

Andrew I. Gavil, Director  
Office of Policy and Coordination  
Room 7117  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Ave, NW  
Washington, D.C. 20580



February 23, 2014

Dear Mr. Gavil:

We are a small company that is being forced out of business in the face of direct competition by the U.S. Government. The purpose of this letter is to seek a review of current antitrust policy by the Federal Trade Commission as it relates to anticompetitive conduct by the Federal Government.

The Department of Health and Human Services (HHS) and the Food and Drug Administration (FDA) are plagiarizing our research, pirating our patented ideas and stealing our trade secrets. The Food and Drug Administration has stated that the quality of the products they have duplicated is inferior to those produced by our company. The products in question do not fall under the FAIR Act definition of an "inherently governmental function."

Using our intellectual property without permission and in the absence of due process, the FDA has duplicated our products and is giving them away for free to industry. As a direct result, the bottom has dropped out of our sales and we are being forced out of business. These actions by the Federal Government have serious implications with respect to Article I, clause 8 of the Constitution, and the right of citizens to pursue commerce; they also give rise to new and serious conflicts relating to the meaning and intent of Sherman Antitrust, Clayton and the Federal Trade Commission Acts.

It is our understanding that an unlawful monopoly exists when only one entity controls the market for a product or service, and it has obtained that market power, not because its product or service is superior to others, but by suppressing competition with anticompetitive conduct. In our case, the Food and Drug Administration and the Department of Health and Human Services have suppressed competition with anticompetitive conduct.

We recognize that current antitrust laws are based on the notion of the Federal Government as an honest broker in the administration of Sherman Antitrust, Clayton and the Federal Trade Commission statutes. However, recent modifications in law by Congress have changed the traditional relationship to make the Federal Government and the private sector direct competitors. By allowing Federal Agencies to patent and copyright for the first time while allowing them to supplement their Congressional Appropriations by charging "user fees" for products and services the Federal Government has now become a *defacto* competitor with the private sector.

One of the extended order effects of these recent changes in law is that the Federal Government is no longer a disinterested party in the administration of justice under Sherman Antitrust, Clayton and the Federal Trade Commission statutes. The new irony that arises in this changed environment is that the Federal Government, through the Department of Justice, serves as the only power that can prosecute violations regarding monopolies. Under current circumstances the Federal Government cannot

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prosecute Federal Government agencies for the very type of anticompetitive behavior that it punishes the private sector for engaging in.

In The Law Bastiat writes:

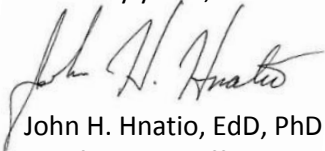
And when [law] has exceeded its proper functions, it has not done so merely in some inconsequential and debatable matters. The law has gone further than this; it has acted in direct opposition to its own purpose. The law has been used to destroy its own objective: It has been applied to annihilating the justice that it was supposed to maintain; to limiting and destroying rights which its real purpose was to respect. The law has placed the collective force at the disposal of the unscrupulous who wish, without risk, to exploit the person, liberty, and property of others. It has converted plunder into a right, in order to protect plunder. And it has converted lawful defense into a crime, in order to punish lawful defense.

We believe with new changes in law passed by Congress and the inability of the Federal Trade Commission and the Department of Justice to effectively police the conduct of Federal Agencies that it is time to re-visit Federal government policies as they relate to direct competition with the private sector. The situation as it stands now belies the very mission of the Federal Trade Commission to:

To prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity.

We wish to thank-you for considering our request for a policy review of current antitrust policy by the Federal Trade Commission as it relates to anticompetitive conduct by the Federal Government. If you have any questions please feel free to contact me.

Sincerely yours,



John H. Hnatio, EdD, PhD  
Chief Science Officer

cc:

The Honorable Kathleen Sebelius, Secretary Department of Health and Human Services  
The Honorable Margaret Hamburg, Commissioner, Food and Drug Administration  
The Honorable Daniel Levinson, Inspector General, Department of Health and Human Services  
The Honorable William Baer, Assistant Attorney General, Department of Justice  
Senator Patrick Leahy, Chairman of the Senate Judiciary Committee  
Representative, John Mica, Committee on Oversight and Government Reform, Chairman, Subcommittee on Government Operations