



June 28, 2011

VIA EMAIL AND FEDEX OVERNIGHT

Donald S. Clark
Secretary
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Facebook, Inc. and Facebook Credits

Dear Secretary Clark:

Enclosed is a Complaint, Request for Investigation, Injunction, and Other Relief submitted by Consumer Watchdog regarding Facebook, Inc. and its virtual currency, Facebook Credits. As explained in the complaint, Consumer Watchdog believes that Facebook is engaging in anticompetitive and unfair business practices in the market for virtual goods purchased in social games through its Facebook Credits terms with game developers.

We request that, pursuant to the Federal Trade Commission's authority under section 5 of the Federal Trade Commission Act and 16 C.F.R. § 2.5, the Commission investigate Facebook's anticompetitive conduct and enjoin Facebook from engaging in conduct that violates sections 2 and 1 of the Sherman act, and section 5 of the Federal Trade Commission Act.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Harvey Rosenfield".

Harvey Rosenfield

cc via email:
Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Julie Brill
Edith Ramirez

**Before the
Federal Trade Commission
Washington, DC**

In the Matter of)
)
Facebook, Inc. and)
Facebook Credits)
)
)
_____)

Complaint, Request for Investigation, Injunction, and Other Relief

I. Introduction

1. Consumer Watchdog submits this Complaint to the Federal Trade Commission (“FTC” or “the Commission”) requesting an investigation and injunctive relief concerning the anticompetitive terms and impact of Facebook Credits, an ambitiously revamped virtual currency system recently announced by Facebook, Inc. (“Facebook”), the dominant social networking company in the United States and the world. The revised Facebook Credits terms will take effect on July 1, 2011. Under the new contractual arrangements, imposed as Facebook prepares to go public in 2012,¹ game developers using the Facebook platform must *exclusively utilize* Facebook Credits in the operation of their games; such developers must *agree not to charge lower prices* to consumers outside of Facebook; and game developers must *pay a 30% service fee* for all Facebook Credits purchases.

2. While Facebook requires all developers to adhere to these onerous and anti-competitive terms, Facebook has reportedly entered into a joint venture agreement with Zynga, Inc. (“Zynga”), the largest social game developer in the United States,² apparently exempting it from the application of certain, undisclosed terms.³

¹ Anupreeta Das, *Facebook Sets Stage for IPO Next year*, Wall Street Journal (Jan. 6, 2011), <http://online.wsj.com/article/SB10001424052748703730704576066162770600234.html>.

² Zynga has more than 250 million monthly active users, which is about eight times the amount of the 2nd and 3rd largest social game developers. (See *Developer Leaderboard*, AppData.com, <http://www.appdata.com/leaderboard/developers> (last visited Jun. 24, 2011).)

³ *Facebook and Zynga Enter Into Long Term Relationship*, Facebook (May 18, 2010) (Press Release), <http://www.facebook.com/press/releases.php?p=162172>; see also Leena Rao, *Facebook and Zynga Enter Into Five Year Partnership, Expand Use of Facebook Credits*, TechCrunch (May 18, 2010), <http://techcrunch.com/2010/05/18/facebook-and-zynga-enter-into-five-year-partnership-expand-use-of-facebook-credits/>.

3. With over 500 million users,⁴ Facebook is the largest and by far the dominant social network on the planet.⁵ Approximately half of the U.S. population actively uses Facebook.⁶ While Facebook has not disclosed revenue data, it is estimated that Facebook controls well over 50% of the market for virtual goods offered in social gaming.⁷ Thus, Facebook *exercises monopoly power* in that market.
4. The terms of Facebook Credits will enable Facebook to maintain and extend its monopoly power in that market. Because the social gaming audience exists primarily on Facebook, developers must agree to adhere to Facebook Credits if they want to compete in the relevant market. By prohibiting game developers from offering lower prices to users outside the Facebook platform, Facebook has fixed prices and therefore stifled competition *outside* the Facebook platform because developers cannot provide the incentive of a discounted price on another social network or website that would draw players away from Facebook. Further, the 30% service fee exacted by Facebook from game developers, along with other Facebook Credits terms described in detail in this complaint, will make it far more difficult, if not cost prohibitive, for smaller game developers to compete *inside* the Facebook platform against larger developers. The effect of these terms is to create a barrier to competition between social game developers, and between potential competitors to Facebook—social networks or websites operating as a platform for games.
5. Moreover, Facebook’s apparent joint venture agreement with developer Zynga to provide it with a special exemption from some of the Facebook Credits terms that Facebook imposes on all other game developers would, if accurate, be an improper joint venture agreement between competitors and an unreasonable restraint on trade. Though Zynga is a game developer, Zynga has developed a large enough customer base that it is the single company in the market that could conceivably compete with Facebook if Zynga chose to leave the Facebook platform and/or establish a new social gaming site. The agreement between Facebook and Zynga, if published reports are correct, would therefore constitute a conspiracy between competitors and further extend Facebook’s already overwhelming monopoly power.
6. The antitrust laws protect users against unfair methods of competition and unfair practices that reduce competition, discourage innovation, limit consumer choices and increase prices. That is precisely what will result if Facebook is permitted to enforce its new Facebook Credits terms. As set forth in detail below, Facebook’s

⁴ *Statistics*, Facebook, <http://www.facebook.com/press/info.php?statistics#!/press/info.php?statistics> (last visited Jun. 19, 2011).

⁵ *Hitwise United States*, Experian Hitwise, <http://www.hitwise.com/us/datacenter/main/dashboard-10133.html> (last visited Jun. 26, 2011).

⁶ *Statistics*, *supra* note 4; *see also* United States Census, *U.S. & World Population Clock* <http://www.census.gov/main/www/popclock.html> (last visited Jun. 26, 2011).

⁷ Liz Gannes, *Facebook Could Make \$250M from Virtual Goods Next Year*, *gigaom.com* (originally published on Sep. 28 2010, but updated 2011), <http://gigaom.com/2010/09/28/facebook-could-make-250m-from-virtual-goods-next-year/>.

business practices constitute incipient violations of sections 1 and 2 of the Sherman Act and Unfair and Deceptive Practices, and are subject to review by the Federal Trade Commission under section 5 of the Federal Trade Commission Act. Without prompt action by the FTC, Facebook will significantly enhance its monopoly power in the market for virtual goods purchased in social games, and online gamers will have fewer choices and pay higher prices.

II. Parties

7. Consumer Watchdog, established in 1985, is a nationally recognized non-partisan, non-profit charitable organization. Its mission is to provide an effective voice for the public interest. Consumer Watchdog's programs include public education, advocacy and litigation in the areas of health care, insurance, energy policy, corporate and governmental accountability, and consumer privacy. Consumer Watchdog is based in Santa Monica, California.
8. Facebook, Inc. was founded in 2004 and is based in Palo Alto, California. Facebook's headquarters are located at 1601 S California Avenue, Palo Alto, CA 94304. At all times material to this complaint, Facebook's course of business, including the acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 45.

III. Statement of Facts

A. **The Facebook Platform**

9. Facebook is both the largest social network service provider and the most visited website in the United States.⁸ Facebook boasts 500 million active users worldwide,⁹ about 30% of which are in the United States, according to estimates.¹⁰ Thus, almost half of the United States' population is actively using Facebook.¹¹
10. Any external, i.e., third-party, website can become "integrated" with Facebook by embedding certain Facebook features, such as a Facebook login function or "social plug-ins" such as the "Like Button," onto its website.¹² The "Like

⁸ *Hitwise United States*, *supra* note 5.

⁹ *Statistics*, *supra* note 4; compare the next largest similarly structured social network in the United States, MySpace, which has "more than 100 million users worldwide, half of which are in the U.S." (*Fact Sheet*, MySpace, <http://www.myspace.com/pressroom/fact-sheet/> (last visited Jun. 24, 2011).) The number of MySpace users is declining at a significant rate. (Michael Arrington, *Amazingly, MySpace's Decline is Accelerating*, TechCrunch (Mar. 23, 2011), <http://techcrunch.com/2011/03/23/amazingly-myspaces-decline-is-accelerating/>.)

¹⁰ *Statistics*, *supra* note 4.

¹¹ See United States Census, *supra* note 6.

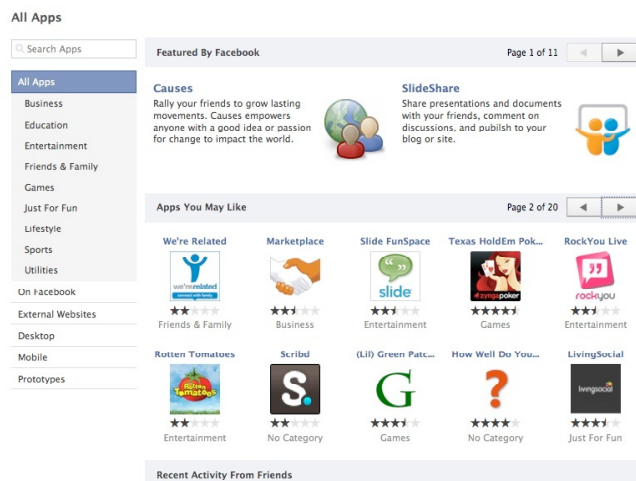
¹² *Facebook for Websites – Facebook Developers*, Facebook, <http://developers.facebook.com/docs/guides/web/> (last visited Jun. 19, 2011).

Button” enables users to share the external website with their Facebook page and their Facebook friends.¹³

11. Over 2.5 million websites have integrated with Facebook, including more than 80 websites on comScore's list of U.S. Top 100 websites.¹⁴

B. Applications on the Facebook Platform

12. The Facebook platform gives software developers a forum to offer “applications” through Facebook. Applications allow Facebook users to “play social games with [their] friends, remember friends' birthdays, share [their] taste in movies, send gifts to friends,” post social events, upload photos, and more.¹⁵



Source: Facebook, *App Directory*, <http://www.facebook.com/apps/directory.php> (last visited Jun. 19, 2011).

13. More than 500,000 active applications are currently operated through the Facebook platform.¹⁶ Users install 20 million applications every day.¹⁷
14. While Facebook develops some of its own applications, the vast majority of applications are built by outside developers who reach users through Facebook's platform, under terms dictated by Facebook.¹⁸
15. Currently, Facebook does not levy any charge upon a developer that offers an application through the Facebook platform; however, developers must comply

¹³ *Id.*

¹⁴ *Statistics, supra* note 4.

¹⁵ *Application basics – Facebook Help Center*, Facebook, <http://www.facebook.com/help/?page=1095> (last visited Jun. 19, 2011).

¹⁶ Website Monitoring, *Infographic Facebook: Facts, Figures & Statistics for 2010*, Digital BuzzBlog (Mar. 22, 2010), <http://www.digitalbuzzblog.com/facebook-statistics-facts-figures-for-2010/>.

¹⁷ *Statistics, supra* note 4.

¹⁸ *Id.*

with all of Facebook’s relevant terms.¹⁹ Facebook reserves the right to start charging developers for the use of platform at any time.²⁰

C. Virtual Goods and Social Gaming on Facebook

16. Many, if not most, third party applications on Facebook are free to users. Application developers generate revenue through a variety of means.²¹
17. “Social gaming” is a term used to describe game applications played within social networks such as Facebook. Virtually all social games are based on the free-to-play model.²²
18. Social game developers generate revenue when users purchase “virtual goods” and “in-game currency” during game play.²³
19. Virtual goods are intangible objects purchased for use within a social network or social game. The U.S. market for virtual goods purchased in social games has exploded in recent years.²⁴ Traditionally, users could directly transact with game developers for virtual goods with U.S. dollars through a third party payment site like PayPal,²⁵ or users could purchase virtual goods with a credit card manually entered or on file with Facebook.²⁶ Users could also buy virtual goods with in-game currency.
20. In-game currency is virtual currency that a developer creates for use in a specific game or set of games. In-game currency could be “directly purchased by users with real money.”²⁷
21. Presently, users logged onto the Facebook platform can purchase “virtual goods” such as virtual gifts, parcels of virtual real estate,²⁸ “widgets” that are used to

¹⁹ *Statement of Rights and Responsibilities*, Section 9, Facebook, <http://www.facebook.com/terms.php> (last visited Jun. 19, 2011).

²⁰ *Id.* at Section 9.14.

²¹ The sale of users’ personal information is one such means. (See Emily Steel and Geoffrey A. Fowler, *Facebook in Online Privacy Breach; Applications Transmitting Identifying Information*, Wall Street Journal (Oct. 18, 2010), <http://online.wsj.com/article/SB10001424052702304772804575558484075236968.html>.)

²² Chris Carvallho, *Hardcore Social Gaming Disrupting the Industry*, industrygamers.com (May 24, 2011), <http://www.industrygamers.com/news/hardcore-social-gaming-disrupting-the-industry/>.

²³ *Id.*

²⁴ Liz Gannes, *supra* note 7.

²⁵ See Justin Smith, *Not Coming Soon: Facebook Holding Off on Plans for Platform Payment System?* Inside Network (Dec. 29, 2008), <http://www.insidefacebook.com/2008/12/29/not-coming-soon-facebook-indefinitely-scrap-plans-for-platform-payment-system/>.

²⁶ See Justin Smith, *Facebook Turns on Another Revenue Stream – Now You Can “Pay With Facebook,”* Inside Facebook (May 29, 2009), <http://www.insidefacebook.com/2009/05/29/facebook-turns-on-another-revenue-stream-now-you-can-pay-with-facebook/>.

²⁷ Additionally, in-game currency could be earned by the amount of time spent playing the game or “earned by users when taking in-app actions such as completing tasks and missions.” (*Facebook Credits Integration Guide*, Facebook (Feb. 16, 2011), available at <https://developers.facebook.com/attachment/FacebookCreditsIntegrationGuidev1.pdf>.)

decorate a member's Facebook profile,²⁹ along with a variety of virtual goods that are available inside a social game application.

22. One example of a virtual good outside the context of a game is a virtual gift. A Facebook user can purchase a virtual gift through the "Sending Gifts" application and give it to a Facebook "friend," who would then have the gift displayed on his or her profile:



Source: Facebook, *Send Gift on Facebook*, <http://apps.facebook.com/sendyougift/> (last visited Jun. 19, 2011).

23. The bulk of virtual goods transactions in Facebook occur within social game applications.³⁰
24. Social games played on Facebook presently utilize the free-to-play model where users purchase virtual goods and in-game currency during game play. In Facebook games, virtual goods can include weapons, tools, animals, and practically anything imaginable in the context of a social game.

²⁸ Oliver J. Chiang, *The World's Most Expensive Island—Online*, Forbes.com (Feb. 17, 2010), <http://www.forbes.com/2010/02/17/farmville-facebook-zynga-technology-business-intelligence-virtual-goods.html>.

²⁹ Susan Wu, *Virtual Goods: The Next Big Business Model*, TechCrunch (Jun. 20, 2007), <http://techcrunch.com/2007/06/20/virtual-goods-the-next-big-business-model/>.

³⁰ *Virtual Goods in Social Networking and Online Gaming*, InStat (Nov. 2010), <http://www.instat.com/abstract.asp?id=212&SKU=IN1004659CM>.

25. For example, in the popular Facebook game “Farmville,” players manage a virtual farm by growing crops and raising livestock. Players can purchase virtual goods like tractors:



Source: Facebook, *FarmVille on Facebook*,
<http://apps.facebook.com/onthefarm/index.php?ref=tab> (last visited Jun. 19, 2011).

Players use the virtual tractors to tend to their virtual crops on their virtual farms:



Source: Facebook, *FarmVille on Facebook*,
<http://apps.facebook.com/onthefarm/index.php?ref=tab> (last visited Jun. 19, 2011).

D. The Market for Virtual Goods Purchased in Social Games

26. Developer revenue from virtual goods purchased in social games in the U.S. totaled \$865 million in 2010, and is expected to hit \$1.25 billion in 2011.³¹ Virtual goods are the largest source of revenue for developers of social games. For example, of the \$865 million revenue in 2010, \$510 million was attributable to virtual goods sales, \$225 million to “lead generation offers,”³² and \$120 million to advertising.³³
27. The U.S. virtual goods market has grown exponentially over the past few years. In 2010, the U.S. virtual goods market produced almost \$1.6 billion in revenue,³⁴ and in 2011, the U.S. virtual goods market is expected to produce \$2.1 billion in revenue.³⁵
28. Although Facebook does not release data on the portion of revenue attributable to virtual goods purchased in social games on the Facebook platform, Inside Network, an industry source of Facebook market data, has reported that “virtual goods sold in social games . . . already account for 40 to 50 percent of the [U.S. virtual goods] market, or at least \$840 million in 2011,” and that Facebook is responsible for “pretty much all of social [gaming].”³⁶

³¹ WebMediaBrands’ *Inside Network Research Releases Latest Survey Revealing Deepening Brand Loyalty, Willingness to Pay Among Social Game Players*, Businesswire.com (Jun. 14, 2011), <http://www.businesswire.com/news/home/20110614005301/en/WebMediaBrands%E2%80%99-Network-Research-Releases-Latest-Survey-Revealing>.

³² Lead-generation offers are “virtual currency incentives offered by marketers to social gamers in exchange for signing up for subscriptions, participating in surveys or buying goods and services.” (*Social Gaming Market to Surpass \$1 Billion*, eMarketer (Jan. 12, 2011) <http://www.emarketer.com/Article.aspx?R=1008166>.)

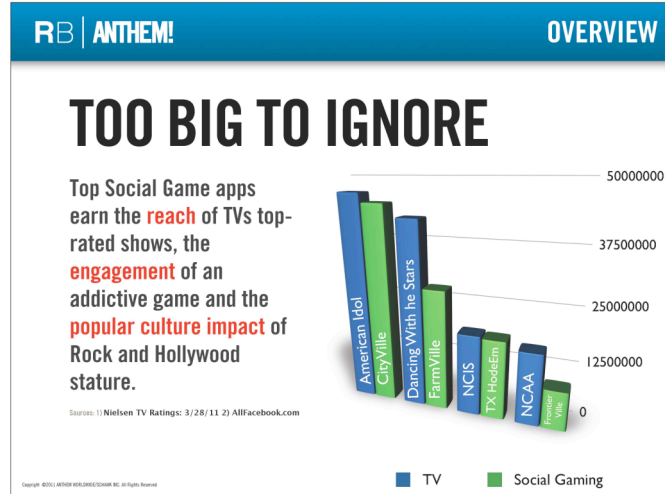
³³ *Id.*

³⁴ Justin Smith and Charles Hudson, *Report: Inside Virtual Goods – Tracking the U.S. Virtual Goods Market 2010 – 2011*, Inside Virtual Goods (Sep. 2010), available at <http://www.insidevirtualgoods.com/us-virtual-goods/#home>.

³⁵ *Id.*

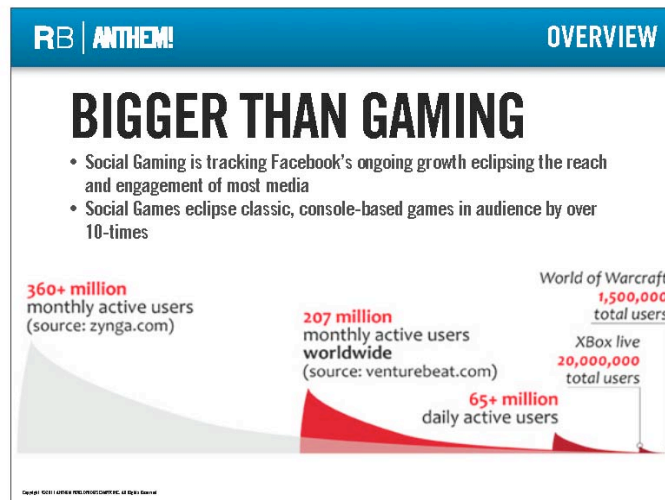
³⁶ Liz Gannes, *supra* note 11.

29. Social gaming on Facebook is hugely popular: half of all Facebook users play social games.³⁷ In terms of the number of users and time spent playing games, social gaming on Facebook has surpassed television viewing as a form of entertainment.³⁸



Source: Mark Silva, *Social Gaming Overview: Too Big to Ignore*, Slide Presentation from AdTech SF Conference (Apr. 12, 2011), available at <http://www.slideshare.net/marksilva/social-gaming-overview-too-big-to-ignore>.

30. Social gaming has eclipsed the market for other types of games, like traditional console video games.

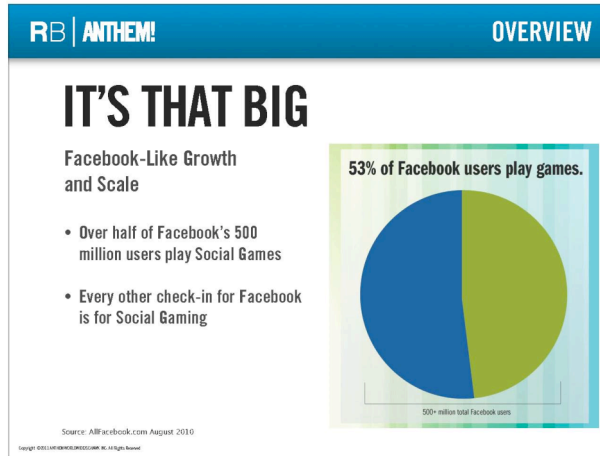


Source: Mark Silva, *Social Gaming Overview: Too Big to Ignore*, Slide Presentation from AdTech SF Conference (Apr. 12, 2011), available at <http://www.slideshare.net/marksilva/social-gaming-overview-too-big-to-ignore>.

³⁷ Mark Silva, *Social Gaming Overview: Too Big to Ignore*, Slide Presentation from AdTech SF Conference (Apr. 12, 2011) available at <http://www.slideshare.net/marksilva/social-gaming-overview-too-big-to-ignore>.

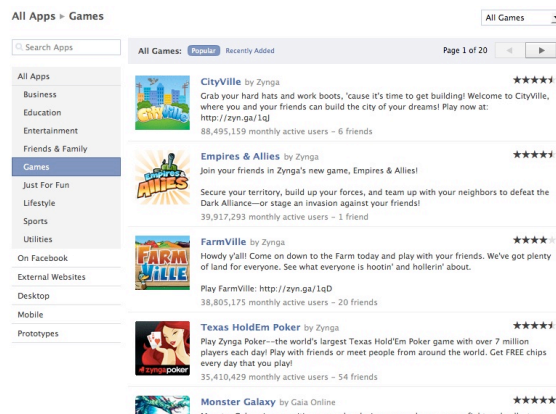
³⁸ *Id.*

31. Online games have overtaken personal email to become the second most heavily used activity behind social networks – accounting for 10% of all time spent on the internet by users in the United States.³⁹



Source: Mark Silva, *Social Gaming Overview: Too Big to Ignore*, Slide Presentation from AdTech SF Conference (Apr. 12, 2011), available at <http://www.slideshare.net/marksilva/social-gaming-overview-too-big-to-ignore>.

32. Zynga is the biggest social games developer in the United States and on Facebook, with an estimated 250 million people playing Zynga games per month.⁴⁰ Facebook's four most popular games are Zynga games.⁴¹



Source: *App Directory*, Facebook.com <http://www.facebook.com/?ref=home-!/apps/directory.php> (last visited Jun. 25, 2011.)

³⁹ Nielsen Wire, *What Americans Do Online: Social Media and Games Dominate Activity*, nielsen.com (Aug. 2, 2010), http://blog.nielsen.com/nielsenwire/online_mobile/what-americans-do-online-social-media-and-games-dominate-activity/.

⁴⁰ Alex Pham, *Zynga Builds an Empire of Social Gamers*, Los Angeles Times (May 31, 2011), <http://articles.latimes.com/2011/may/31/business/la-fi-ct-zynga-20110527>.

⁴¹ See *App Directory*, Facebook.com <http://www.facebook.com/?ref=home-!/apps/directory.php> (last visited Jun. 25, 2011.)

33. While Zynga generates some revenue from advertising and mobile games, the majority is attributable to virtual goods sold through social games.⁴² Zynga's upcoming IPO filing, which is slated for late June or July 2011, will make Zynga the first public company in the U.S. based on the business of the sale of virtual goods.⁴³
34. Zynga's estimated revenue from the sale of virtual goods in social games has exhibited an astounding growth over the past few years, jumping from an estimated \$50 million in 2008,⁴⁴ to an estimated \$270 million in 2009,⁴⁵ to an estimated \$850 million in 2010.⁴⁶ However, Zynga's upcoming IPO filing is expected to reveal larger revenue numbers than industry estimates.⁴⁷
35. Zynga offers six games on MySpace's social gaming platform,⁴⁸ in comparison to 20 on Facebook.⁴⁹ Specific figures on virtual goods sales in social games between the two social networks are unavailable, but Zynga's recent move to remove its popular "MafiaWars" game from the MySpace platform⁵⁰ indicates the disparity between the two social gaming platforms.

E. Facebook Credits: Facebook's New Virtual Currency System

36. As noted above, Facebook has traditionally provided developers with access to Facebook users through a system in which Facebook users have the option to transact directly with the game developer through a third party payment system like PayPal.
37. However, in 2009, Facebook started developing and testing Facebook Credits,⁵¹ a virtual currency Facebook members "can use to buy virtual goods in games and apps on the Facebook platform."⁵² Since 2009, Facebook has been slowly unveiling Facebook Credits.

⁴² Tricia Duryee, *What Zynga Will Look Like as a Public Company*, AllThingsD (Jun. 24, 2011), <http://allthingsd.com/20110624/what-zynga-will-look-like-as-a-public-company/>.

⁴³ *Id.*

⁴⁴ Nicholas Carlson, *Time to Stop Laughing: Selling Virtual Goods, Zynga Profits on Revenues Closer to \$50 Million*, Business Insider (Jan. 8, 2009) <http://www.businessinsider.com/2009/1/time-to-stop-laughing-selling-virtual-goods-zynga-profits-on-50-million-revenues>.

⁴⁵ Jeremy Liew, *We estimate Zynga Revenues Around \$270M in 2009*, TechCrunch (May 3, 2010), <http://techcrunch.com/2010/05/03/zynga-revenue/>.

⁴⁶ Tricia Duryee, *supra* note 42.

⁴⁷ *Id.*

⁴⁸ *MySpace Games*, Zynga.com, <http://www.zynga.com/games/myspace.php> (last visited Jun. 24, 2011).

⁴⁹ *Facebook Games*, Zynga.com, <http://www.zynga.com/games/facebook.php> (last visited Jun. 24, 2011).

⁵⁰ Leena Rao, *Zynga Discontinues Mafia Wars Game on MySpace*, TechCrunch (Apr. 18, 2011), <http://techcrunch.com/2011/04/18/zynga-discontinues-mafia-wars-game-on-myspace/>.

⁵¹ George Lee, *Expanding Facebook Credits*, Facebook Developer Blog (Oct. 13, 2010), <http://developers.facebook.com/blog/post/416>.

⁵² *Facebook Credits – Facebook Help Center*, Facebook, <http://www.facebook.com/help/?topic=credits> (last visited Jun. 23, 2011).

38. Presently, game developers have the option, but are not required, to use Facebook Credits as their sole in-game currency on the Facebook platform.⁵³
39. Effective July 1, 2011, however, Facebook will require social game developers to *exclusively* utilize Facebook Credits for the purchase of virtual goods.⁵⁴ Developers can choose Facebook Credits as their in-game currency, or they can continue to create and utilize their own in-game currency,⁵⁵ but a developer cannot accept any form of real-world currency (e.g. USD) from a Facebook game player for the purchase of in-game currency. Users must purchase Facebook Credits *directly from Facebook* and then use the Credits to purchase in-game currency (as opposed to earning such currency through game-play).⁵⁶
40. Users must purchase Facebook Credits from Facebook with a credit card, PayPal, a mobile phone,⁵⁷ and Facebook Credits gift cards that can be purchased at brick-and-mortar stores like Safeway, Target, and Walmart.⁵⁸
41. Facebook Credits can be purchased on Facebook in three ways: through a user's Facebook account settings on the "payments" page, or while playing a social game by clicking on any item in that application's "store" that has a Facebook Credits icon underneath, or by choosing to purchase in-game cash or coins.⁵⁹

⁵³ Deborah Liu, *The Next Step for Facebook Credits*, Facebook Developers Blog (Jan. 24, 2011), <http://developers.facebook.com/blog/post/451>.

⁵⁴ *Facebook Credits Integration Guide*, *supra* note 27.

⁵⁵ *Id.*

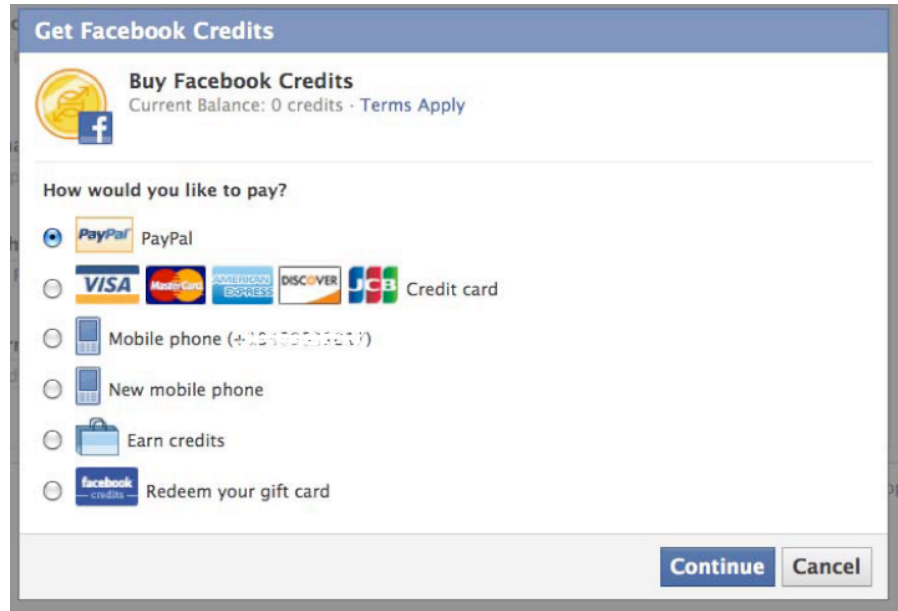
⁵⁶ *Using Facebook Credits in Games*, Facebook, <http://www.facebook.com/help/?faq=18643> (last visited Jun. 25, 2011).

⁵⁷ *About Facebook Credits*, Facebook, <http://www.facebook.com/help/?faq=17265#!/help/?page=1038> (last visited Jun. 27, 2011).

⁵⁸ *Facebook Credits – Facebook Credits Gift Cards*, Facebook, http://www.facebook.com/FacebookCredits?v=app_154977384515365 (last visited Jun. 27, 2011).

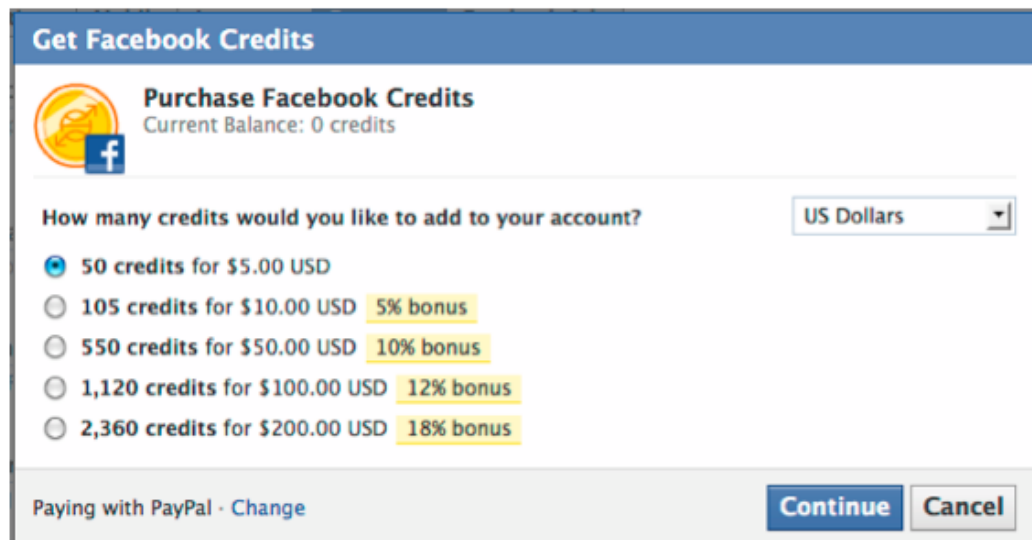
⁵⁹ *Purchasing Facebook Credits*, Facebook, <http://www.facebook.com/help/?page=1039> (last visited Jun. 25, 2011).

42. Under the first option—buying Credits outside of a game --- if Facebook users navigate to their accounts payments page and want to buy credits, they will be presented with the following screen where they would proceed to transact for Credits:



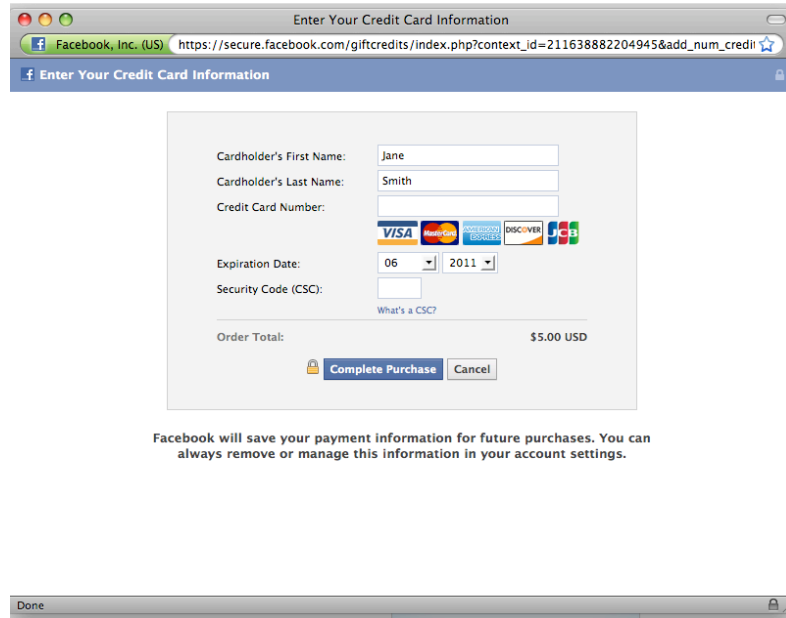
Source: Facebook, *Purchasing Facebook Credits*, <http://www.facebook.com/help/?page=1039> (last visited Jun. 25, 2011).

Then, the user chooses the desired amount of credits:



Source: Facebook, *Purchasing Facebook Credits*, <http://www.facebook.com/help/?page=1039> (last visited Jun. 25, 2011).

If a user is paying for the Facebook Credits with a credit card, the following transaction screen will then pop up:



Source: *My Account*, Facebook, <http://www.facebook.com/help/?page=1039#!/editaccount.php?payments> (last visited Jun. 26, 2011).

43. For example, game developer Zynga has implemented Facebook Credits in its game “FarmVille.” A player with 50 Facebook Credits but zero “Farm Cash,” FarmVille’s in-game currency, who wishes to buy a virtual “Golden Chicken” from the “Market,” will go through the following steps:



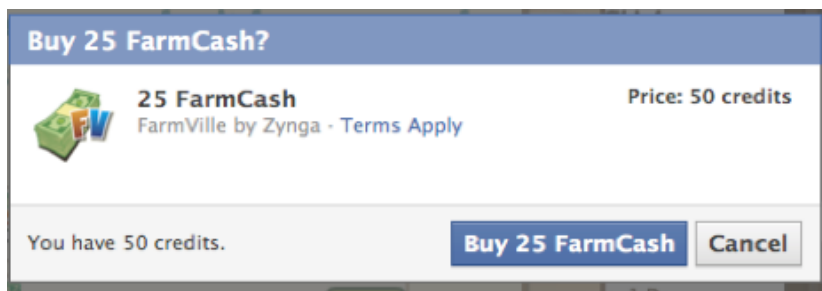
Source: Zynga, *FarmVille*, Facebook.com, <http://apps.facebook.com/onthefarm/index.php> (last visited Jun. 25, 2011).

The user will be required to exchange Credits for FarmCash:



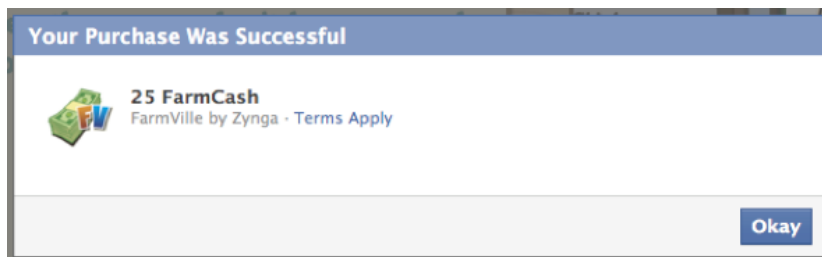
Source: Zynga, *FarmVille*, Facebook.com, <http://apps.facebook.com/onthefarm/index.php> (last visited Jun. 25, 2011).

After clicking “Buy” on the relevant amount, the user is asked to confirm the Credits purchase of FarmCash:



Source: Zynga, *FarmVille*, Facebook.com, <http://apps.facebook.com/onthefarm/index.php> (last visited Jun. 25, 2011).

After the FarmCash is purchased, there is a confirmation screen:



Source: Zynga, *FarmVille*, Facebook.com, <http://apps.facebook.com/onthefarm/index.php> (last visited Jun. 25, 2011).

Finally, the user is taken back to the farm, and the Golden Chicken appears:



Source: Zynga, *FarmVille*, Facebook.com, <http://apps.facebook.com/onthefarm/index.php> (last visited Jun. 25, 2011).

44. Under the second and third option—purchasing Credits directly in-game—the user never directly transacts for Credits. Facebook automatically exchanges the currency. Even though the new Facebook Credits terms take effect on July 1, 2011, “[c]urrently all purchases for virtual currency and goods are powered by Facebook Credits. The way you purchase goods or currency with Facebook Credits is subtle; Facebook Credits are first purchased with the game/app by using your payment source (PayPal, Credit card, or other) and will automatically convert to the in-game currency package that you selected.”⁶⁰

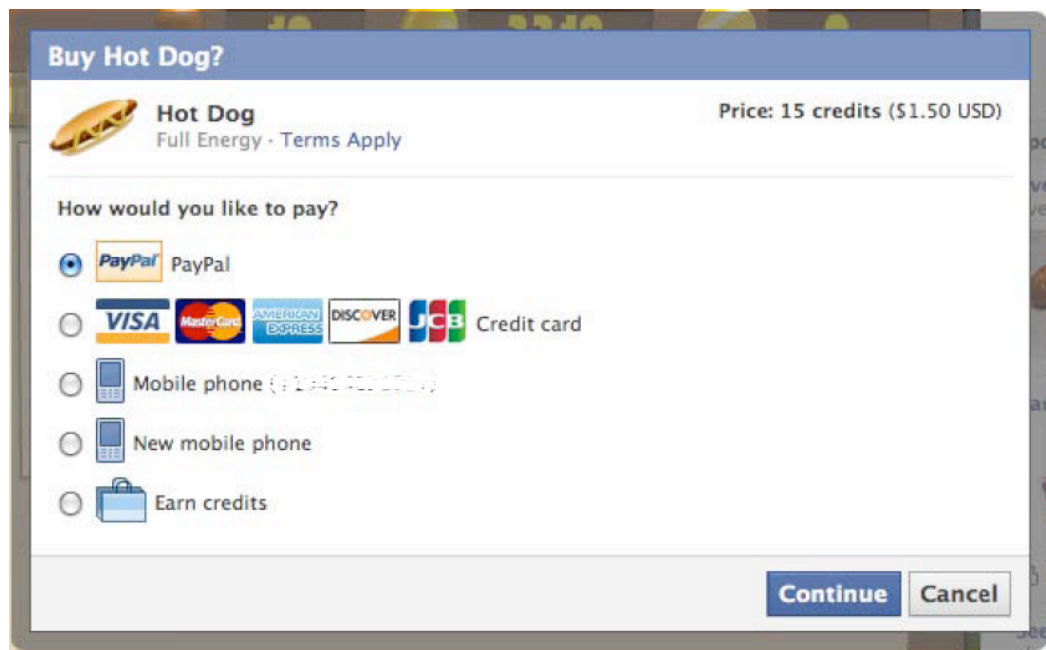
⁶⁰ *Help Center*, Facebook, <http://www.facebook.com/help/search/?q=virtual%20goods> (last visited Jun. 25, 2011).

45. The following example illustrates the process of in-game Facebook Credits purchases. In the zombie-fighting game “Zombie Lane,”⁶¹ when the user runs out of energy, he or she must purchase an energy boosting virtual hot dog to continue playing.



Source: *Zombie Lane on Facebook*, Digital Chocolate,
<http://apps.facebook.com/zombielane/?ref=bookmarks&count=0> (last visited Jun. 25, 2011)

If the user has zero Facebook and clicks on the hot dog, the user will be given the option to purchase the hotdog:



Source: *Zombie Lane on Facebook*, Digital Chocolate,
<http://apps.facebook.com/zombielane/?ref=bookmarks&count=0> (last visited Jun. 25, 2011)

⁶¹ See *Zombie Lane on Facebook*, Digital Chocolate,
<http://apps.facebook.com/zombielane/?ref=bookmarks&count=0> (last visited Jun. 25, 2011.)

If the user chooses the credit card option and clicks “continue”:

The screenshot shows a web browser window with the address bar displaying "Facebook, Inc. (US) https://secure.facebook.com/giftcredits/index.php?context_id=241907749154648&add_num_crediti". The page title is "Enter Your Credit Card Information". The form contains the following fields and options:

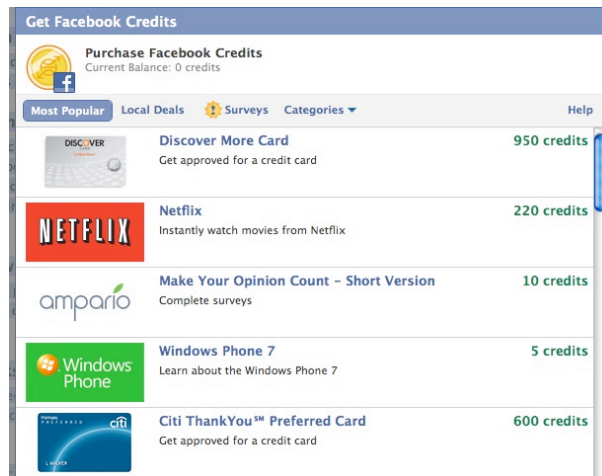
- Cardholder's First Name: Jane
- Cardholder's Last Name: Smith
- Credit Card Number: [Empty field]
- Expiration Date: 06 / 2011
- Security Code (CSC): [Empty field]
- Order Total: \$1.50 USD
- Buttons: Complete Purchase (with a lock icon), Cancel

Below the form, there is a link: "What's a CSC?".

Facebook will save your payment information for future purchases. You can always remove or manage this information in your account settings.

Source: *Zombie Lane on Facebook*, Digital Chocolate, <http://apps.facebook.com/zombielane/?ref=bookmarks&count=0> (last visited Jun. 25, 2011)

46. Users can also earn Facebook Credits through special promotions.⁶² For example, a user will be rewarded with Facebook Credits for ordering a Netflix subscription, applying for a Discover credit card, purchasing a Groupon Deal, or purchasing a membership to 24 hour Fitness through Facebook.⁶³



Source: Facebook, *Facebook Credits*, <http://www.facebook.com/credits> (last visited Jun. 19, 2011).

⁶² *Facebook Credits Integration Guide*, *supra* note 27.

⁶³ *Facebook Credits*, Facebook, <http://www.facebook.com/credits> (last visited Jun. 27, 2011).

47. Note that these promotional Facebook Credits are provided by Facebook, presumably as part of financial arrangements with non-developer third party advertisers, and in exchange for compensation to Facebook. However, as explained below, application developers will be required to honor these Facebook Credits⁶⁴ thus effectively reducing the compensation paid to the developers.
48. Facebook will retain its members' credit card information (or PayPal login information) so that users can buy Facebook Credits while they are playing games.⁶⁵
49. Currently, Facebook Credits are applied towards the purchase of virtual goods in applications and social games operating within the Facebook platform. However, Mark Zuckerberg, the Chief Executive Officer of Facebook, has said that the company plans to do "a lot more" with Facebook Credits, developing it into a system for micropayments open to any type of application on Facebook.⁶⁶ Discussing the future of Facebook Credits beyond social gaming, a Facebook representative stated that "[t]he gaming industry is often an indicator of what's to come" and that "[m]ore people play games on Facebook than on the top three consoles combined."⁶⁷
50. And though Facebook has not formally announced that Facebook Credits can be applied towards other online media products, or non-gaming digital goods, such as pay-per-view movies, TV, music, and news articles, in March, 2011, Facebook users were permitted to purchase and apply Facebook Credits to rent a movie as a test Warner Brothers' application streaming movies through Facebook.⁶⁸
51. Deborah Liu, a platform marketing manager at Facebook, says Facebook plans to slowly expand credits to cover new markets, and Facebook "think[s] a number of verticals will break through."⁶⁹
52. Analysts predict that Facebook Credits will eventually become a payment method outside of Facebook,⁷⁰ usable for purchase of virtual goods on other platforms

⁶⁴ See *Facebook Credits Terms*, Section 3.11, Facebook, <http://developers.facebook.com/policy/credits/> (last visited Jun. 27, 2011).

⁶⁵ Prashant Fuloria, *Two New Features for Facebook Credits* (Feb. 3, 2011), <http://developers.facebook.com/blog/post/458>.

⁶⁶ Miguel Helft, *Facebook Hopes Credits Make Dollars*, *New York Times Technology* (Sep. 22, 2010), <http://www.nytimes.com/2010/09/23/technology/23facebook.html>.

⁶⁷ Mark Millan, *Buying Facebook Goods, Just a Few Cents at a Time*, *CNN Tech* (Oct. 26, 2011), <http://www.cnn.com/2010/TECH/social.media/10/26/facebook.paypal/index.html>.

⁶⁸ Jacqui Cheng, *Warner Bros. Taking Movie Rentals to its Facebook Pages*, *Arstechnica* (Mar. 19 2011), <http://arstechnica.com/media/news/2011/03/warner-bros-taking-movie-rentals-to-its-facebook-pages.ars>.

⁶⁹ Benny Evangelista, *Facebook Credits Starting to Make Some Real Money*, *SFGate.com* (Nov. 15, 2010), http://articles.sfgate.com/2010-11-15/business/24832442_1_social-games-facebook-platform-virtual-currency.

⁷⁰ SocialTimes Pro, *Facebook Credits: Trends and Opportunities* (May 2011), <http://www.mediabistro.com/socialtimes-pro/Facebook-Credits-Trends-and-Opportunities-sp625.html>.

which Facebook forms partnerships with, or even for purchases of *tangible goods* from external websites integrated with Facebook through social plug-ins or Facebook login functions.

53. While there is currently a prohibition on accepting Facebook Credits for tangible goods through the Facebook platform,⁷¹ the Facebook Credits agreement does not use the term “virtual goods.” The terms explicitly refer to transactions of “goods and services,”⁷² making no distinction between tangible or virtual goods.

F. Facebook Credits Terms

54. Starting in July 1, 2011, Facebook will require all social game developers operating within the Facebook platform to *exclusively* utilize Facebook Credits for purchases of virtual goods and services.⁷³
55. The terms of Facebook Credits will also prohibit developers from charging a purchaser a “higher effective price in Credits for a good or service than [they] would for any other payment method that [they] accept for that good or service”⁷⁴ outside of Facebook.
56. Facebook limits developers’ access to their Facebook Credits earnings. Facebook issues payments to developers twice per month: one payment for activity between the 1st and the 15th of the month, and a second payment for activity between the 16th and the end of the month. Facebook issues payments 21 days after the end of each bimonthly period.⁷⁵
57. When Facebook compensates developers for the Facebook Credits that users have purchased, Facebook will redeem the Facebook Credits at the rate of \$0.10 per Credit, less a service fee of \$0.03 per credit.⁷⁶ In other words, effective July 1, 2011, Facebook will charge developers a 30% fee on members’ purchases within the platform.
58. Facebook reserves the right to change the 30% commission level (or any other term) at any time by giving 30 days notice on the Facebook Developer Blog.⁷⁷
59. Developers may not price items for sale in fractions of Credits.⁷⁸ However, the terms provide that Facebook will round *down* any fractional amounts of Facebook Credits to the nearest whole number when they redeem Credits to developers.⁷⁹

⁷¹ *Facebook Credits Terms*, *supra* note 67, at Section 2.1.6.

⁷² *Id.* at Sections 2.1.1, 2.1.9, 2.1.12, 4.3.

⁷³ *Facebook Credits Integration Guide*, *supra* note 27.

⁷⁴ *Facebook Credits Terms*, *supra* note 67, at Section 2.1.9.

⁷⁵ *Id.* at Section 3.2.

⁷⁶ *Id.* at Section 3.1.

⁷⁷ *Id.*

⁷⁸ *Id.* at Section 2.1.4.

60. The terms include a provision which reads, “[f]rom time to time, we may issue a small amount of Credits at no cost to a particular user (e.g. someone who is new to Credits or has lapsed from usage) in order to promote the use of Credits on Facebook and applications that use Credits, and if you receive those Credits in transactions, we will not redeem them.”⁸⁰
61. Facebook is now paying users with Facebook Credits to watch advertisements for which third parties pay Facebook.⁸¹ This will result in significant advertising revenue for Facebook, while effectively requiring the developer to provide the game, application, or virtual good to a user at a reduced price – and *below the price that the developer is permitted by Facebook to charge outside of the Facebook platform*.
62. According to at least one published report, Facebook may be offering more favorable terms to its largest customers. Larger companies that can still afford to operate under the Facebook Credits terms are starting to form partnerships, or make agreements, with Facebook.
63. For example, in May 2010, Facebook formed a five-year partnership with Zynga, the largest provider of Facebook social applications and games and a “cash cow for virtual goods,”⁸² to “expand the use of Facebook Credits in Zynga’s games.”⁸³ The agreement came after Zynga took issue with the prospective 30% commission on Facebook Credits purchases.⁸⁴
64. Facebook and Zynga kept details of the agreement secret, but it was reported that Zynga “was able to win some concessions” on the application of Facebook Credits terms to Zynga.⁸⁵
65. In September, 2010, Facebook Credits became the exclusive payment method for Zynga games and applications on Facebook.⁸⁶
66. On June 6, 2011, it was reported that Facebook and Apple, Inc., which sells games through the iTunes platform, have formed an “unofficial” agreement under which Apple will apparently accept Facebook Credits for use in the same games offered on both platforms.⁸⁷ According to the report, the agreement requires

⁷⁹ *Id.* at Section 3.5.

⁸⁰ *Id.* at Section 3.11.

⁸¹ Matt Rosoff, *Facebook Offering Credits to Users Who Watch Video Ads*, Business Insider (May 5, 2011), <http://www.businessinsider.com/facebook-will-let-users-earn-credits-by-watching-video-ads-in-games-2011-5>.

⁸² Leena Rao, *supra* note 3.

⁸³ *Facebook and Zynga Enter Into Long-Term Relationship*, *supra* note 3.

⁸⁴ Leena Rao, *supra* note 3.

⁸⁵ *Id.*

⁸⁶ Michael Arrington, *Zynga Swallowed the Facebook Credits Pill Whole*, TechCrunch (Sep. 8, 2010), <http://techcrunch.com/2010/09/08/zynga-swallows-the-facebook-credits-pill-whole/>.

⁸⁷ Tricia Duryee, *Surprise! Facebook Credits and Apple’s iTunes Play Nice With Each Other*, AllThingsD (Jun. 6, 2011), <http://allthingsd.com/20110606/surprise-facebook-credits-and-apples-itunes-play-nice-with-each-other/>.

uniform prices between the two platforms.⁸⁸ There is no information as to whether Facebook agreed to alter the terms of Facebook Credits for Apple.

IV. Legal Analysis

A. The FTC's Section 5 Authority

67. Section 5 of the FTC Act gives the Commission the authority to challenge acts and practices in or affecting commerce that are “deceptive” or “unfair.”⁸⁹
68. The FTC's enforcement authority under Section 5 of the FTC Act also reaches conduct that violates the Sherman Act.⁹⁰ The FTC also has authority to act against incipient Sherman Act violations and violations of the Sherman Act's "spirit."⁹¹

B. Facebook Credits Terms Constitute Monopolization Under Section 2 of the Sherman Act

69. Section 2 of the Sherman Act makes it unlawful to “monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations.”⁹²
70. Monopolization under Section 2 of the Sherman Act requires a showing that (1) the defendant possesses monopoly power in the relevant market, and (2) the defendant that has acquired, enhanced, or maintained that power by the use of exclusionary conduct.⁹³
71. The relevant market includes two components: the relevant product and service market, which is defined by identifying producers that provide customers of a firm with alternative sources for the firm's product or services,⁹⁴ and the relevant

⁸⁸ *Id.*

⁸⁹ 15 U.S.C. § 45(a)(1).

⁹⁰ The Federal Trade Commission Act “was designed to supplement and bolster the Sherman Act ... to stop in [its] incipency acts and practices which, when full blown, would violate [the Sherman Act] ... as well as to condemn as ‘unfair methods of competition’ existing violations” of those acts and practices. (*F.T.C. v. Brown Shoe Co.*, 384 U.S. 316, 322 (1966) (quoting *F.T.C. v. Motion Picture Adv. Serv. Co.*, 344 U.S. 392, 394-95 (1953); *See also F.T.C. v. Texaco*, 393 U.S. 223, 225-26 (1968); *F.T.C. v. Cement Inst.*, 333 U.S. 683, 694-95 (1948).)

⁹¹ *Federal Trade Commission v. Sperry & Hutchinson Trading Stamp Co.*, 405 U.S. 233 (1972).

⁹² 15 U.S.C. § 2.

⁹³ *Verizon Communs. v. Law Offices of Curtis v. Trinko, LLP*, 540 U.S. 398, 407 (2004).

⁹⁴ *Eastman Kodak Co. v. Image Technical Services* 504 U.S. 451, 481 (1992); *see also United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966) (“In case of a product it may be of such a character that substitute products must also be considered, as customers may turn to them if there is a slight increase in the price of the main product.”); *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 404 (1956) (the relevant market “is composed of products that have reasonable interchangeability.”)

geographic market, which is measured by the area in which the defendants operate and which the customers can reasonably turn to for supplies.⁹⁵

72. Monopoly power ordinarily may be inferred from the predominant share of the market.⁹⁶
73. Exclusionary conduct within the meaning of Section 2 is understood to be “the willful acquisition or maintenance of [monopoly] power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.”⁹⁷
74. The relevant product and service market for purposes of a Section 2 analysis of Facebook Credits is the market for virtual goods purchased in social games.⁹⁸ The relevant geographic market is, at minimum, all English language websites internationally, since Facebook operates globally via the Internet.
75. Facebook generates the predominant share of revenue in these markets. The market for virtual goods purchased in social games is expected to generate \$1.25 billion in 2011,⁹⁹ and virtual goods purchased in social games on Facebook have *already* generated \$840 million in revenue so far.¹⁰⁰ Based on this data, revenue in 2011 from virtual goods purchased in social games on the Facebook platform in the U.S. *already* accounts for over 65% or more of the expected revenue for the entire year. While detailed market data is needed to make a definite determination, the available data suggests that Facebook controls almost the entire market. Therefore, Facebook wields monopoly power in the relevant markets.
76. The new Facebook Credits terms will enable Facebook to maintain and extend its monopoly power over the market for virtual goods purchased in social games.
77. Because Facebook is the predominant distribution channel in the market for virtual goods purchased in social games, software developers wishing to enter the market, or existing developers currently offering games on Facebook, must accept Facebook’s Credits terms in order to participate in the market.

⁹⁵ *Tampa Elec. Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961).

⁹⁶ *United States v. Grinnell Corp.*, *supra* note 89 at pp. 570-71; *see also American Tobacco Co. v. United States* 328 U.S. 781, 797 (1946) (finding a “substantial monopoly” where a cigarette company occupied “over two-thirds of the entire domestic field of cigarettes, and . . . over 80% of the field of comparable cigarettes.”); *United States v. Aluminum Co. of America*, (2d Cir. 1945) 148 F.2d 416, 429 (finding that 90% of the market constituted monopoly power.).

⁹⁷ *United States v. Grinnell Corp.*, *supra* note 89 at p. 571.

⁹⁸ Even if the relevant products and services market were expanded here to include all virtual goods outside of social gaming, Facebook may still have monopoly power. More data is needed to determine whether the revenue generated from U.S. virtual goods sales on the Facebook platform is over 50% of the U.S virtual goods market revenue.

⁹⁹ *WebMediaBrands’ Inside Network Research Releases Latest Survey Revealing Deepening Brand Loyalty, Willingness to Pay Among Social Game Players*, *supra* note 31.

¹⁰⁰ Liz Gannes, *supra* note 7.

78. The terms of Facebook Credits prohibit developers from charging a purchaser a “higher effective price in Credits for a good or service than [they] would for any other payment method that [they] accept for that good or service”¹⁰¹ outside of Facebook. This provision prevents developers from offering their products at lower prices outside of the Facebook platform. Developers who do not agree to this coercive term will lose access to the Facebook platform, which is the dominant social gaming platform. Most developers cannot afford to lose this access to the user base.
79. A developer who wants to develop a customer base on another social network platform (should a viable alternative arise), or even on its own website (so that they can eventually become independent from Facebook), would ordinarily wish to offer discounts that would provide an incentive for a gamer to migrate from Facebook to another platform or website, which would in turn stimulate competition. The prohibition on offering lower prices outside of Facebook prevents such developers from engaging in such competitive actions.¹⁰² Facebook is wielding its monopoly power to dictate prices; this term directly undermines competition *outside the Facebook platform, i.e., in the market*, and forces users to pay higher prices.
80. Further, under the new terms, developers must pay Facebook a 30% service fee for access to the Facebook platform and Facebook users. This fee disadvantages smaller developers who wish to compete inside the Facebook platform against larger game application developers.
81. Further, under the new terms, Facebook will provide users with free Facebook Credits to watch advertisements for which third parties pay Facebook.¹⁰³ Developers must agree to accept these Facebook Credits, reducing the developers’ compensation and in effect discounting the price of the virtual goods below the *price that the developer is permitted by Facebook to charge outside of the Facebook platform*.
82. According to one commentator, once the Facebook Credits terms become mandatory, smaller developers “who have bet their livelihoods on Facebook [will] get a rude awakening and have no way to escape.”¹⁰⁴
83. Collectively, the terms of Facebook Credits will block and slow the adoption of competitive products and allow Facebook to maintain its monopoly to the

¹⁰¹ *Facebook Credits Terms*, *supra* note 64, at Section 2.1.9.

¹⁰² *WebMediaBrands’ Inside Network Research Releases Latest Survey Revealing Deepening Brand Loyalty, Willingness to Pay Among Social Game Players*, *supra* note 31.

¹⁰³ Matt Rosoff, *supra* note 81.

¹⁰⁴ Alex St. John, *How Facebook Will be Committing “Commercide” on July 1st*, VentureBeat (Mar. 2, 2011), <http://venturebeat.com/2011/03/02/how-to-avoid-committing-%E2%80%9Ccommercide%E2%80%9D-on-july-1st/>.

detriment of consumers; will exclude competitors from entering and competing in the market; will undermine innovation; and lead to high prices for consumers.¹⁰⁵

84. Facebook’s newly revised Facebook Credits program violates Section 2 of the Sherman Act.

C. Exemption from the Terms Imposed on All Other Competitors May Constitute a Violation of Section 1 of the Sherman Act

85. Under Section 1 of the Sherman Act, “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”¹⁰⁶
86. A challenge to a joint venture agreement between two competitors may be brought under Section 1 of the Sherman Act as an illegal contract, combination or conspiracy that unreasonably restrains trade.¹⁰⁷
87. The rule of reason is the accepted standard for evaluating a joint venture agreement between competitors under Section 1 of the Sherman Act.¹⁰⁸ Relevant considerations when determining whether a joint venture agreement is an unreasonable restraint on trade are the purpose of the venture; the industry structure and relative competitive positions of the venture participants; the scope and duration of the venture; efficiencies and other purported justifications; and the impact of the venture upon venture participants and outside competitors and customers.¹⁰⁹
88. Facebook and Zynga’s agreement, reported in May 2010, could be considered a conspiracy between competitors. Zynga’s widespread popularity and established, loyal, player base currently exists primarily on Facebook. But unlike its competitors, Zynga is potentially the only social game developer powerful enough to draw its followers away from Facebook to a different social network, or to create its own platform for social games. Facebook and Zynga’s agreement is confidential, but it calls for a five-year partnership¹¹⁰ and is said to include concessions on Facebook’s part regarding Facebook Credits. If published reports

¹⁰⁵ Sarah E. Needleman, *Some Game Developers Don’t ‘Like’ Facebook’s New Virtual Currency*, Wall Street Journal (Jun. 15, 2010), <http://online.wsj.com/article/SB10001424052748704764404575287123371328524.html>.

¹⁰⁶ 15 U.S.C. § 1.

¹⁰⁷ *Berkey Photo, Inc. v. Eastman Kodak Co.*, (2d Cir. 1979) 603 F.2d 263 (Sherman Act Section 1 liability found where a monopolist exploited its control over a product development venture with another firm to delay market entry by competing producers of nonventure products).

¹⁰⁸ *See Texaco Inc. v. Dagher*, 547 U.S. 1 (2006) (the rule of reason, rather than the per se horizontal rule for price fixing, governed the price-setting activities of a joint venture formed by two formerly competing oil companies to refine and sell gasoline under their respective brand names at identical prices set by the venture entity, where the “business practice being challenged involve[d] the core activity of the joint venture itself—namely, the pricing of the very goods produced and sold by [the venture].”); *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 768 (1984).

¹⁰⁹ *Major League Baseball Properties, Inc. v. Salvino, Inc.*, (2d Cir. 2008) 542 F.3d 290, 338.

¹¹⁰ *Facebook and Zynga Enter Into Long-Term Relationship*, *supra* note 3.

are accurate, the arrangement seems likely to reduce competition and exclude competitors.

89. Such an arrangement is an unreasonable joint venture agreement between competitors that violates the Sherman Act and its spirit.

D. Facebook’s Conduct Constitutes Unfair Methods of Competition and Unfair Acts or Practices Under Section 5 of the FTC Act

90. Even if the FTC were to conclude that Facebook’s conduct does not rise to the level of a Sherman Act violation, it nonetheless would constitute a violation of Section 5 of the Federal Trade Commission Act, which prohibits “unfair methods of competition” and “unfair acts or practices.”¹¹¹
91. The new terms of Facebook Credits, specifically the requirement that game developers exclusively utilize Facebook Credits as of July 1, 2011, the prohibition on lower prices outside of Facebook, and the 30% service fee, plus the possible special arrangements given to Zynga, constitute unfair and deceptive acts and practices. Such practices are prohibited by the Federal Trade Commission Act (“FTC Act”), and the Commission is empowered to enforce the Act’s prohibitions.¹¹² These powers are described in the FTC Policy Statement on Unfairness.¹¹³
92. A trade practice is unfair if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”¹¹⁴
93. The terms of Facebook Credits are likely to cause substantial injury to consumers because the overall effect on consumers will be higher prices for virtual goods and less consumer choice due to limited distribution channels.
94. Consumers will not be able to reasonably avoid these injuries because they have seriously limited options for social gaming platforms on which to play their favorite games and purchase desired virtual goods, other than through Facebook and the use of Facebook Credits.

¹¹¹ Section 5 prohibits “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1).

¹¹² 15 U.S.C. § 45.

¹¹³ Fed. Trade Comm’n, FTC Policy Statement on Unfairness (1980), *available at* <http://www.ftc.gov/bcp/policystmt/ad-unfair.htm>.

¹¹⁴ 15 U.S.C. § 45(n); *see, e.g., Fed. Trade Comm’n v. Seismic Entertainment Productions, Inc.*, Civ. No. 1:04-CV-00377 (Nov. 21, 2006) (finding that unauthorized changes to users’ computers that affected the functionality of the computers as a result of Seismic’s anti-spyware software constituted a “substantial injury without countervailing benefits.”).

95. As evidenced by Facebook representatives' public comments and the Facebook Credits terms, Facebook plans to expand Facebook Credits to other markets. Such an expansion would result in higher prices to consumers and restricted competition in whatever market Facebook decides to enter.
96. Any possible benefits to consumers or developers resulting from Facebook's number of active users, heavy traffic, and massive population of social gamers are not outweighed by the negative, anticompetitive impact of the terms of Facebook Credits.
97. For reasons discussed in sections IV-B and IV-C, the new terms of Facebook Credits, and Facebook's agreement with Zynga constitute unfair methods of competition that will result in higher prices and limited options for consumers.

V. Prayer for Investigation and Relief

98. Petitioners request that the Commission investigate and enjoin Facebook from engaging in unfair business practices in connection with Facebook Credits. Specifically, petitioners request that the Commission:
 - Investigate the marketplace for virtual gaming and the use of virtual currency within social gaming platforms;
 - Investigate the development of Facebook Credits and its imposition upon developers;
 - Investigate alternative arrangements that Facebook has offered to developers, specifically whether the May 2010, agreement between Facebook and Zynga and/or other developers contains anti-competitive terms;
 - Enjoin Facebook from requiring social game developers to exclusively utilize Facebook Credits for the purchase of virtual goods within their games;
 - Enjoin Facebook from prohibiting any developer or application provider from offering lower prices on their products outside the Facebook platform in the terms of Facebook Credits; and
 - Enjoin Facebook from requiring any developer or application provider to exclusively utilize Facebook Credits for goods or services sold within the Facebook platform in the future.
99. FTC investigation and enforcement is necessary to prevent Facebook from destroying competition in the market for virtual goods purchased in social games, and eventually in other markets for purchasing goods or services on the Internet, to protect existing businesses from being unfairly boxed out of the market, and to

allow new businesses to enter the relevant markets, and ultimately, to protect consumers from higher prices.

100. Petitioners reserve the right to supplement this petition as other relevant information to this proceeding becomes available.

Respectfully Submitted,

Harvey Rosenfield, Founder
Jamie Court, President
John Simpson, Online Privacy Advocate
Laura Antonini, Research Attorney

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