

end users of products or services. Departing from this approach makes the FTC into a general overseer of all business disputes simply on the conjecture that a dispute between two large businesses may affect consumer prices, which is a great expansion of our role and is far afield from our mission of protecting consumers. Further, the unfairness count in the complaint alleges merely speculative consumer harm, at best, and thus fails to comply with the Commission's Unfairness Statement.<sup>47</sup>

Fourth, even taking the much-criticized *N-Data* consent decree as a starting point, it is unclear whether this case meets the requirements identified by the Commission in that matter. In *N-Data*, the Commission alleged that there was a clear promise to license by N-Data's predecessor-in-interest, which N-Data subsequently broke.<sup>48</sup> The evidence presented to me in the instant matter does not reveal a clear promise by Motorola not to seek an injunction on the SEPs at issue and at least one court has found there was no such promise. Nor does there appear to have been any reasonable expectation on the part of members of the relevant SSOs—the Institute of Electrical and Electronics Engineers (“IEEE”), the European Telecommunications Standards Institute (“ETSI”), and the International Telecommunications Union (“ITU”)—that SEP holders, including Google and Motorola, had waived their right to seek injunctions on their SEPs. At least one of the SSOs at issue in this matter, ETSI, went so far as to explicitly reject an outright ban on injunctions.<sup>49</sup> And the

one federal court that has issued an injunction against what appears to have been a willing licensee on a RAND-encumbered patent (not identified expressly as a SEP but a core technology embodied in the standards) did so five years ago on the 802.11a and 802.11g IEEE-adopted wireless local area network standards.<sup>50</sup> Thus, it should have been a reasonable expectation since that time to IEEE members (including the affected parties here) that an injunction could issue in certain situations even on a RAND-encumbered SEP against a potentially-willing licensee.

In sum, I disagree with my colleagues about whether the alleged conduct violates Section 5 but, more importantly, believe the Commission's actions fail to provide meaningful limiting principles regarding what is a Section 5 violation in the standard-setting context, as evidenced by its shifting positions in *N-Data*, *Bosch*, and this matter. Because I cannot ignore the jurisdictional conflicts and doctrinal contradictions that we are inviting with this policy and its inconsistent application, I dissent.

[FR Doc. 2013-00465 Filed 1-10-13; 8:45 am]

BILLING CODE 6750-01-P

## FEDERAL TRADE COMMISSION

### Revised Jurisdictional Thresholds of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

**SUMMARY:** The Federal Trade Commission announces the revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of Section 7A of the Clayton Act.

**DATES:** Effective Date: February 11, 2013.

**FOR FURTHER INFORMATION CONTACT:** B. Michael Verne, Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Avenue NW., Room 301, Washington, DC 20580, Phone (202) 326-3100.

**SUPPLEMENTARY INFORMATION:** Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94-435, 90 Stat. 1390 (“the Act”), requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Section 7A(a)(2) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). Note that while the filing fee thresholds are revised annually, the actual filing fees are not similarly indexed and, as a result, have not been adjusted for inflation in over a decade. The new thresholds, which take effect 30 days after publication in the **Federal Register**, are as follows:

Subsection of 7A	Original threshold [million]	Adjusted threshold [million]
7A(a)(2)(A)	\$200	\$283.6
7A(a)(2)(B)(i)	50	70.9
7A(a)(2)(B)(ii)	200	283.6
7A(a)(2)(B)(ii)(I)	10	14.2
7A(a)(2)(B)(ii)(II)	100	141.8
7A(a)(2)(B)(ii)(III)	10	14.2
7A(a)(2)(B)(ii)(IV)	100	141.8
7A(a)(2)(B)(ii)(V)	10	14.2
Section 7A note: Assessment and Collection of Filing Fees <sup>1</sup> (3)(b)(1)	100	141.8

<sup>47</sup> See FTC Policy Statement on Unfairness, Appended to Int'l. Harvester Co., 104 F.T.C. 949, 1070 (1984) (“First of all, the injury must be substantial. The Commission is not concerned with trivial or merely speculative harms.”). As an initial matter, consumers do not have a right to purchase a good that a court or the ITC has found to infringe a patent. Thus, the only possible cognizable harm is the risk that the threat of an injunction may raise prices or reduce innovation through deterring the adoption of beneficial technologies. There is no compelling evidence that either type of harm exists in this matter, and it is far from certain that such harm is likely to occur in the future, particularly because it is so rare for the courts or the ITC to issue

injunctions or exclusion orders for SEP-encumbered technologies.

<sup>48</sup> *In re Negotiated Data Solutions LLC*, FTC File No. 051-0094, Complaint (Jan. 23, 2008), available at <http://www.ftc.gov/os/caselist/0510094/080923ndscomplaint.pdf>.

<sup>49</sup> See, e.g., Submission of Qualcomm Incorporated in Response to the Commission's Request for Written Submissions, *In re Certain Wireless Communications Devices, Portable Music and Data Processing Devices, Computers and Components Thereof*, Inv. No. 337-TA-745, at 5 (Int'l Trade Comm'n July 9, 2012) (“Language whereby a patentee making a FRAND commitment would have waived all right to injunction was

debated and briefly included in an [intellectual property rights] policy adopted in 1993. However, when the current policy was adopted in 1994, that provision was removed. The only permissible inference from this sequence is that the ETSI membership turned their minds to the question of waiver of injunction and affirmatively decided to exclude any such waiver from the content of the FRAND commitment.”) (footnotes omitted).

<sup>50</sup> See *Commonwealth*, 492 F. Supp. 2d at 602 (applying eBay factors and holding that permanent injunction warranted for infringement of technology that was “core technology” for the 802.11a standard and “embodie[d]” in the 802.11g standard).

Subsection of 7A	Original threshold [million]	Adjusted threshold [million]
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2) .....	100	141.8
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2) .....	500	709.1
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(3) .....	500	709.1

<sup>1</sup> Public Law 106–553, Sec. 630(b) amended Sec. 18a note.

Any reference to these thresholds and related thresholds and limitation values in the HSR rules (16 CFR parts 801–803) and the Antitrust Improvements Act Notification and Report Form and its Instructions will also be adjusted, where indicated by the term “(as adjusted)”, as follows:

Original threshold	Adjusted threshold [million]
\$10 million .....	\$14.2
\$50 million .....	70.9
\$100 million .....	141.8
\$110 million .....	156.0
\$200 million .....	283.6
\$500 million .....	709.1
\$1 billion .....	1,418.1

By direction of the Commission.

**Richard C. Donohue,**  
*Acting Secretary.*

[FR Doc. 2013–00378 Filed 1–10–13; 8:45 am]

**BILLING CODE 6750–01–P**

## GOVERNMENT ACCOUNTABILITY OFFICE

### Medicare Payment Advisory Commission Nomination Letters

**AGENCY:** Government Accountability Office (GAO).

**ACTION:** Notice on letters of nomination.

**SUMMARY:** The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. For appointments to MedPAC that will be effective May 1, 2013, I am announcing the following: Letters of nomination should be submitted between January 15 and March 8, 2013, to ensure adequate opportunity for review and consideration of nominees prior to the appointment of new members.

#### ADDRESSES:

GAO: *MedPACapointments@gao.gov*.  
GAO: 441 G Street NW., Washington, DC 20548.

MedPAC: 601 New Jersey Avenue NW., Suite 9000, Washington, DC 20001.

#### FOR FURTHER INFORMATION CONTACT: GAO: Office of Public Affairs, (202) 512–4800.

42 U.S.C. 1395b–6.

**Gene L. Dodaro,**  
*Comptroller General of the United States.*  
[FR Doc. 2013–00335 Filed 1–10–13; 8:45 am]  
**BILLING CODE 1610–02–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10458]

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection (request for a new OMB control number). *Title of Information Collection:* Consumer Research Supporting Outreach for Health Insurance Marketplace. *Use:* The Centers for Medicare and Medicaid Services is requesting clearance for two surveys to aid in understanding levels of awareness and customer service needs associated with the Health Insurance Marketplace established by the

Affordable Care Act. Because the Marketplace will provide coverage to the almost 50 million uninsured in the United States through individual and small employer programs, we have developed one survey to be administered to individual consumers most likely to use the Marketplace and another to be administered to small employers most likely to use the Small Business Health Options portion of the Marketplace. These brief surveys, designed to be conducted quarterly, will give CMS the ability to obtain a rough indication of the types of outreach and marketing that will be needed to enhance awareness of and knowledge about the Marketplace for individual and business customers. CMS' biggest customer service need is likely to be providing sufficient education so consumers: (a) can take advantage of the Marketplace and (b) know how to access CMS' customer service channels. The surveys will provide information on media use, concept awareness, and conceptual or content areas where education for customer service delivery can be improved. Awareness and knowledge gaps are likely to change over time based not only on effectiveness of CMS' marketing efforts, but also of those of state, local, private sector, and nongovernmental organizations. *Form Number:* CMS–10458 (OCN: 0938–New). *Frequency:* Quarterly. *Affected Public:* Individuals or households, Private Sector (business or other for-profits). *Number of Respondents:* 40,200. *Total Annual Responses:* 40,200. *Total Annual Hours:* 2,480. (For policy questions regarding this collection contact Clarese Astrin at 410–786–5424. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov), or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference