illegally acquired Paragon Holdings I, Inc. The order requires Valeant to sell Paragon in its entirety to Paragon Companies, LLC, a newly created entity.
- February 10, 2017 – The FTC is accepting public comments on an application from SuperValu, Inc. to sell a store in Lake Stevens, Washington to Saar's Inc. SuperValu acquired the store in 2015 through the divestiture required by the FTC in the merger of Safeway and Albertsons, and was required to seek FTC approval for any sale of the store within three years of purchase.

Department of Justice Competition Round-ups

October 2016 through February 15, 2017

- October 5, 2016 – Lam Research Corp. and KLA-Tencor Corp. announced they would abandon plans to merge in light of DOJ concerns about the proposed transaction's effect on competition. The merger would have combined a leading supplier of semiconductor fabrication equipment with a leading supplier of metrology and inspection equipment, which the DOJ believed may have allowed the merged entity to foreclose certain competitors.
- October 26, 2016 – The DOJ announced that it will require Westinghouse Air Brake Technologies Corporation (Wabtec) to divest Faiveley Transport North America's (Faiveley) entire U.S. freight car brakes business in order for Wabtec to proceed with its proposed approximately \$1.8 billion acquisition of Faiveley Transport S.A. and Faiveley Transport North America. Faiveley's U.S. freight car brakes business develops, manufactures and sells freight car brake systems and components including: air brake control valves, hand brakes, slack adjusters, truck-mounted brake assemblies, empty load devices and brake cylinders. The divestiture also includes Faiveley's FTEN control valve, a freight car brake control valve under development that will be available for full commercialization after approval from the Association of American Railroads.
- October 28, 2016 – The DOJ's Antitrust Division, at the request of the FTC, filed a civil antitrust lawsuit in U.S. District Court in Washington, D.C., against Faye Sarofim for violating the premerger notification and waiting period requirements of the Hart-Scott-Rodino Act of 1976 when he acquired voting securities of Kinder Morgan Inc., in 2001, 2006 and 2012, and Kemper Corporation in 2007. At the same time, the department filed a proposed settlement, subject to approval by the court, under which Sarofim has agreed to pay a \$720,000 civil penalty to resolve the lawsuit.
- November 1, 2016 – The DOJ and FTC seek public comment on proposed Antitrust Guidelines for International Enforcement and Cooperation. The proposed guidelines will update the 1995 Antitrust Enforcement Guidelines for International Operations and will provide guidance on international business activities and the agencies' international enforcement policy.
- November 2, 2016 – The DOJ filed a complaint against DIRECTV and its corporate successor, AT&T Inc., on allegations that it orchestrated a series of unlawful information exchanges with its competitors – Cox Communications Inc., Charter Communications Inc., and AT&T – during the companies' negotiations to carry SportsNet LA on its network. Specifically, the complaint alleges that the companies exchanged non-public information about ongoing negotiations and future plans related to the channel.
- November 16, 2016 – Two Northern California real estate investors have agreed to plead guilty for their role in a conspiracy to rig bids at public real estate foreclosure auctions in Northern California. According to court documents, between June 2008 and January 2011, John Michael Galloway and Nicholas Diaz conspired with others not to bid against one another, instead designating a winning bidder to obtain selected properties at public real

estate foreclosure auctions in Contra Costa County. The selected properties were then awarded to the conspirators who submitted the highest bids in the second, private auctions.

- November 16, 2016 – The DOJ filed a civil antitrust lawsuit seeking to block EnergySolutions' proposed \$367 million acquisition of Waste Control Specialists. According to the department's complaint, EnergySolutions and Waste Control Specialists are the only two significant competitors providing low level radioactive waste disposal services to commercial customers in 36 states, the District of Columbia and Puerto Rico.
- November 28, 2016 – The DOJ's Antitrust Division and the FTC have submitted a comment in response to the U.S. Federal Energy Regulatory Commission's Notice of Inquiry addressing how FERC assesses market power with respect to mergers and electricity sales at market-based rates.
- December 6, 2016 – The DOJ announced that it would require Alaska Air Group Inc. to reduce the scope of its codeshare agreement with American Airlines, in order for Alaska to proceed with its \$4 billion acquisition of Virgin America Inc. The DOJ alleged that the codeshare agreement effectively limited incentives for Alaska and American to compete on certain routes, in contrast with Virgin's robust competition with American. The Alaska-Virgin merger will create the nation's fifth largest air carrier.
- December 13, 2016 – The DOJ issued a Business Review Letter indicating that it would not challenge a proposal by Amadeus Group LLC and its corporate affiliate Mystic Logistics LLC to offer pricing aggregation services to subscribers involved in the commercial mailing business. The proposal includes safeguards to ensure that no commercially sensitive information will be made available to share as part of these services.
- December 15, 2016 – A federal jury convicted four real estate investors for their roles in a conspiracy to rig bids at public real estate foreclosure auctions held in Alameda County, California, the DOJ announced. After a two-week trial, the jury convicted Alvin Florida Jr., Robert Alhashash Rasheed, John Lee Berry III and Refugio Diaz of one count each of conspiring to rig bids at foreclosure auctions between May 2008 and December 2010. The conspirators designated the winning bidders to obtain selected properties in advance, then held second, private auctions at or near the courthouse steps where the public auctions were held, awarding the properties to conspirators who submitted the highest bids.
- December 20, 2016 – The DOJ announced that it will require AMC Entertainment Holdings Inc. to divest theatres in 15 local markets, sell off most of its holdings and relinquish all of its governance rights in National Cinemedia LLC, and transfer 24 theatres with a total of 384 screens to the network of Screenvision LLC in order to complete its \$1.2 billion acquisition of Carmike Cinemas Inc.
- December 21, 2016 – The current senior vice president of trade marketing of a leading packaged seafood company has agreed to plead guilty for his role in a conspiracy to fix the prices of packaged seafood such as canned tuna sold in the United States, the DOJ announced. According to a one-count felony charge filed in the U.S. District Court for the Northern District of California in San Francisco, Kenneth Worsham and his co-conspirators agreed to fix the prices of packaged seafood from as early as 2011 until about 2013. In addition to his guilty plea, which is subject to court approval, Worsham has agreed to pay a criminal

fine and cooperate with the Division's ongoing investigation.

- December 22, 2016 – The DOJ announced that it will require Clear Channel Outdoor Holdings, Inc. and Fairway Media Group, LLC to divest billboards in Atlanta and Indianapolis in order to proceed with their \$150 million swap of outdoor advertising assets located in multiple U.S. markets. According to the DOJ, the proposed swap transaction, in which Clear Channel would acquire Fairway billboards in Atlanta in exchange for Clear Channel billboards in Indianapolis and certain other areas, would eliminate substantial head-to-head competition between Clear Channel and Fairway for the business of local and national advertisers seeking to reach customers within the Atlanta and Indianapolis metropolitan markets. Under the terms of the proposed settlement, Clear Channel and Fairway must divest 13 billboard structures in Indianapolis to Circle City Outdoor, LLC, and 44 billboard structures in Atlanta to Link Media Georgia, LLC.
- January 13, 2017 – The DOJ and FTC issued updated Antitrust Guidelines for the Licensing of Intellectual Property. This update modernized the IP Licensing Guidelines, initially issued by the agencies in 1995.
- January 13, 2017 – The DOJ and FTC issued revised Antitrust Guidelines for International Enforcement and Cooperation. This update modernized the Antitrust Enforcement Guidelines for International Operations, initially issued by the agencies in 1995.
- January 18, 2017 – The DOJ announced a settlement with Duke Energy Corporation (Duke) for violating the reporting and waiting period requirements of the HSR Act. The settlement requires Duke to pay \$600,000 in civil penalties to resolve the department's charges that, after agreeing to purchase the Osprey Energy Center (Osprey) from Calpine Corporation, Duke took control of Osprey's business before filing required HSR Act notifications and waiting for the expiration of the mandatory waiting period for antitrust review.
- January 23, 2017 – Judge John D. Bates of the District Court for the District of Columbia issued a decision that found in favor of the DOJ in its civil antitrust lawsuit to block health insurer Aetna Inc.'s acquisition of rival insurer Humana Inc. The decision follows a 13-day trial in December 2016. In July 2016, the Justice Department along with eight states and the District of Columbia sued to stop the merger. In blocking the transaction, the court ruled that the proposed merger is likely to substantially lessen competition in the sale of individual Medicare Advantage plans in 364 counties.
- January 26, 2017 – A federal jury convicted four individuals in the U.S. District Court of the District of Puerto Rico for conspiring to rig bids and allocate the market for public school bus transportation contracts in the municipality of Caguas from approximately August 2013 until May 2015. Each individual was also found guilty of conspiracy to commit mail fraud and four counts of mail fraud for defrauding the municipality of Caguas to fraudulently obtain contracts for school bus transportation services.
- February 8, 2017 – United States District Court Judge Amy Berman Jackson ruled in favor of the Justice Department in its civil antitrust lawsuit to block Anthem, Inc.'s acquisition of Cigna Corp.

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- October 4, 2016 – The District Court for the District of Nevada granted the FTC’s motion for summary judgment and entered a judgment in the amount of \$1.3 billion against defendants who operated a payday lending scheme that deceived consumers and charged them undisclosed and inflated fees. Defendants falsely told consumers that they would charge the consumers a one-time finance fee; instead Defendants made multiple withdrawals from consumers’ bank accounts and assessed new finance fees each time. In addition to the monetary judgment, Defendants are banned from participating in any aspect of consumer lending and from conditioning the extension of credit on preauthorized electronic fund transfers.
- October 4, 2016 – The FTC and the State of Georgia have filed a complaint in the Northern District of Georgia against Laptop & Desktop Repair, LLC, an electronics buyback company and its owners alleging that the Defendants deceived consumers with high-dollar offers to buy back electronics only to give consumers far less than promised after the electronics were sent to the company. At the FTC’s and State of Georgia’s request, a judge in the Northern District of Georgia has granted the Plaintiffs’ request for a temporary restraining order against the Defendants.
- October 4, 2016 – The US Court of Appeals for the Second Circuit upheld a lower court’s ruling requiring the operator of an affiliate marketing group to pay \$11.9 million relating to the promotion of LeanSpa, a weight loss supplement that the FTC alleged was deceptively marketed. The Circuit Court found that Defendants knew that news sites being used to drive internet traffic to LeanSpa were phony and rejected Defendants’ claims of immunity under the Communication Decency Act because Defendants participated in the development of the deceptive content.
- October 5, 2016 – The FTC has reached a settlement with the makers of Supple, a supplement that allegedly provided complete relief from chronic and severe joint pain caused by arthritis and fibromyalgia. Pursuant to the terms of the settlement, Defendants are barred from making any future claims about pain relief without scientific evidence. Defendants also are subject to a \$150 million judgment, most of which is suspended based on inability to pay.
- October 6, 2016 – The FTC joined the NAACP and local community partners for a forum on consumer fraud issues. The forum provided consumers the opportunity to ask questions about ongoing fraud issues and learn about how to combat fraud. Consumers also will have the opportunity to share how fraud has impacted them.
- October 6, 2016 – FTC Chairwoman Edith Ramirez issued a statement regarding the release of the FCC’s Fact Sheet on Broadband Consumer Privacy Proposal, stating that she is “pleased to see the FCC moving forward to protect the privacy” of broadband users. The FTC previously provided comment on the FCC’s proposed rulemaking on this issue.

- October 11, 2016 – The FTC announced its final amendments to the Hobby Protection Rules, which regulate the marking of imitation coins and political items sold to hobbyists. The Hobby Protection Rules now cover sellers of imitation numismatic items, such as replica coins and paper money. The Rules also now bar person from giving substantial assistance to manufacturers of imitation numismatic items or manufacturers of political items who are known (or should have been known) to be violating the marking requirements of the Rules.
- October 12, 2016 – The FTC filed a complaint in the Eastern District of Missouri against operators of a multi-national tech support company alleging that the company used deceptive pop-up internet ads to induce consumers into paying for unnecessary computer support services. The FTC also was granted a temporary restraining order, which has stopped Defendants' business and has frozen their assets.
- October 13, 2016 – The District Court for the District of Arizona has granted the FTC's request for a temporary restraining order that shut down a telemarketing scheme that allegedly bilked more than \$9 million from consumers. As part of the scheme, Defendants called consumers, particularly the elderly and military veterans, and urged consumers to invest in e-commerce websites in exchange for which consumers would receive high returns. Defendants would obtain consumers' credit card information for payments and would cease contact with consumers after 90 days, paying neither the promised returns nor refunds (most credit card companies impose a 90-day deadline to dispute charges). A preliminary injunction hearing is scheduled for October 18, 2016.
- October 13, 2016 – The FTC has reached a settlement with a group of Defendants who allegedly used deceptive marketing tactics to promote skincare products. Pursuant to the terms of the settlement, Defendants are barred from selling products via a "negative option," in which consumer silence is interpreted as consent to receive and pay for goods. Defendants also are subject to a monetary judgment of \$72.7 million, which is partially suspended based on inability to pay.
- October 17, 2016 – A federal judge has granted the FTC's request for a preliminary injunction against two people and their companies for allegedly tricking small commercial trucking businesses into paying them for federal and state motor carrier registrations by impersonating government transportation agencies, such as the U.S. Department of Transportation (USDOT). Consumers who own and operate certain types of commercial vehicles must register annually with the Unified Carrier Registration (UCR) system or their state government and pay a fee based on their fleet size. According to the FTC's complaint, the defendants have taken in more than \$19 million from thousands of small businesses by sending misleading robocalls, emails, and text messages that create and reinforce the false impression that they are, or are affiliated with, the USDOT, the UCR system, or another government agency.

- October 19, 2016 – Georgia-based specialty chemical company Chemence, Inc. will stop making misleading unqualified claims that its strong, fast-acting glues are made in the United States, under a settlement with the FTC. Chemence also has agreed to pay a \$220,000 judgment to resolve the lawsuit the FTC brought against the company in February 2016. In its complaint against Chemence, the FTC alleged that the company deceived consumers by making “Made in USA” or “Proudly Made in USA” claims for its cyanoacrylate glue products such as Kwik Fix, Hammer Tite, and Krylex. While Chemence’s claims allegedly implied that the products were all, or virtually all, made in the United States, approximately 55 percent of the costs of the chemical inputs to Chemence’s glues are attributable to imported chemicals that are essential to the glues’ function, according to the FTC.
- October 25, 2016 – A federal district court judge in San Francisco signed a \$10 billion settlement order, starting the formal process for owners of certain Volkswagen and Audi 2.0 liter diesel cars to receive compensation for the vehicles they bought. Under the \$10 billion Federal Trade Commission order, in most cases the owners of VW and Audi diesel cars fitted with illegal emissions defeat devices will receive between \$12,500 and \$44,000 each, depending on the model, year, mileage, and trim of the car, as well as where the owner lives.
- October 28, 2016 – The FTC has charged three individuals and five companies they control with bilking money from consumers by selling them a worthless money-making opportunity purportedly linked to Amazon.com, and luring them with a phony grants program. At the FTC’s request, a federal court has temporarily halted the operation. The agency seeks to end the alleged illegal practices and obtain money for return to consumers. According to the FTC’s complaint, the defendants’ telemarketers falsely tell people they represent Amazon and offer, for hundreds or thousands of dollars, to create a website for them linked to Amazon.com, claiming they will earn thousands of dollars every month in commissions for sales via the website. The defendants’ telemarketers allegedly also call people, often claiming to represent the government, and falsely tell them they can get government and corporate grants to help pay for home repairs, medical costs, and paying down debt. They ask for thousands of dollars up-front and falsely promise that consumers will receive grants worth tens of thousands of dollars within 90 days.
- October 31, 2016 – A federal judge has banned a group of debt collectors based in Buffalo, New York who pretended to be affiliated with the government from the collection business and ordered them to pay nearly \$11 million, after granting the FTC’s request for summary judgment. The action is part of Operation Collection Protection, a continuing nationwide crackdown on collectors whose illegal tactics include harassing phone calls and false threats of lawsuits and arrest.
- November 1, 2015 – The FTC announced that it will host a privacy research and development networking event on January 11, 2017. The event is part of the FTC’s PrivacyCon forum and will be

Structured as an exhibition, allowing participants to circulate among various organizations to learn about the organizations' research and collaboration opportunities.

- November 1, 2016 – The FTC has reached a settlement with the Consumer Education Group, settling charges that it made millions of illegal telemarketing calls to consumers on the Do Not Call Registry as part of a campaign to generate sales leads for third parties. Pursuant to the terms of the settlement, the Group is required to comply with the Telemarketing Sales Rule and pay a \$2.3 million civil penalty, most of which is suspended based on inability to pay.
- November 4, 2016 – The FTC has filed a complaint against Innovative Designs, Inc. in the Western, alleging that it made false and unsubstantiated claims that its home insulation products could save consumers money. The FTC alleges that the test results and certificates advertised by the company regarding its products are flawed and invalid.
- November 8, 2016 – A judge in the Northern District of Illinois has granted the FTC's request to lift a partial suspension of a judgment against a defendant who allegedly sent spam text. The FTC alleged that the defendant hid assets and misrepresented his financial condition, which led to the partial suspension of the judgment. The new order requires the defendant to pay an additional \$180,000.
- November 8, 2016 – The FTC mailed more than 280,000 checks totaling more than \$3.7 million to people who lost money in a multi-level marketing pyramid scheme run by Fortune Hi-Tech Marketing.
- November 8, 2016 – The FTC announced that it will host a workshop to analyze changing consumer demographics. The workshop will be held in Washington, DC on December 6, 2016.
- November 10, 2016 – The FTC announced the publication of its advice on how to protect electronic devices and respond to ransomware attacks. The advice follows from the FTC's September 2016 workshop on Ransomware.
- November 10, 2016 – The FTC announced that it is seeking comment on proposed amendments to the Contact Lens Rule, which promotes competition for retail contact lenses by requiring a prescriber to provide patients with a copy of contact lens prescription. The amendments would require prescribers to obtain signed acknowledgments after releasing a contact lens prescription to a patient and to maintain that acknowledgment for at least 3 years.
- November 10, 2016 – The FTC announced final amendments to the Used Car Rule. The Used Car Rule requires car dealers to display a window sticker on used cars offered for sale, which discloses whether the car is being sold as-is or is being sold with a warranty. The amendments are to change requirements for the window sticker, including identifying whether the car is covered by a third-party warranty or the original car manufacturer warranty and instructing purchasers to obtain vehicle history reports.
- November 10, 2016 – The FTC has filed a complaint in the U.S. District Court for the Northern District of Georgia against NetSpend Corporation, which the FTC alleges deceived

consumers about access to funds deposited on NetSpend debit cards. Once consumers loaded money onto the NetSpend debit cards, NetSpend allegedly denied consumers access to that money by delaying or denying activation of the card.

Customers who tried to close their accounts were denied refunds or their accounts were depleted by NetSpend fees.

- November 14, 2016 – A judge in the U.S. District Court for the Middle District of Florida has granted the FTC’s motion for summary judgment against a defendant who marketed Pure Green Coffee and deceived consumers by using false weight-loss claims, testimonials, and news stories. In addition to the grant of summary judgment, the court also granted the FTC’s request for a \$30 million judgment assessed against the defendants. The court’s order also permanently bars the defendant from making similar claims.
- November 14, 2016 – The FTC has announced its agenda for its Fall Tech Event on SmartTV. The event will be held on December 7, 2016. The event will explore the tracking of consumers’ TV viewing habits by television delivery services and how that information is used by content producers and advertisers.
- November 14, 2016 – The FTC has begun mailing checks to victims of a telemarketing scheme that conned consumers into paying fake debts. The FTC will mail nearly 3,500 checks totaling more than \$830,000.
- November 15, 2016 – The FTC, together with the National Association of State Charities Officials, will host a conference to analyze consumer charitable decisions and what, if any, consumers protections are required in this space. The event will be on March 21, 2017.
- November 15, 2016 – The FTC has announced a website designed for mobile devices to help military members with personal financial decisions. Military members face unique financial needs, including frequent relocations that require buying or renting property and deployment.
- November 15, 2016 – The FTC has issued a policy statement called “Enforcement Policy Statement on Marketing Claims for Over-the-Counter (OTC) Homeopathic Drugs.” The statement explains that the standards that the FTC will use to examine claims made by homeopathic drug manufacturers.
- November 15, 2016 – The FTC, together with the National Association of State Charities Officials, will host a conference to analyze consumer charitable decisions and what, if any, consumers protections are required in this space. The event will be on March 21, 2017.
- November 15, 2016 – The FTC announced a new “Enforcement Policy Statement on Marketing Claims for Over-the-Counter (OTC) Homeopathic Drugs.” The policy statement was informed by an FTC workshop held last year to examine how such drugs are marketed to consumers. The FTC also released its staff report on the workshop, which summarizes the panel presentations and related public comments in addition to describing consumer research commissioned by the FTC. The policy statement explains that the FTC will hold efficacy and safety claims for OTC homeopathic drugs to the same standard as other products making similar claims.

- November 15, 2016 – The FTC and the National Association of State Charities Officials, the association of state offices charged with oversight of charitable organizations and charitable solicitations, will host a conference on March 21, 2017, in Washington, DC, to examine how consumers evaluate and respond to various charitable solicitation practices and the role for consumer protection in ensuring consumers have confidence their giving expectations are fulfilled.
- November 17, 2016 – The FTC released a report that provides an in-depth assessment of evolving business models that rely on internet and app-based “sharing economy” platforms used by millions of Americans. The report summarizes a June 2015 FTC public workshop and highlights a number of competitive benefits and potential consumer protection challenges posed by disruptive business models in markets such as for-hire-transportation and short-term lodging.
- November 17, 2016 – The FTC will host a roundtable on December 5 in Chicago that will bring together leaders of Chicago-area Latino organizations to discuss consumer fraud and its disproportionate impact on Latino communities. The roundtable, “Combating Fraud in Latino Communities,” will examine prior FTC research showing that Latinos were more likely than non-Hispanic whites to be fraud victims yet less likely than the general population to report the fraud.
- November 21, 2016 – Following a public comment period, the FTC has approved a final consent order with Warner Bros. Home Entertainment Inc., settling charges that the company failed to adequately disclose that it paid online influencers to post gameplay videos. According to the FTC’s complaint, announced in July 2016, Warner Bros. deceived consumers during a marketing campaign for the video game Middle Earth: Shadow of Mordor, by failing to adequately disclose that it paid online “influencers” thousands of dollars to post positive gameplay videos on YouTube and social media. Over the course of the campaign, the sponsored videos were viewed more than 5.5 million times.
- November 29, 2016 – The FTC has granted Gilbarco Inc. and other ethanol flex fuel retailers a partial exemption to its Fuel Rating Rule labeling requirements. Specifically, the exemption permits retailers to reduce slightly the required label size when disclosing the ethanol content of ethanol flex fuels on the fuel selection buttons on retail pumps. Gilbarco, a retail fuel pump manufacturer, petitioned the agency for the exemption. The Commission previously granted similar exemptions for octane labels placed on fuel selection buttons.
- November 30, 2016 – In a stipulated order, the FTC resolved charges against Jason A. Kotzker, brought in August 2015, alleging that he and his co-defendants obtained personal information from people who thought they were applying for payday loans online and, instead of passing the information to legitimate payday lenders, sold it to companies like Ideal Financial Solutions Inc., which raided consumers’ bank accounts and credit cards for at least \$7.1 million. The FTC also alleged that the defendants helped Ideal Financial hide the fraud from banks. The order prohibits Kotzker from selling or disclosing consumers’ sensitive personal information, making

misrepresentations about any financial or other product or service, and profiting from consumers' personal information and failing to dispose of it properly. It imposes a judgment of more than \$7.1 million that will be partially suspended upon payment of \$45,000, which represents virtually all of Kotzker's assets.

- December 6, 2016 – The FTC hosted a workshop in Washington, DC on changing consumer demographics and how that will affect the marketplace. The workshop focused on how population is changing, how advertising and marketing are changing in response, how fraud is likely to change, and what the FTC and others can do to combat fraud.
- December 8, 2016 – The FTC is providing refunds totaling more than \$88 million to nearly 2.7 million consumers who had third party charges added to their mobile phone bills without their consent, a practice known as "cramming." The refunds relate to a 2014 settlement with AT&T and other companies and represent the most ever returned to consumers in a mobile cramming case. The average amount of refund will be \$31.
- December 9, 2016 – The FTC issued the National Do Not Call Registry Data Book for Fiscal Year 2016. The book contains information about the DNC registry, including the number of active registrants, the number of complaints, the registration and complaints by state, the rankings of DNC registrations by state population, the number of entities accessing the DNC registry, and an appendix with registrations and complaints organized by state and area code.
- December 12, 2016 – The FTC has reached a settlement with marketers of a mobile app designed to measure blood pressure. The settlement resolves the FTC's allegations that the marketers deceived consumers with claims that their app was as accurate as a traditional blood pressure cuff. Pursuant to the terms of the settlement, the marketers are banned from making unsupported claims in the future and must reveal any material connection between the company and people who endorse its products. The settlement also imposes a judgment of nearly \$600K, which is suspended based on inability to pay.
- December 12, 2016 – The FTC has granted a summary decision against California Naturel, Inc. for falsely advertising its sunscreen products as "all natural." In an opinion written by Chairwoman Ramirez, the FTC found that while the company promoted its products as all natural, 8% of its formula came from a synthetic ingredient. The FTC rejected the company's argument that a disclaimer was posted to its website, arguing that consumers shouldn't have to search out information that contradicts a company's claims. The order bans the company from misrepresenting ingredients or claims.
- December 13, 2016 – The FTC has approved a final consent order with Mars Petcare US, settling charges that Mars falsely advertised the benefits of its Eukanuba brand dog food. According to the FTC, Mars could not prove that a 10-year study found that Eukanuba could extend the lifespan of dogs by 30% or more. Pursuant to the terms of the settlement, Mars is prevented from misrepresenting the existence or results of any

study and from making false and misleading claims.

- December 14, 2016 – The FTC has reached a settlement with the operators AshleyMadison.com relating to charges resulting from a 2015 data breach that exposed user information for 36 million consumers. Pursuant to the terms of the settlement, the defendants have to implement a comprehensive data-security program, including third-party assessments, and pay a judgment of \$1.6 million. The FTC was joined in this action by 13 states. In addition, the FTC received assistance from Canadian and Australian authorities.
- December 15, 2016 – The FTC has reached a settlement with DeVry University and its parent company relating to charges that DeVry mislead consumers with ads that touted high employment success rates and incomes for students upon graduation. Pursuant to the terms of the settlement, DeVry will pay \$49.4M to be distributed to qualifying students, as well as \$50.6M in debt relief (for a settlement totaling \$100M). The debt being forgiven includes the full balance owed (\$30.35M) on all private unpaid student loans issued to undergraduates between September 2008 and September 2015, and \$20.25M in student debts for tuition, books, and lab fees. The FTC also received assistance in this action from the Department of Education and the Department of Veterans Affairs.
- December 15, 2016 – The FTC has reached a settlement the marketers of a pyramid scheme that sold health and wellness drinks. Pursuant to the terms of the settlement, the marketers are banned from participating in any pyramid schemes and from misrepresenting the profitability of any business venture or the health benefits of any products. The marketers also are subject to a \$238M judgment that will be partially suspended upon payment of \$470K and the surrender of certain real estate and business assets. The marketers also are required to provide compliance reports for 20 years.
- December 16, 2016 – The FTC is mailing more than 20,000 checks totaling more than \$18 million to people who lost money to The Tax Club, a scheme that targeted people who were trying to start home-based businesses. According to a complaint brought by the FTC and the New York and Florida Attorneys General, the defendants falsely claimed their services would help home-based businesses succeed, and promised services that were never delivered. People who lost money will get an average of \$914 back. Recipients should deposit or cash checks within 60 days.
- December 16, 2016 – CarMax Inc. and two other major used auto retailers have agreed to settle FTC charges that they touted how rigorously they inspect their used cars, yet failed to adequately disclose that some of the cars were subject to unrepaired safety recalls. The proposed consent orders will prohibit them from making unqualified inspection or safety-related claims about their used vehicles if any are subject to open, or unrepaired, safety recalls. Also, following a public comment period, the Commission has approved final consent orders in similar cases against General Motors Company, Jim Koons Management, and Lithia Motors Inc. that were settled earlier this year.

- December 20, 2016 – Turn Inc., a Redwood City, California company that enables sellers to target digital advertisements to consumers, has agreed to settle FTC charges that it deceived consumers by tracking them online and through their mobile applications, even after consumers took steps to opt out of such tracking. The proposed FTC consent order bars Turn from misrepresenting the extent of its online tracking or the ability of users to limit or control the company's use of their data. Turn also must provide an effective opt-out for consumers who do not want their information used for targeted advertising and place a prominent hyperlink on its home page that takes consumers to a disclosure explaining what information the company collects and uses for targeted advertising.
- December 22, 2016 – The defendants who operated a Florida-based tech support scheme that the FTC and State of Florida charged deceived thousands of consumers, will pay \$10 million for consumer redress to settle the action. According to the complaint, defendant Inbound Call Experts, doing business as Advanced Tech Support along with other defendants, used high-pressure sales pitches to telemarket tech support products and services falsely claiming to find viruses and malware on consumers' computers. The stipulated final court order prohibits the defendants from misrepresenting that they have identified performance or security issues on consumers' computers and from making any other misrepresentations while selling a product or service.
- December 22, 2016 – The FTC has charged the operators of a timeshare reselling scheme with bilking at least \$15 million dollars from timeshare property owners by imposing hefty up-front fees based on false promises that they would sell or rent their properties. At the FTC's request, a federal court temporarily halted the operation and froze the defendants' assets pending litigation. The agency seeks to permanently stop the allegedly illegal practices and return money to consumers. According to the FTC's complaint, the defendants telemarket to timeshare property owners and falsely claim that they have a buyer or renter ready and willing to buy or rent their properties for a specified price, or they promise to sell the timeshares quickly, sometimes within a specified time period.
- January 4, 2017 – The FTC announced a contest in which contestants must develop a tool to address security vulnerability created by out-of-date software in home devices connected to the Internet of Things. The top prize is \$25,000, with \$3,000 prizes for honorable mention winners. Submissions are due by May 22, 2017, and winners will be announced on or about July 27, 2017. This is the fourth FTC contest under the America COMPETES Act.
- January 4, 2017 – The FTC announced that it is holding a workshop on April 18, 2017 to discuss competition and consumer protection issues relating to hearing health and technology, particularly focused on hearing aids and similar devices.
- January 5, 2017 – The FTC filed a complaint in the Northern District of California against D-Link Corporation and its U.S. subsidiary, alleging that it

took inadequate steps to protect its wireless routers and internet cameras from well-known and preventable security flaws that could lead to hacking, which put U.S. consumers' privacy at risk. The case is part of the FTC's efforts to protect consumers' privacy and security in the Internet of Things.

- January 9, 2017 – The FTC, joined by the New York Attorney General, have filed a complaint in the Southern District of NY alleging that the marketers of Prevagen, a nationally advertised memory and cognition supplement, made false and unsubstantiated claims in violation of the FTC Act and NY state laws. In addition to corporate defendants, the FTC also charged the two co-founders of the company.
- January 9, 2017 – The FTC filed a complaint in the District of Kansas, charging a Kansas man and his companies with selling portfolios of fake payday loan debts that debt collectors used to get people to pay up on debts that they did not owe. Simultaneously, the FTC filed for a preliminary injunction to halt the operations, which was granted. The case is related to prior actions taken by the FTC against related entities and against debt collection entities that used the fake loan portfolios.
- January 10, 2017 – The FTC has begun to mail refund checks to persons who lost money running Herbalife businesses. The checks are pursuant to a July 2016 settlement that required Herbalife to pay \$200 million.
- January 11, 2017 – The FTC has reached a settlement with an operator of a mortgage relief scheme that stole millions of dollars from homeowners. Pursuant to the terms of the settlement, Damian Kutzner is banned from providing certain financial products and services and from making misrepresentations about those products or services. Kutzner also is subject to a judgment of more than \$18.3 million. In its complaint, the FTC alleged that Kutzner and 4 attorneys told homeowners that they would receive \$75,000 or their homes free and clear through so-called "mass-joinder" lawsuits, when, in fact, no consumer has ever achieved or is likely to achieve, any mortgage relief via such action.
- January 12, 2017 – The FTC issued a statement welcoming the adopting of the Swiss-U.S. Privacy Shield Framework. The Framework replaces the U.S.-Swiss Safe Harbor Framework and will help facilitate continued trade between the United States and Switzerland.
- January 13, 2017 – The FTC announced that it will host its third FinTech Forum on March 9, 2017. This Forum will focus on consumer implications of artificial intelligence and blockchain technology. The event will be hosted at the University of California at Berkeley.
- January 13, 2017 – The FTC announced that it filed a complaint in each of the Southern District of Florida and the Central District of California against defendants who allegedly ran massive robocall telemarketing operations in violation of the Telemarketing Sales Rule. The defendants previously were sued by state attorneys general for similar violations. Several of the defendants have settled with the FTC, resulting in judgments of \$9.9M, with all but \$510,000 suspended based on inability to pay.

- January 18, 2017 – The FTC has charged Credit Bureau Center LLC and three individuals with luring consumers with fake rental property ads and deceptive promises of “free” credit reports into signing up for a costly credit monitoring service. At the FTC’s request, a federal court temporarily halted the operation, which has raked in millions of dollars. The agency seeks to permanently stop the allegedly illegal practices and return money to consumers.
- January 19, 2017 – The Western Union Company (Western Union), a global money services business headquartered in Englewood, Colorado, has agreed to forfeit \$586 million and enter into agreements with the FTC, the DOJ, and several U.S. Attorneys’ Offices. In its agreement with the DOJ, Western Union admits to criminal violations including willfully failing to maintain an effective anti-money laundering program and aiding and abetting wire fraud.
- January 19, 2017 – Uber Technologies, the San Francisco-based ride-hailing company, has agreed to pay \$20 million to resolve FTC charges that it misled prospective drivers with exaggerated earning claims and claims about financing through its Vehicle Solutions Program. In addition to imposing a \$20 million judgment against Uber, the stipulated order prohibits the company from misrepresenting drivers’ earnings and auto finance and lease terms. The order also bars Uber from making false, misleading, or unsubstantiated representations about drivers’ income; programs offering or advertising vehicles or vehicle financing or leasing; and the terms and conditions of any vehicle financing or leasing. The \$20 million will be used to provide refunds to affected drivers across the country.
- January 23, 2017 – The marketers of two app-supported smartphone accessories, marketed to accurately measure consumers’ blood alcohol content (BAC), have agreed to settle FTC charges that they lacked scientific evidence to back up their advertising claims. Under the terms of the FTC settlement, defendants Breathometer, Inc., and the company’s founder and chief executive officer Charles Michael Yim, are barred from making future accuracy claims for a consumer breathalyzer product unless such claims are supported by rigorous testing. The defendants also are required to notify and pay full refunds to consumers who bought their devices. According to the FTC’s complaint, Mr. Yim obtained initial financing for his breathalyzer product by successfully pitching it to the investors on the television show “Shark Tank.”
- January 24, 2017 – Under a settlement with the FTC and the State of Florida, the operators of an alleged student debt relief and credit repair scam will be banned from those lines of business. The stipulated final order resolves charges the FTC and the State of Florida brought in April 2016, against Chastity Valdes and her companies, Consumer Assistance LLC, Consumer Assistance Project Corp., and Palermo Global LLC. The defendants allegedly lured borrowers with false promises of “eliminating” their student loan debts and repairing their credit and then charged illegal up-front fees, and posted positive online reviews of their services to appear as if customers wrote them.

- February 1, 2017 – The FTC began mailing refund checks to more than 600,000 T-Mobile customers totaling nearly \$20 million. The refunds are pursuant to a 2014 settlement relating to claims that T-Mobile added unwanted third party charges to consumers' bills without their permission.
- February 1, 2017 – The FTC has reached a settlement with Volkswagen Group of America relating to claims that Volkswagen deceived consumers by falsely advertising its diesel Volkswagens and Audis as being low-emission, environmentally friendly, able to meet emissions standards, and capable of maintaining a high resale value. Pursuant to the terms of the settlement, Volkswagen is required to compensate consumers who purchased 3.0 liter TDI diesel vehicles through a combination of repairs, additional monetary compensation, and buybacks for certain models.
- February 1, 2017 – The FTC has reached a settlement with iSpring Water Systems, a Georgia-based distributor of water filtration systems relating to claims that it deceived consumers with false claims that its water filtration systems were built in the USA. In fact, iSpring's products either are wholly imported or made using a significant amount of foreign inputs. Pursuant to the terms of the settlement, iSpring is prevented from making unqualified "Made in USA."
- February 3, 2017 – The FTC has reached a settlement with Stratford Career Institute resolving the FTC's claims that the school misled consumers about its high school diploma program, which failed to meet the basic requirements set by most states. Pursuant to the terms of the settlement, Stratford is prohibiting from making false claims about educational programs and is required to disclose that some schools and employers may not recognize the diploma. Stratford also must inform students of the right to cancel the program and is subject to a \$6.5 million judgment that will be partially suspended when the company pays \$250,000.
- February 6, 2017 – The FTC has reached a settlement with VIZIO, Inc. relating to charges that it installed software on its TVs to collect viewing data without consumers' knowledge or consent. Pursuant to the terms of the settlement, VIZIO has agreed to pay \$2.2 million, with \$300,000 suspended.
- February 7, 2017 – The FTC is mailing refunds totaling \$2.59 million to more than 1,300 consumers who bought Mercola indoor tanning systems. The refunds are part of a 2016 settlement between the FTC and Dr. Joseph Mercola relating to claims that Dr. Mercola falsely claimed that his indoor tanning systems are safe and do not increase the risk of melanoma.
- February 9, 2017 – The FTC staff has provided the CFBP with its annual summary of activities enforcing the Equal Credit Opportunity Act. The FTC is responsible for ECOA enforcement and education regarding most non-bank financial service providers.
- February 10, 2017 – The FTC has reached a settlement with two online "high schools" relating to claims that the schools falsely claim to be accredited, but were, in fact, diploma mills. Pursuant to the terms of the settlement, defendants are barred from marketing or selling

any academic degree programs. Defendants also are subject to judgments in varying amounts that will be suspended after defendants turn over their assets.

- February 14, 2017 – The FTC sent a summary of its 2016 work on debt collection practices to the CFPB for inclusion in the CFPB's annual report to Congress on the Fair Debt Collection Practices Act, as required by the Dodd-Frank Act.
- February 14, 2017 – The FTC reached a settlement with GC Services relating to charges that it used unlawful tactics to collect on federal student loan and other debts. Pursuant to terms of the terms of the settlement, GC will pay a \$700,000 settlement. In addition, GC is prohibited from violating the Fair Debt Collection Practices Act.
- February 15, 2017 – The FTC reached a settlement with a Florida man who allegedly helped telemarketers in India defraud cash-strapped consumers in the US. The defendant participated in a scheme that helped Indian call centers collect money from victims of IRS tax scams, government grant scams, and advance-fee loan scams. Pursuant to the terms of the settlement, the defendant is barred from helping telemarketers and imposed a \$1.5 million judgment that is suspend based on defendant's inability to pay.
- February 15, 2017 – FTC investigators in 9 states found violations of the FTC's Funeral Rule. The investigators uncovered 31 failures to disclose pricing information to consumers. The FTC requires the funeral homes to provide evidence that it has corrected the problems.
- February 15, 2017 – The FTC testified before Senate Special Committee on Aging today describing the current trends relating to fraud impacting older Americans. Lois Greisman, Associate Director of FTC's Division of Marketing Practices, said that certain types of scams are more likely to impact older Americans, such as fraudulent prize promotion schemes. The testimony also focused on the FTC's aggressive enforcement tactics against companies that have targeted seniors.

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