

# FEDERAL TRADE COMMISSION

## PERFORMANCE REPORT FISCAL YEAR 1999



# EXECUTIVE SUMMARY

The Federal Trade Commission (FTC) is an independent law enforcement agency and the only federal agency with both consumer protection and competition jurisdiction over broad sectors of the economy. We strive to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive.

The FTC protects American consumers in both domestic and world marketplaces. Our national experience demonstrates that competition among producers and accurate information in the hands of consumers yields products at the lowest prices, spurs innovation, and strengthens the economy.

Our Strategic Plan defines the FTC's Vision and Mission in two Goals:

- GOAL 1** Prevent fraud, deception, and unfair business practices in the marketplace.
- GOAL 2** Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

These Goals, with their corresponding Objectives and Performance Measures, help us assess our Performance.

## FTC'S STRATEGIC PLAN

**VISION:** *A U.S. economy characterized by vigorous competition among producers and consumer access to accurate information, yielding high quality products at low prices and encouraging efficiency, innovation, and consumer choice.*

**MISSION:** *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 these missions without unduly burdening legitimate business activity.*

**GOAL 1** Prevent fraud, deception, and unfair business practices in the marketplace.

**GOAL 2** Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

**OBJECTIVE 1.1** Identify fraud, deception, and unfair practices that cause the greatest consumer injury.

**OBJECTIVE 2.1** Identify anticompetitive mergers and practices that cause the greatest consumer injury.

**OBJECTIVE 1.2** Stop fraud, deception, and unfair practices through law enforcement.

**OBJECTIVE 2.2** Stop anticompetitive mergers and practices through law enforcement.

**OBJECTIVE 1.3** Prevent consumer injury through education.

**OBJECTIVE 2.3** Prevent consumer injury through education.

## FY 1999 Performance Measures and Targets

### GOAL 1

#### OBJECTIVE 1.1

**Measure 1.1.1:** Cumulative number of consumer complaints and inquiries entered in database.

Target: 200,000

Actual: 398,558 ✓

#### OBJECTIVE 1.2

**Measure 1.2.1:** Dollar savings for consumers from FTC actions which stop fraud.

Target: \$200 million

Actual: \$454.1 million ✓

**Measure 1.2.2:** Percentage of targeted industry brought into compliance through law enforcement and self regulation.

Target: 50-75%

Actual: 78% ✓

#### OBJECTIVE 1.3

**Measure 1.3.1:** Number of education publications distributed to or accessed electronically by consumers.

Target: 7.25 million

Actual: 8.589 million ✓

|                          |
|--------------------------|
| ✓ met or exceeded target |
|--------------------------|

### GOAL 2

#### OBJECTIVE 2.1

**Measure 2.1.1:** Average number of days for review of HSR-reported transactions.

Target: 20

Actual: 19 ✓

**Measure 2.1.2:** Number of nonmerger investigations opened per year.

Target: 45-70

Actual: 45 ✓

#### OBJECTIVE 2.2

**Measure 2.2.1:** Positive outcome of cases brought by FTC due to alleged violations.

Target: 80%

Actual: 80% ✓

**Measure 2.2.2:** Dollar savings for consumers resulting from FTC actions.

Target: \$200 million

Actual: \$1.2 billion ✓

**Measure 2.2.3:** Average time, in months, from proposed consent orders to divestitures.

Target: 9

Actual: 4 ✓

#### OBJECTIVE 2.3

**Measure 2.3.1:** Identify and survey FTC "customers" in the marketplace.

Target: design survey

Actual: design survey ✓

## FY 1999 Assessment

The results of our FY 1999 activities reached, and in most cases exceeded, each of our Performance Measure Targets. Highlights of our Performance and its effect on consumers and businesses are:

- Saving consumers an estimated \$1.7 billion in 1999 from law enforcement

actions to stop fraud and prevent anticompetitive mergers, achieving an estimated consumer savings of \$14 for every \$1 spent on agency operations. In addition, the FTC's presence in the marketplace deters many fraudulent activities or anticompetitive mergers that could result in substantial, though unmeasurable, consumer savings.

- Protecting consumers and businesses

from anticompetitive mergers which raise prices and harm consumer confidence by reviewing an unprecedented number and size of proposed mergers and acquisitions.

- Bringing 61 Internet-related fraud enforcement actions in 1999, over 100 since 1994. These actions have targeted more than 300 corporate and individual defendants on behalf of millions of online consumers and small businesses. Further, these actions have stopped some of the newest, as well as the traditional, types of fraud used on the Internet to con consumers.
- Receiving and processing nearly 400,000 consumer complaints and inquiries into our Consumer Information System database since 1997, and sharing fraud complaints with over 220 law enforcement agencies via Consumer Sentinel, a secure Web site. Many complaints are now received through the Internet and a new, toll-free consumer helpline, 1-877-FTC-HELP, implemented in July 1999. This helpline allows individuals throughout the United States to call with questions or complaints and speak to trained counselors.
- Educating consumers and businesses about their rights and responsibilities, and alerting them to potential frauds, by distributing 8.6 million educational publications in print and online and expanding our media outreach programs.
- Advancing the public understanding of the merger reporting process and its importance to consumer confidence and the economy by responding to nearly 41,000 telephone inquiries and issuing draft

“Guidelines for Collaboration Among Competitors.”

## **Challenges**

Two developments have greatly increased the demands on the FTC – the continuous growth of the Internet and the dramatic increase in the number and size of corporate mergers.

Use of the Internet has grown exponentially since commercial Web browsers first became available in 1994 – 123 million Americans now use the Internet. Internet purchasing also is booming and is forecasted to skyrocket from \$20 billion in 1999 to \$184 billion in 2004. The FTC is working to protect consumers and businesses against new high-tech frauds that use the Internet to defraud consumers. Halting cyberfraud and reviewing Internet-related issues to ensure continued growth of the new e-commerce medium during the early years of the Internet's existence already is challenging us and taxing our resources.

Similarly, the corporate merger wave continues into its tenth straight year with the number of reported mergers rising from 1,529 in 1991 to 4,642 in 1999. While this restructuring may be necessary for companies to compete in the new global, high-tech marketplace, antitrust review is necessary to identify and stop those combinations that could diminish competition in specific markets as this restructuring proceeds.

While the number of mergers has tripled in the past decade the dollar value of commerce affected by these mergers is on an even steeper trajectory, increasing eleven-fold in total value during this period, from \$169 billion to

\$1.9 trillion. Overall, merger transactions are increasingly larger and significantly more complex, requiring more exacting analysis when they raise competitive issues. As a result, merger investigation and litigation are more resource-intensive than before.

To meet the challenges of the Internet, we have pursued a comprehensive program consisting of systematic analysis of the marketplace, law enforcement – often in conjunction with federal, state, and local partners – and consumer and business education. To meet the merger wave challenge, we work cooperatively with industry and the antitrust bar to assess what changes can be made in merger investigations to make the process efficient as possible. Also, we have undertaken a number of internal reforms to expedite merger investigations and provide parties with more complete information on the issues that give rise to an investigation.

## ***Strategic Planning – Continuing the Process***

A major part of our Strategic Planning is to continually re-evaluate our Objectives, Performance Measures, and Performance Targets to ensure that we are measuring the most appropriate indicators of our Performance and that we are correctly capturing this data. For example, in 1999, we concluded that two

of our Performance Measures under Objective 1.2 were better expressed as one aggregate Measure that more succinctly captures the results of our efforts. Also, as part of our Strategic Planning, our Inspector General (IG) reviewed the Performance Measures and found that the methodology used to collect certain Performance data could be improved to increase the accuracy and consistency of the information. The IG recommends that, in order to prevent this weakness in the future, the FTC's GPRA Task Force define the rationale behind each of the Performance Measures by clearly articulating how consumers/businesses are better off when the FTC meets or exceeds its Performance Targets. We will address those concerns as we continue to re-evaluate the validity of our Performance Measures and Objectives.

Although we face mounting challenges – especially from the continuing growth of the Internet and the merger wave – we are able to address them more effectively because of Strategic Planning. Through this process we have assessed, and will continue to assess, the challenges and opportunities facing the FTC and will position ourselves to be as innovative and aggressive in protecting consumers and businesses from unfair or deceptive acts or practices.

# THE RESULTS

## GOAL 1 PREVENT FRAUD, DECEPTION, AND UNFAIR BUSINESS PRACTICES IN THE MARKETPLACE

The FTC is the federal government's primary consumer protection agency. While most federal agencies have jurisdiction over a specific market sector, we have broad law enforcement authority over nearly the entire economy, including business and consumer transactions on the Internet. Our goal is to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace. We implement three interconnected objectives to reach this broad-reaching goal.

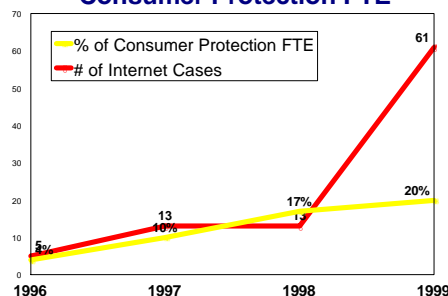
- Identify fraud, deception, and unfair practices that cause the greatest consumer injury.
- Stop fraud, deception, and unfair practices through law enforcement.
- Prevent consumer injury through education.

First, we identify practices that cause consumer injury by analyzing the consumer complaint data collected in our Consumer Information System database and monitoring the marketplace, including the Internet. We then use this information to target law enforcement efforts. Our law enforcement program aims to stop and deter fraud and deception and to increase compliance with

our consumer protection statutes to ensure that consumers have accurate and complete information for their purchasing decisions. We target our education efforts to give consumers the information they need to protect themselves from injury.

One of the greatest challenges we face is safeguarding consumers in the new electronic marketplace so they will have the same confidence in this market as they should in the traditional marketplace. The Internet has the potential to deliver traditional goods and services, often more conveniently, faster, and at lower prices than traditional media. Online commerce promises enormous benefits to consumers and the economy. Moreover, the Internet is stimulating the development of innovative products and services that were barely conceivable just a few years ago and enabling consumers to tap into rich sources of information that they can use to make better informed purchasing decisions.

**Internet Cases and Percentage of Consumer Protection FTE**



There is real risk, however, that these benefits may not be realized if consumers associate the Internet with fraud operators. Fraud on the Internet is an enormous concern for the FTC, and it has prompted a vigorous response using all the tools at our disposal, including

law enforcement and education.

## OBJECTIVE 1.1

## IDENTIFY PRACTICES THAT CAUSE CONSUMER INJURY

To prevent fraud, deception, and unfair business practices in the marketplace, we must first identify such practices, especially those that cause the greatest consumer injury, where we can make the greatest impact.

### *Strategies*

To keep abreast of consumer protection problems in the marketplace, the FTC is collecting and analyzing data from many sources. In 1997, we established the Consumer Response Center to receive consumer complaints and inquiries via mail, telephone, and the Internet. A toll-free number established in 1999 (1-877-FTC-HELP) has made the agency even more accessible to consumers across the nation. Partners such as the National Fraud Information Center of the National Consumers League, Better Business Bureaus, and the Canadian fraud database, PhoneBusters, also provide us with the consumer complaint data they collect. The information is entered into the Consumer Information System database and analyzed by FTC staff to identify trends and patterns, new scams, and companies engaging in fraudulent, deceptive, and unfair business practices. This information is used to target FTC law enforcement and education efforts. Also, the fraud complaints collected are shared with over 220 other law enforcement agencies across the United States and Canada, via Consumer Sentinel, a secure Web site. The constant input and analysis of fresh complaint data have allowed the FTC to move quickly – in some instances in a matter

of weeks – to stop practices before they can do more harm to consumers.

In addition to receiving and analyzing consumer complaints, we monitor the growing marketplace by systematically surfing the Internet to identify Web sites engaged in questionable practices. To date the FTC has led or coordinated over 20 Surf Days, uncovering some 4,000 questionable sites. We also hold public hearings and workshops to help identify emerging consumer protection issues in the global economy.

### *Performance Measure and Results*

**Performance Measure 1.1.1**  
Cumulative number of consumer complaints and inquiries entered into database.

|                  |                |
|------------------|----------------|
| FY 1999 Target:  | <b>200,000</b> |
| FY 1999 Actual:  | <b>398,558</b> |
| Met or Exceeded: | ✓              |

We assessed our 1999 impact by the total number of consumer complaints and inquiries in the Consumer Information System

database. At the end of 1999, these entries totaled nearly 400,000 – almost double our target, which was established in 1998. This was due to the increasing number of complaints received via the Internet and the new toll-free telephone number, and the growing number of partners contributing complaints. On the basis of this data – including a spike in Internet fraud complaints – we were able to identify the top consumer frauds of 1999 and effectively target our law enforcement and education to these areas, including online auction fraud, pyramid schemes, unauthorized billing (“cramming”), and travel scams. Our better-than-expected results in capturing consumer information has led us to revise our performance targets for the next few years.



## **Performance Assessment and Future Trends**

In our effort to identify fraud, deception, and unfair business practices, we focus law enforcement and education efforts on the most serious consumer protection problems. We search our database for information that enables us to detect illegal practices and respond quickly to prevent consumer injury. By collecting data from, and sharing it with, our partners, we are able to enhance the effectiveness of our own efforts and those of law enforcement agencies across the country and in Canada. To make the database even more valuable, we plan to increase our collection of information from consumer agencies in other countries. Building on our experience with Canadian members of Consumer Sentinel, we will work toward data-sharing agreements, for example, with the members of the International Marketing Supervision Network (IMSN), an organization consisting of consumer protection agencies from more than two dozen countries. The IMSN's mission is to share information about cross-border commercial activities that could affect consumer interests and to encourage international cooperation among law enforcement agencies.

We are designing a compatible

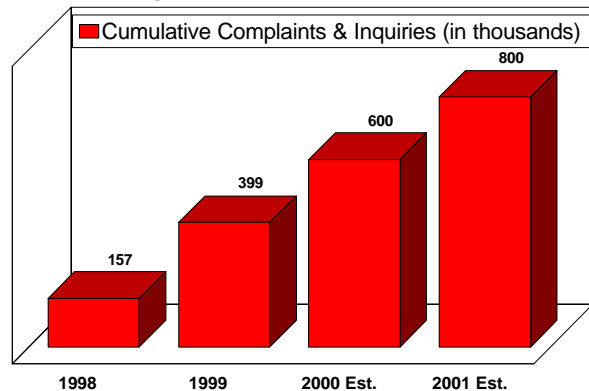
database dedicated to identity theft in response to the new responsibilities we have been given under the Identity Theft and Assumption Deterrence Act of 1998. The Commission will receive and record complaints by victims of identity theft, refer the complaints to the appropriate national consumer reporting and law enforcement agencies, analyze the

complaint data to identify trends, and undertake consumer education about the identity theft problem.

Assessing our performance using the number of entries in our consumer complaint database has proven to be a reasonable indicator of our ability to identify

consumer problems. Using the data to identify trends and patterns, new scams, and individual companies engaged in illegal activities has quickly become the bedrock of our ability to effectively target our law enforcement and education efforts. Also, working with our partners across the country and in Canada to collect data in one central location increases the value of each cluster of data by establishing patterns and giving us a broad view of what consumers are facing in the expanding, global marketplace. The more data we have, the better able we are to see trends and coordinate activities with other law enforcers. The database allows us and our law enforcement partners to identify and develop cases against fraudulent operators more quickly and coordinate our efforts to achieve greater impact on practices that cause consumer injury. For consumers, having one centralized, toll-free number to call gives them the opportunity to share their experiences

**Cumulative Number of Consumer Complaints and Inquiries Entered Into Database**



and contribute to law enforcement efforts to stop wrongdoers.

When we revise our five-year strategic plan, we will revisit this performance measure to consider moving to an annual count of database entries versus a cumulative one. The use of a cumulative count for 1999 is valid since the database has been in existence for approximately two years. However, as the data age, earlier entries will be less

useful in identifying bad practices; the data gleaned from recent entries will determine the targets of current law enforcement and education efforts. We will also examine the potential for duplication of complaints; for example, an individual may send the same complaint to us and several of our partners. At this time, we do not believe this is to be a significant problem.

## OBJECTIVE 1.2

## STOP PRACTICES THAT CAUSE CONSUMER INJURY

Once we identify fraud, deception, and unfair business practices in the marketplace, we focus our law enforcement efforts on areas where we can have the greatest impact for consumers.

### *Strategies*

To combat fraud, we focus on the areas identified through our Consumer Information System database and our monitoring of the traditional and electronic marketplaces. Attacking telemarketing fraud continues to be a priority, as does protecting consumers from more traditional scams that have found new life on the Internet, including health-related fraud. The FTC also is moving to protect consumers and business against new high-tech frauds through our Internet Rapid Response Team.

One of the most effective tools in the battle against fraud has been the law enforcement sweep – simultaneous law enforcement actions against numerous defendants nationwide that focus on a particular, widespread type of fraud. Each sweep is supported by a creative education program aimed at preventing future losses to the public. The FTC has led 50 sweeps in the past five years that have had a substantial impact on reducing fraud and raising consumer awareness.

In the nonfraud area, we work to ensure that there is compliance with our consumer protection statutes. Using information from our database and monitoring national advertising, we are

able to target our law enforcement to areas that create the greatest risks to consumer health, safety, and economic well-being. We often work with industry and interested groups to encourage self-regulation and private initiatives, where appropriate, in lieu of regulation or law enforcement.

### *Performance Measures and Results*

#### **Performance Measure 1.2.1**

Dollar savings for consumers from FTC actions which stop fraud.

FY 1999 Target: **\$200 million**

FY 1999 Actual: **\$454.1 million**

Met or Exceeded: ✓

#### **Performance Measure 1.2.2**

Percentage of targeted industry brought into compliance through law enforcement or self regulation.

FY 1999 Target: **50% - 75%**

FY 1999 Actual: **78%**

Met or Exceeded: ✓

Our goal in 1999 was to save consumers over \$200 million by stopping fraud. We estimate that we more than doubled that amount with our actions saving consumers approximately \$454 million. One large scheme with estimated annual fraudulent sales of \$180 million, and three others with estimated sales of close to \$50 million each, boosted our impact to an unanticipated level. By

publicizing our successes, we seek to increase consumer confidence in the marketplace. Consumer savings are measured on the basis of the estimated annual fraudulent sales of defendants in the 12 months prior to filing a complaint. The law enforcement actions included in this measure were taken against fraudulent operators, who range from individuals or small companies to scam artists operating large schemes on the Internet. Our experience in most cases is that once we file a complaint in federal district court and obtain a court order, the defendants stop their fraudulent practices; if they fail to comply, they are subject to contempt actions. Thus, in

stopping these frauds, we stop further consumer losses to these defendants.

In the nonfraud area, our goal was to increase compliance with the laws against deceptive and unfair practices, and thereby ensure that consumers have more accurate and complete information for their purchasing decisions. We target industries where misleading or unfair practices are widespread, and work to significantly improve the level of compliance through law enforcement or self-regulatory programs over a two-year period. In 1999, we planned to bring 50% to 75% of the noncomplying members in targeted industries into compliance through law enforcement or self-regulatory programs. In 1997, we targeted industries whose major members were not in compliance with the law, including: auto leasing, online service providers, engine treatments, air cleaners, credit counseling, online advertising directed to children, refractive eye care surgery, and alcohol advertising. By taking law enforcement actions and encouraging self-regulatory programs across these industries, we were able to achieve an average increase in compliance of 78%. This percentage is slightly higher than anticipated because we achieved a 98% to 100% compliance rate in three of the targeted industries.

## ***Performance Assessment and Future Trends***

The boom in e-commerce has yielded fertile ground for fraud. Internet technology is the latest magnet to draw opportunistic predators. The rapid rise in the number of consumer complaints related to online fraud and deception bears this out: in 1997, the FTC received fewer than 1,000 Internet fraud complaints to our database; a year later, the number had increased eightfold. In

1999, over 18,600 complaints – roughly 24% of all fraud complaints logged in that year – related to online fraud and deception. We expect this number to continue to grow, and in response, we will increase our efforts to slow online fraud and prevent consumer injury.

We are well on the way to achieving our goal of saving consumers \$1 billion over five years; our goal in fiscal year 2000 is to save consumers over \$250 million. We do not anticipate repeating the savings reached in fiscal year 1999, where one scheme alone had estimated annual fraudulent sales of \$180 million. As our expertise in high and new technologies grows, we will be better able to detect and deter Internet fraud before these schemes take hold. By stopping fraudulent operators early, measured savings in each case may fall; however, the true savings to consumers will be enormous. This effort, combined with strategies such as law enforcement sweeps, demonstrates that our commitment to preventing consumer injury is strong and effective.

While fighting fraud is a major law enforcement priority, we also focus resources on compliance – both offline and online – with traditional advertising law and FTC Rules and Guides. As reported, directing our law enforcement and self-regulatory efforts to industries targeted in 1997 was an effective strategy. We are in the second year of evaluating results in industries targeted in 1998, and have begun efforts to increase compliance in those targeted in 1999. Early indicators suggest that we will reach our goal for 2000 and 2001. Concentrating efforts on industries identified by our database and marketplace monitoring is proving to be an effective tool in significantly improving compliance by industry members and preventing consumer injury.

## OBJECTIVE 1.3

# PREVENT CONSUMER INJURY THROUGH EDUCATION

Consumer and business education is the first line of defense against fraud and deception and a top priority of the FTC.

## *Performance Measure and Results*

### *Strategies*

Our database helps us focus our education efforts on areas where fraud, deception, unfair practices, and information gaps are causing the greatest injury. Each major law enforcement initiative is supported by a comprehensive and creative self-help education program. Consumers are given the tools they need to spot potentially fraudulent and other illegal promotions, and businesses are advised about how to comply with the law. As with our law enforcement, more of our education efforts now involve the Internet. We not only address consumer issues involving the Internet, such as shopping online, but we also use the Internet as a tool to reach consumers, for example, through our Web sites, online banner public service announcements, and online distribution of “news” consumers can use.

We coordinate with hundreds of private and public partners to provide information about specific promotions, products, and services. In 1999, the FTC took the lead in organizing the first National Consumer Protection Week, an initiative sponsored by a broad coalition of public and private consumer protection advocates. In addition to the FTC’s own Web site ([www.ftc.gov](http://www.ftc.gov)), [www.consumer.gov](http://www.consumer.gov), which the FTC initiated and continues to manage, offers one-stop access to consumer information from 135 federal partners.

#### **Performance Measure 1.3.1**

Number of education publications distributed to or accessed electronically by consumers.

|                  |                      |
|------------------|----------------------|
| FY 1999 Target:  | <b>7.25 million</b>  |
| FY 1999 Actual:  | <b>8.589 million</b> |
| Met or Exceeded: | ✓                    |

We measured our impact in the education area by tracking the number of publications we distributed to the public. In 1999, the FTC distributed approximately 8.6 million publications: 6 million print publications and 2.6 million

through the FTC Web site. We surpassed our goal of 7.25 million publications by well over 1 million. We can attribute our high dissemination rates to increased marketing activity to and among our “customers” and partners, and the many publications sent directly to consumers who call, write, or e-mail our Consumer Response Center. In addition, the number of publications accessed by consumers through our Web site increased by 1 million over 1998. Our reach nationwide was extended by more aggressive outreach and promotion of FTC materials and our new toll-free number, and the increasing number of consumers who are online. We used information from our database to target our education programs to problem areas, such as Internet fraud; health services and products fraud including online pharmaceuticals, home testing kits, dietary supplements, and weight management; and home improvement and direct mail fraud. The growing number of telephone calls and the increased use of our Web site demonstrate that our efforts have created a greater awareness of consumer issues. In turn consumers will, to some extent, be able to protect themselves

against fraud and deception in the marketplace.

## ***Performance Assessment and Future Trends***

The FTC seeks to alert as many consumers as possible to the telltale signs of fraud, deception, and unfair business practices, and other critical consumer protection issues. Use of the Internet to disseminate information about fraud and technology-related matters is integral to the FTC's education, deterrence, and enforcement efforts and has allowed the agency to reach vast numbers of consumers and businesses quickly, simply, and at low cost. The FTC has been at the forefront of using the Internet to educate and empower consumers. This trend will accelerate in the future.

Our measure of the number of publications distributed is an accurate indicator of our impact in educating consumers, although it does not fully capture the millions of FTC publications

distributed by our customers and partners, and downloaded from the Internet. In the future, we expect the number of print publications we distribute to decline and the number of publications accessed through the Internet to increase as more consumers and businesses go online. The growth in the number of publications viewed online in 1996 and 1999 (140,000 versus 2.5 million) tells the story of the Internet's coming of age as a mainstream medium and certainly its importance to any large-scale dissemination effort. Capitalizing on this trend, we will increase our use of the FTC's Web site, [www.ftc.gov](http://www.ftc.gov), and the multi-agency Web site, [www.consumer.gov](http://www.consumer.gov), to efficiently and effectively reach consumers, businesses, law enforcement officials, and the media.

Increasing the visibility of the FTC as the nation's consumer protection champion not only helps consumers better protect themselves, but also encourages consumers to provide the FTC with more and better complaint data. That, in turn, will make our law enforcement and education efforts more effective.



## GOAL 2 PREVENT ANTICOMPETITIVE MERGERS AND OTHER ANTICOMPETITIVE BUSINESS PRACTICES IN THE MARKETPLACE

Competition among sellers in an open marketplace results in lower prices for consumers, leads to high quality products and services, maximizes consumer choice, and spurs the discovery and development of beneficial new products and services.

Anticompetitive mergers, and other practices that diminish competition, deny consumers these benefits. Thus, it is our goal to protect consumers from such threats and promote vigorous competition by preventing mergers that would diminish competition, and other anticompetitive practices. We apply three objectives to achieve this goal.

- Identify anticompetitive mergers and practices that cause the greatest consumer injury.
- Stop anticompetitive mergers and practices through law enforcement.
- Prevent consumer injury through education.

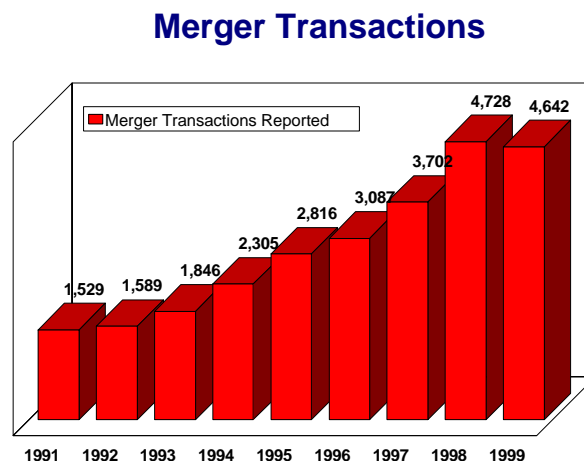
First, we identify anticompetitive mergers and business practices through the application of sophisticated economic analysis and thorough factual investigation to distinguish between conduct that threatens the operation of free markets and conduct that promotes and advances their operation. This step is critical because in any

given circumstance the activity in question, such as a merger, may be either beneficial – by enabling sellers to be more efficient and pass those savings along to consumers – or harmful – by enabling sellers to reduce the output of their product and raise the price to consumers. Thus, indiscriminate or ill-considered intervention into the marketplace may do more harm than good.

Second, once we identify an anticompetitive merger or business practice, we take enforcement action under the antitrust laws to prevent it, either through an administrative challenge or in federal court. In many instances we are able to reach a consent agreement with the affected parties that prevents the anticompetitive activity.

Third, we seek to prevent anticompetitive activity by educating business and consumers about the antitrust laws. Increased knowledge and understanding on the part of businesses facilitates their efforts to comply with the

law. Increased knowledge and understanding on the part of consumers enables them to identify anticompetitive activity more readily and to bring such activity to our attention for possible enforcement action.



## OBJECTIVE 2.1

# IDENTIFY ANTICOMPETITIVE MERGERS AND PRACTICES THAT CAUSE CONSUMER INJURY

To prevent anticompetitive mergers and other anticompetitive business practices, we must first determine which mergers and business practices are anticompetitive.

### *Strategies*

To achieve this objective, the FTC (1) identifies the mergers and business practices that should be examined for antitrust consequences, and (2) conducts an inquiry appropriate to the circumstances of each matter to determine whether to pursue enforcement action. As a collateral aspect of this objective, we try to conduct our inquiry in a way that minimizes any cost or inconvenience to businesses.

The premerger notification requirements of the *Hart-Scott-Rodino (HSR) Act* provide us the primary means for identifying potentially anticompetitive mergers. The FTC's Premerger Notification Office reviews all filings made for proposed mergers, acquisitions, and joint ventures and performs preliminary antitrust review for every transaction that is filed with the FTC. We work to complete these reviews as quickly and as efficiently as possible, both to conserve our available resources to devote to other work, and to minimize the delay imposed on businesses as a result of the HSR requirements.

We also use trade press and other news articles, consumer and competitor complaints, hearings, economic studies, and other means to identify potentially anticompetitive practices other than mergers that may harm consumers. In particular, we focus on emerging trends in the economy, technology, and the marketplace.

### *Performance Measures and Results*

We measure our success in identifying anticompetitive mergers by the average number of days we devote to reviewing actions reported to us under the HSR premerger notification program. This measure is important because it reflects the efficiency with which we conduct these reviews. When the review of reported actions is completed quickly and efficiently, we conserve available resources that can be devoted to other important activities. In addition, a prompt review better serves economic growth, because it allows businesses to proceed with mergers and acquisitions that pose no antitrust issues with minimal delay.

#### **Performance Measure 2.1.1**

Average number of days for review of HSR-reported transactions.

FY 1999 Target: **20 days**  
FY 1999 Actual: **19 days**  
Met or Exceeded: ✓

#### **Performance Measure 2.1.2**

Number of nonmerger investigations opened per year.

FY 1999 Target: **45 - 70**  
FY 1999 Actual: **45**  
Met or Exceeded: ✓



review of HSR reported actions in an average of 19 days.

In 1999, we received notification of 4,642 proposed transactions in accordance with the HSR notification and filing requirements. This volume of transactions reflects the ongoing wave of merger activity that has been taking place over the past several years. The number of reported transactions in 1999 represents a decrease of approximately 2% from the 4,728 transactions reported in 1998, but remains at a level more than three times the number of reported merger transactions in 1991.

Mergers reported under the HSR Act vary tremendously in their complexity and potential anticompetitive effect. We continue to review and prepare an analytical summary of each reported transaction. In most cases, the agency can make a reasonable judgment about whether a merger has the potential to be anticompetitive or not within a few days of filing, simply by reviewing these analyses, based on materials filed with the HSR notification. The agency's Merger Screening Committee, comprised of senior officials of the Bureaus of Competition and Economics, reviews those transactions that raise more difficult questions. If the Committee determines that more information is needed in a matter, it calls for a more extensive investigation, often including the issuance of a request for additional information from the parties.

In 1999, we allowed 3,148 of the reported transactions, approximately 70%, to proceed before the end of the statutory 30-day waiting period. From all of the transactions, we opened 278 preliminary investigations and issued requests for additional information in 45 proposed transactions to obtain information to assist the attorneys and economists in conducting their

investigations.

We also measure our success in identifying anticompetitive practices that cause consumer injury by counting the number of nonmerger investigations opened during the year. This measure directly reflects our enforcement activity. While we do not take enforcement action in every matter we investigate, because we often conclude that the practice in question is not anticompetitive, it is axiomatic that a thorough investigation always precedes any order to a business that it must "cease and desist" a particular anticompetitive activity.

We established a goal of opening 45 to 70 nonmerger investigations over the course of the year. In 1999, we opened 45 such investigations, a number within the range of our goal, albeit at the lower end.

## ***Performance Assessment and Future Trends***

We were able to exceed one performance goal – reducing the average review time for HSR reported transactions – and to meet the other performance goal – initiation of investigations into potentially anticompetitive activity other than mergers – despite the continuation of the record-setting pace of corporate mergers and acquisitions. In the future, continuing to assess each reported transaction through our structured review process, and to do so as quickly and efficiently as possible, will continue to be among our highest priorities.

We remain cognizant of the continuing potential for anticompetitive activity not involving mergers and of the importance of our efforts to identify such activity. Although we met our goal on this performance measure, two factors

limited our ability to exceed the minimum level. First, the continuing high level of merger activity, described above, demanded an extremely large share of the resources devoted to our maintaining competition mission. Second, of the resources remaining for nonmerger investigation and enforcement, a substantial proportion were properly devoted to preparations for administrative litigation in the *Intel Corp.* case, which was among the most important nonmerger matters addressed by the agency in some time. In the future, we expect, at a minimum, to maintain the historic level of nonmerger investigations, even if the current level of merger activity continues, and to increase our activity when merger-related resource demands subside.

In addition to achieving these specific performance goals, we continue our work to accomplish this objective through economic research designed to improve our understanding of those market situations where antitrust activity would result in a more competitive market. We concluded a study of the pharmaceutical industry to help us understand the rapid changes taking place in this industry and what these changes might mean for antitrust policy; as well as studies of the effects of franchise transfers and mergers in the carbonated soft drink bottling industry. Studies of how the entry of branded generic drugs has influenced the pricing and sales of branded drugs, and the aftermath of hospital mergers that were not challenged are ongoing.

## **OBJECTIVE 2.2**

# **STOP ANTICOMPETITIVE MERGERS AND PRACTICES THROUGH LAW ENFORCEMENT**

Law enforcement represents the most direct method by which the Commission pursues its goal of preventing anticompetitive mergers and other anticompetitive business practices.

### ***Strategies***

To stop suspect mergers and practices through law enforcement, our preferred strategy – that is, the most effective and cost-efficient strategy – is to prevent such mergers before they occur. We implement this strategy primarily through our authority to seek injunctive relief under Section 13(b) of the Federal Trade Commission Act. Often we are able to resolve the competitive problem through consent proceedings without having to seek such an injunction. Where injunctive relief is inappropriate or unavailable, we may rely on our administrative remedial powers to seek to restore competition lost as a result of a merger that could not be prevented. Whether achieved by consent or in an administrative proceeding, the principal remedy is divestiture of assets sufficient to preserve or restore competition, although we have also employed conduct remedies where appropriate.

To accomplish this objective, we emphasize (1) thorough investigation, as well as sophisticated legal and economic analysis to ensure we reach an accurate assessment of the illegality of the activity in question, and (2) comprehensive preparation for litigation before an Administrative Law Judge or in federal court. While we frequently resolve matters through settlement (or, in the case of mergers, through the parties'

abandonment of the anticompetitive transaction), our ability to do so depends in large measure on opposing counsel's recognition and appreciation of our preparedness to achieve the needed result through litigation, if necessary.

In addition, when resolving anticompetitive mergers and practices through settlement, we are placing increasing emphasis on crafting remedies that will successfully eliminate the anticompetitive effects of the activity in question, and do so in a timely fashion.

We employ our law enforcement authority to stop anticompetitive mergers and practices both directly and indirectly. Through direct legal challenges to specific anticompetitive transactions, we save consumers millions of dollars annually by preventing such transactions from taking place or by arranging for restructuring of the transaction to eliminate the anticompetitive effects.

In addition, such challenges indirectly serve our objective by serving as legal precedent and demonstrating to the business and legal communities that the agency can and will successfully take legal action to block anticompetitive transactions. This deterrent effect prevents many anticompetitive mergers and acquisitions from even being proposed.

Another part of our strategy is to study the remedies used in antitrust cases, particularly divestiture orders used to resolve merger cases. Our study focuses in particular on what makes divestiture orders more or less effective,

and on how to expedite the completion of curative divestitures.

We are continuing to refine and improve our skills in litigation, economic analysis, and negotiation through ongoing training for staff.

Finally, we try to ensure that administrative litigation and adjudication reach a timely resolution.

## **Performance Measures and Results**

We measure our success in stopping anticompetitive mergers and practices through law enforcement by the percentage of successful outcomes in enforcement actions. This measure is important not only because it directly reflects whether we stopped, or failed to stop, the anticompetitive mergers and practices we challenged, but also whether we are effectively utilizing the limited resources available to the agency.

We established as a goal a positive outcome in 80% of the enforcement actions brought by the agency to challenge anticompetitive mergers or practices. We were able to meet this goal in 1999, reaching a successful settlement agreement or persuading parties not to proceed with an anticompetitive acquisition in more than 80% of the matters we challenged. The Commission authorized 23 proposed consent orders in 1999. In addition, parties to proposed mergers abandoned their transactions in ten instances following our investigation, and two transactions were reconstructed after our investigations to avoid possible

antitrust violations.

We established as another goal direct dollar savings to consumers of at least \$200 million as a result of our prevention of anticompetitive mergers that would have raised prices by that amount. In calculating these savings, we take into consideration the size of the markets involved, the percentage increase in price that would likely have resulted from the merger, and the likely duration of the price increase.<sup>1</sup> The importance and relevance of this measure is self-evident. We exceeded our goal by a wide margin in 1999, preventing mergers that would have cost consumers \$1.2 billion had they been allowed to proceed.

We also established as a goal a reduction of the average time needed to complete divestitures required by consent orders, to nine months from approval of a proposed consent order to completion of the

|  |                      |
|--|----------------------|
| <b>Performance Measure 2.2.1</b>                                       |                      |
| Positive outcome of cases brought by FTC due to alleged violations.    |                      |
| FY 1999 Target:  | <b>80%</b>           |
| FY 1999 Actual:  | <b>80%</b>           |
| Met or Exceeded:   | ✓                    |
| <b>Performance Measure 2.2.2</b>                                       |                      |
| Dollar savings for consumers resulting from FTC actions.               |                      |
| FY 1999 Target:  | <b>\$200 million</b> |
| FY 1999 Actual:  | <b>\$1.2 billion</b> |
| Met or Exceeded:   | ✓                    |
| <b>Performance Measure 2.2.3</b>                                       |                      |
| Average time, in months, from proposed consent orders to divestitures. |                      |
| FY 1999 Target:  | <b>9 months</b>      |
| FY 1999 Actual:  | <b>4 months</b>      |
| Met or Exceeded:   | ✓                    |

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<sup>1</sup>We derive these estimates from a thorough analysis of company documents and detailed pricing data, which FTC attorneys and economists routinely conduct as part of their investigations. In some cases, the available information allows us to estimate with specificity the extent to which prices would rise as a result of an anticompetitive merger. Where we do not have such definitive information, we conservatively estimate that an anticompetitive merger would lead to a price increase of at least one percent absent enforcement action, lasting for two years. The methodology used is explained in the analytical guidelines used by the FTC and the Department of Justice for the analysis of horizontal mergers. See U.S. Dept. of Justice and Federal Trade Commission, [Horizontal Merger Guidelines](#) §§ 1.1, 1.2.

divestiture. This measure is important because delay in the divestiture of assets that are the subject of a consent decree often results in a decline in the competitive viability of the assets. To avoid delay, we increasingly seek either “up-front” purchase and sales agreements or divestiture orders that limit the time in which divestiture relief is accomplished to the minimum necessary. As a result, we substantially exceeded our goal, reducing the average time needed to complete divestitures in 1999 to four months, down from an average of 15 months in 1996.

In addition, in 1999 we released “A Study of the Commission’s Divestiture Process,” a staff report evaluating the results of a study of divestiture orders entered between 1990 and 1994. The report discusses a number of factors that result in divestiture being more or less successful, which will assist the agency in crafting more effective divestiture consent orders in the future.

## **Performance Assessment and Future Trends**

In 1999, we achieved a positive outcome in more than 80% of the cases brought by the agency, and we expect to continue to do so in the future.

In addition, based upon advice from our Inspector General, we are developing a more representative means for evaluating this performance measure in 2000. We realistically do not expect to succeed in every case. A law enforcement agency that prevails in each and every litigated matter, for example,

may do so because it pursues only the cases that are easiest to win. Enforcement authorities such as the FTC should not shy away from difficult cases, which are not uncommon in antitrust law. The FTC will continue to bring law enforcement actions where it has reason to believe that the merger or practice in question is illegal and harms consumers, even where litigation risks may exist.

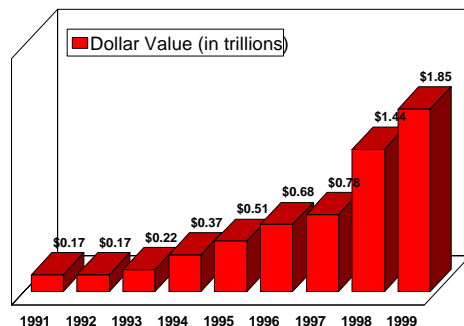
We exceeded our performance goal of \$200 million in consumer savings through the prevention of anticompetitive mergers by a factor of six, achieving savings of an estimated \$1.2 billion in 1999. Because the amount of consumer savings achieved in any one year is largely dependent on the size and nature of transactions proposed, the amount of savings in 1999 may not be typical (due to the large supermarket and wholesale gasoline mergers the we reviewed). However, based on our first year of measuring consumer savings for GPRA, we expect the amount of consumer

savings resulting from the FTC’s antitrust enforcement activity to remain high. Therefore, we believe it is appropriate to raise our goal to \$500 million in 2000.

We also substantially exceeded our performance goal by accomplishing

divestitures within an average of four months, compared to the goal of nine months. Based on our increased knowledge of the importance of accomplishing divestitures quickly and policy changes aimed at achieving that result, we expect that the average time required to complete divestitures will continue to be substantially less than nine months.

**Dollar Value of Merger Transactions**





## OBJECTIVE 2.3

# PREVENT CONSUMER INJURY THROUGH EDUCATION

In addition to its law enforcement activity, the FTC seeks to enhance understanding of the operation of the marketplace by educating the business community about the antitrust laws.

### *Strategies*

We pursue this objective through guidance to the business community; outreach efforts to Federal, state and local agencies, business groups and consumers; development and publication of antitrust guidelines and policy statements; and speeches and publications. Through these mechanisms, we publicize the antitrust law and our enforcement intentions, with the likely result of deterring future anticompetitive behavior.

Our enforcement program is made more effective by public awareness of what factors are likely to be challenged as law violations. Through public releases of Commission decisions in various media such as press releases, Web page publications, and speeches, the public facts underlying Commission actions provide bases for companies to evaluate the likelihood that other transactions would likely face challenge.

As a complement to our enforcement activity, we also advise other state and federal government officials about the possible effect that various regulatory proposals may have on competition in the relevant marketplace.

### *Performance Measures and Results*

Our success in educating the business community about the antitrust laws is also determined in part by the timeliness with which we provided needed advice. Accordingly, one measure in accomplishing this objective is the length of time required to provide advisory opinions related to issues in the health care industry. We set a goal of providing such advisory opinions within 90 days of our receipt of a request, and we exceeded that goal by providing advisory opinions in an average of 63 days.

|  |                      |
|--|----------------------|
| <b>Performance Measure 2.3.1</b><br>Identify and survey FTC "customers" in the marketplace.                |                      |
| FY 1999 Target:  | <b>design survey</b> |
| FY 1999 Actual:  | <b>design survey</b> |
| Met or Exceeded:   | ✓                    |
| <b>Performance Measure 2.3.2</b><br>Average number of days to issue advisory opinions in health care area. |                      |
| FY 1999 Target:  | <b>90 days</b>       |
| FY 1999 Actual:  | <b>63 days</b>       |
| Met or Exceeded:   | ✓                    |

### *Performance Assessment and Future Trends*

We were able to meet one performance goal – designing a customer survey – and to exceed the other performance goal – providing advisory opinions relating to health care within 90 days of receipt of a request. Upon further consideration of the use of a general survey, we are exploring whether our education efforts would be better evaluated by measuring the number of contacts we have with our primary stakeholders.

In addition to achieving these specific performance goals, we worked to accomplish this objective in a number of

other ways, including the following:

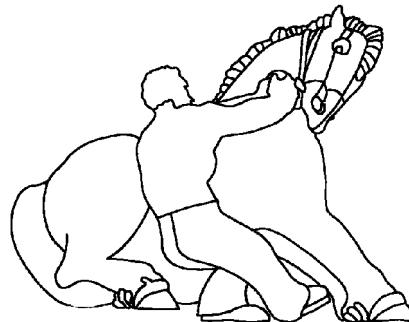
- With the Department of Justice Antitrust Division, we issued draft “Antitrust Guidelines for Collaborations Among Competitors.”
- We assisted understanding of and compliance with the HSR Act through written guidance, such as Premerger Rules, formal interpretations, the Premerger Notification Source Book, and three Premerger Guides.
- Our Premerger Staff handled nearly 41,000 telephone inquiries from the public.
- We now post on the FTC’s website HSR-related information, including a list of early terminations.
- The FTC and the Department of Justice promoted federal and state cooperation by issuance of a joint protocol for our coordinated investigations.
- We routinely communicated with the public through press releases describing specific events.
- We maintained effective international outreach and coordination efforts

with foreign competition authorities.

- The Bureau of Economics circulated economic papers on competition issues.

We strongly believe in the importance of these “outreach” activities and will continue to place emphasis in this area in future years.

Finally, because the Commission and its staff have a great deal of expertise about competition and about the competitive effect of proposed laws, rules or regulations of other governmental bodies, they are often invited to comment on such proposals. For instance, we provided advice to state utility commissions and to the Federal Energy Regulatory Commission about alternative ways they could structure the rules that will guide the deregulation of electricity transmission and generation to allow competition in wholesale and retail sales of electric power. Other recent examples of competition advocacy comments include those filed before the North Carolina Legislature regarding restrictions on distribution choices of motor vehicle manufacturers, and comments to the Illinois and North Carolina legislatures regarding the competitive effects of mandating exclusive distributorships for alcoholic beverages.





## Appendix FY 1999 Performance Measures

|  | FY 1999 Target | FY 1999 Actual  | Met or Exceeded |
|--|----------------|-----------------|-----------------|
| <b>Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.</b>                                       |                |                 |                 |
| <i>Objective 1.1—Identify fraud, deception, and unfair practices that cause the greatest consumer injury:</i>                    |                |                 |                 |
| Measure 1.1.1: Cumulative number of consumer complaints and inquiries entered in database.                                       | 200,000        | 398,558         | ✓               |
| <i>Objective 1.2—Stop fraud, deception and unfair practices through law enforcement:</i>   |                |                 |                 |
| Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud.   | \$200 million  | \$454.1 million | ✓               |
| Measure 1.2.2: Percentage of targeted industry brought into compliance through law enforcement and self regulation. <sup>2</sup> | 50-75%         | 78%             | ✓               |
| <i>Objective 1.3—Prevent consumer injury through education:</i>  |                |                 |                 |
| Measure 1.3.1: Number of education publications distributed to or accessed electronically by consumers.                          | 7.25 million   | 8.589 million   | ✓               |
| <b>Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.</b>                  |                |                 |                 |
| <i>Objective 2.1—Identify anticompetitive mergers and practices that cause the greatest consumer injury:</i>                     |                |                 |                 |
| Measure 2.1.1: Average number of days for review of HSR-reported transactions.   | 20             | 19              | ✓               |
| Measure 2.1.2: Number of nonmerger investigations opened per year.   | 45 to 70       | 45              | ✓               |
| <i>Objective 2.2—Stop anticompetitive mergers and practices through law enforcement:</i>   |                |                 |                 |
| Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.   | 80%            | 80%             | ✓               |
| Measure 2.2.2: Dollar savings for consumers resulting from FTC actions.  | \$200 million  | \$1.2 billion   | ✓               |
| Measure 2.2.3: Average time, in months, from proposed consent orders to divestitures.  | 9              | 4               | ✓               |
| <i>Objective 2.3—Prevent consumer injury through education:</i>  |                |                 |                 |
| Measure 2.3.1: Identify and survey FTC "customers" in the marketplace.   | design survey  | design survey   | ✓               |

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<sup>2</sup>During 1999, we consolidated two Performance Measures into Performance Measure 1.2.2. These Measures read as follows: "Increase compliance in areas targeted for law enforcement." and "Increase compliance in targeted self-regulated areas." Targets for these Measures were 20% and 10%, respectively.

|  |    |    |   |
|--|----|----|---|
| <b>Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.</b> |    |    |   |
| Measure 2.3.2: Average number of days to issue advisory opinions in health care area.      | 90 | 63 | ✓ |