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## Illustration

## 1 Overview of Budget Process

.1 PROGRAMMED ACTIVITIES.1.1 CONCEPT

The Commission's law enforcement activities are arranged by major missions. The three major operating missions of the Commission under the statutes it enforces and administers are Maintaining Competition, Consumer Protection and Economic Activities. Because of the diversity of mission goals and objectives, it is necessary to further subdivide each mission into program areas. By using the programmatic approach, the Commission is able to plan and direct specific cases, projects and rulemaking activities to achieve its objectives and administer its law enforcement responsibilities efficiently.

A "program" comprises all activities within a particular industry (e.g., health care or land sales) or related enforcement efforts that warrant allocation of significant resources (e.g., mergers or advertising substantiation). Activities may be confined in a single program when they concern the same problem and share the same overall goal. When practicable, staff should place within an industry-specific program all matters that involve members of that industry, regardless of the nature of the law violation.

The parameters of individual programs necessarily change as circumstances dictate. This allows the Commission flexibility to respond to current situations and needs.

All law enforcement activities should fall within a programmed area. Even the initial stages of an investigation that ultimately may become a separate program should be reported from the earliest practicable time under the most closely appropriate existing program.

These activities together with policy planning, complaint screening, preliminary inquiries, evaluation, workload review, ongoing program review, and case re-evaluation efforts are all charged on a pro rata basis to the programs as an overhead expense as part of the overall budget process. One exception is that any activity related to an FOIA request should be charged against the FOIA program code, rather than the substantive program area.

.1.2 PROGRAM MANAGEMENT

The Commission's law enforcement missions envision coordination among bureaus and the regional offices in the selection, planning, and coordination of programs, with early and substantial use of economic support.

Primary enforcement responsibility for each program in the Bureau of Consumer Protection is under the general supervision of one or more Assistant Directors. (Consumer Protection programs that involve only regional office activities may be supervised by a Regional Director rather than an Assistant Director.)

In addition, each Consumer Protection program is coordinated on a day-to-day basis by a program advisor, who is an attorney within the Assistant Director's division (or Regional Director's office, if applicable). In the Bureau of Competition, primary responsibility for subject area programs (e.g., food, health care) is under the general supervision of one or more Assistant Directors and law enforcement programs are under the general coordination of the Evaluation Office.

The Commission conducts periodic review of programs. These reviews permit the Commission to focus on each individual program's policies, objectives, plans and status, as distinguished from budgetary reallocations.

### .1.3 PROGRAM BUDGETING

In addition to providing substantive direction for a group of related law enforcement activities, each program serves as a logical budgeting unit within the Commission's program budget. The program budget is the Commission's principal mechanism for allocating resources and helps the Commission perform several management functions. It is the instrument for making future plans. The program budget is one of the principal means by which the Commission establishes its priorities and communicates them to the staff, the Administration (OMB), and Congress. Similarly, budget sessions provide an opportunity for review of agency progress toward the solution of defined problems.

The Commission is responsible for the review, and approval of the agency's program plans and budget request to OMB and Congress, and for ensuring that the execution of the Congressionally-approved budget is consistent with OMB and Congressional guidance.

To fulfill these responsibilities, the Commission conducts four budget planning and resource utilization sessions each year, during which all programs are reviewed and resources are allocated among them. Two of these sessions focus on the development of the FTC budget request for the next fiscal year. The budget is first submitted to OMB; then, once OMB guidance is incorporated into the request, the budget is submitted to Congress.

In preparation of the OMB budget request, Zero Base Budget (ZBB) techniques are used to establish the Commission's resource allocation priorities.

The principal objectives of Zero Base Budgeting are:

- . to assess alternative methods of accomplishing objectives
- . to analyze the probable effects (or impact) of different budget amounts or performance levels on the achievement of objectives
- . to provide a credible rationale for reallocating resources, especially from old activities to new activities.

The identification of (1) alternative levels of effort for each program, (2) the impact of each funding level on program objectives and accomplishments, and (3) the priority ranking of all levels of all programs results in a high degree of flexibility to align available resources with Commission priorities.

Three decision packages, corresponding to a minimum, current, and expanded level of effort, are developed for each program decision unit. The program decision units correspond to programs, or to related groupings of programs.

These decision packages are ranked in priority order within each mission to establish the mission director's resource allocation priorities. The ranked decision packages are then submitted to the Executive Director who ranks all decision packages (across missions) and then submits the decision packages and rankings to the Commission. The Commission then sets priorities for all decision packages. Based on the

Commission's established priorities, a budget is developed and forwarded to the OMB. Following the receipt of OMB's guidance on resource levels, a detailed program budget is developed for submission to Congress.

After congressional action on the appropriation request, a detailed operating budget is prepared prior to the start of the fiscal year and submitted to the Commission for approval. This budget takes into account all action on that year's request -- OMB, congressional and Commission actions -- plus current operating realities. This budget lays out in detail the spending plans and planned accomplishments for each program in the upcoming fiscal year. It is against this plan the Commission (and mission directors) monitor and control the current year's activities. Illustration No. 1 shows the interrelationship of the various phases of the planning/budgeting process -- formulation (OMB and Congress) and execution (operating budget). A description of the program budgeting process is available from the Office of the Executive Director in a manual entitled "FTC Planning/Budget Process" to all staff with responsibilities for planning and resource management.

#### .1.4 CURRENT PROGRAMS

The full explanation of each Commission-approved program, including name, program code, description of problem areas, program objectives, resource allocations, and Assistant Director (BC) or Program Advisor (BCP) assigned, is contained on a program summary form (PB-1) reflecting the current Commission Operating Budget.

#### .1.5 NEW PROGRAM DEVELOPMENT

The programmatic budget provides flexibility to discover and initiate investigations of market imperfections in nonprogrammatic areas through a resource allocation for new program development. Recommendations for investigations in nonprogrammatic areas in the Bureau of Consumer Protection are submitted to the Assistant for Evaluation. If research analysis justifies the need for a substantial commitment of resources in an investigation, a recommendation may be forwarded to the Commission for a new program or the matter may be assigned to an appropriate existing program area.

The Bureau of Competition maintains four flexible, generic law enforcement programs that are sufficiently broad to accommodate almost any new investigation (i.e., industrywide, mergers, horizontal, and vertical). The industry-wide program, in particular, is utilized for the development of other new programs. When a group of related cases handled under various programs becomes sufficient in terms of consumer and competitive importance, a new program may be established at Mid-Year Review or during budget formulation for better planning, administration, control, and accountability of the mission's enforcement activities.

#### .2 NONPROGRAMMED ACTIVITIES

Not all staff time can be attributed directly to programmed activities. Nonprogrammed activities include general managerial functions other than specific program management, training, generalized research, general correspondence, and similar types of nonlaw-enforcement responsibilities. Since staff is assigned to specific programs, staff should report time and activities to these programs when the training, research, etc., relates directly to the program.

#### .3 POLICY PROTOCOLS AND CASE SELECTION CRITERIA

### 3.1 PURPOSE

Policy protocols and case selection criteria are used as investigative tools and as evaluation standards. Protocols describe the types of issues and questions particularly relevant to a specific type of case or investigation, and offer guidance to staff in determining the existence of violations and evaluating the public interest and market impact of individual matters. Case selection criteria are the tools to evaluate the answers to the protocol questions in order to compare the relative benefits of similar or alternative individual cases and options. Whenever staff recommends any action to a Bureau Director or the Commission in an area in which the Commission has adopted a protocol, the transmittal memorandum should contain a discussion of those relevant protocol questions for which information is available.

### 3.2 FORMULATION AND USE

Initial drafts of protocols and case selection criteria are prepared and reviewed by the enforcement bureaus, Office of Policy Planning (OPP), Bureau of Economics, and other interested offices or personnel prior to submission to the Commission for approval. Since protocols and case selection criteria are intended only for use as a guideline and standard by the Commission and its staff, they do not have the effect of a rule and are not binding on the Commission in administrative proceedings before the Commission and in the courts.

The factors listed in protocols or case selection criteria are not cumulative; action may be appropriate even if the matter pertains to less than all of the enumerated factors. Development of facts covering all enumerated factors is not required where obtaining such data would be unduly burdensome or where knowledge of other factors indicate compelling reasons for the proposed action.

Protocols and case selection criteria are intended for use at all levels of the Commission. They should govern both the day-to-day consideration of the staff in planning, investigating, and preparing cases, and the administrative review of programs and activities. Protocols and case selection criteria are designed to improve the quality and the consistency of the Commission's enforcement efforts, and to enhance the judgment of the staff in selecting cases and projects.

### 3.3 APPROVED PROTOCOLS

The following protocols have been approved by the Commission:

Ad Substantiation  
Bait and Switch

Other protocols will be added to this list as they are approved by the Commission.

## 4 INVESTIGATIONAL STRATEGY AND PLANNING

Resource considerations are an important component of case selection, investigational strategy and prioritization within each operating unit. Procedures for furnishing case or rule resource estimates are in OM Ch. 19. Estimates of planned work-month expenditures for both the current fiscal year and through completion for rules and up to complaint for cases are included on initiation forms. Staff should also consider other anticipated resource expenditures, such as the availability of funds for travel, program contracts and stenographic reporting, as part of case initiation and investigational strategy planning.

## .5 REVIEW PROCESS AND EVALUATION

Systematic evaluation and review are designed to ensure that Commission resources are expended efficiently and in conformity with Commission-established priorities, goals, and objectives. Policy planning and priorities must be considered at every level, not only for the initial determination to commence investigations and subsequent enforcement decisions, but also in the assignment of personnel and the expenditure of travel monies and other resources.

### .5.1 BUREAU DIRECTOR

Each Bureau Director recommends to the Commission the priorities, goals, and objectives that are believed to be appropriate to accomplish the Bureau's mission. The Commission formally reviews these recommendations at periodic budget review sessions. Once priorities, goals, and objectives are established, the Bureau Director has responsibility for maintaining them for the entire mission through overseeing the expenditure of mission resources, regardless of where a particular matter originates or is being pursued. Consequently, there is a need for continuing coordination of programs between the regional offices and the operating bureaus.

Bureau Director control over each bureau's mission is accomplished through budget supervision, major staff assignments, approval for large expenditures of funds, objective case evaluation and selection procedures and systematic workload review.

### .5.2 BUREAU OF COMPETITION PROCEDURES

#### .5.2.1 Workload Review

Continuous monitoring of staff progress and accomplishments is conducted through period workload review meetings among staff supervisors. Changes in enforcement priorities, program plans, and work assignments may be made as a result of these meetings. Workload review within the Bureau of Competition involves the Director, Deputy Directors, Associate Directors, Assistant Directors, and selected supervising attorneys. Workload review in the regional offices involves the Bureau Director, Assistant Director for Regional Operations, Regional Directors and Assistant Regional Directors and necessary members of the respective staffs. Headquarters matters are reviewed approximately every two months by the Bureau Director. The Competition workload of each regional office is reviewed approximately three times a year.

#### .5.2.2 Evaluation Office

The Office of the Associate Director for Evaluation is the center of case evaluation and selection, and control over mission resources. Through supervision of program formulation and development, budgetary planning, and resource allocation, as well as administration of the evaluation and workload review functions of the Bureau, the Associate Director for Evaluation performs a primary role in advising and assisting the Director.

#### .5.2.3 Evaluation Committee

The Evaluation Committee, chaired by the Bureau Director, is composed of two classes of members: permanent and non-permanent (since the "permanent" members include some rotating Assistant and

Regional Directors, the terms refer to authority of the members, as described below, rather than presence on the Committee).

Permanent members from the Bureau of Competition are the Director, Deputy Directors, Assistant Director for Regional Operations, Associate Director for Evaluation, an Assistant Director (2-month rotation, selected by Bureau Director) and an Attorney (2-month rotation, selected by Bureau Director on the recommendation of Assistant Director); from the Bureau of Economics: Deputy Director, Assistant Director for Economic Evidence, and a Deputy Assistant Director for Economic Evidence (2-month rotation, selected by the Assistant Director for Economic Evidence, BE). In addition, a Regional Director (serving on a monthly rotation on a schedule determined by the Assistant Director for Regional Operations) serves as a permanent member of the Committee. In the event of leave or other absences, a permanent member or, as appropriate, their supervisor, may designate a replacement to serve on the Committee.

Others who may attend Evaluation meetings as non-permanent members, include any Assistant Director, BC; any Regional Director or other representative of regional offices; Associate Directors for Planning, Special Projects or Premerger Notification, BE; a representative of the Bureau of Consumer Protection and a representative from the Office of Policy Planning; any Assistant to the Director, BC; any attorney-advisor to the Assistant Director for Regional Operations; and Bureau of Economics personnel as designated by the Assistant Director for Economic Evidence, BE.

#### .5.2.4 Associate Director for Evaluation

The Associate Director for Evaluation is responsible for developing new and specific case or program proposals and for submission of Bureau of Competition matters to the Evaluation Committee. The Associate Director ensures that matters have been thoroughly and properly prepared for evaluation, schedules meetings, makes the agenda, prepares and circulates all background materials required for full and fair consideration, and presents matters for discussion and determination. The Associate Director is also responsible for reporting the Director's determinations and for advising the staff of any follow-up action that may be required in order to implement the decisions of the Director.

#### .5.2.5 Assistant Director for Regional Operations

The Assistant Director for Regional Operations serves as liaison between the Bureau and the regional offices. With the assistance of attorney-advisors, the Assistant Director reviews all recommendations addressed by regional offices to the Bureau Director, the Secretary, or the Commission, and may take the initiative for returning matters for additional preparation or correction, as warranted. In all matters involving recommended investigative activity, the Assistant Director schedules and administers Evaluation Committee consideration in a manner similar to that performed by the Associate Director for Evaluation in Bureau of Competition matters. With concurrence by the Associate Director for Evaluation, the Assistant Director may approve requests by regional offices for authorization to initiate investigations, without referral to the Evaluation Committee. The Assistant Director is responsible to the Bureau Director for monitoring regional office progress in competition matters and obtaining compliance with established deadlines or granting extensions of such deadlines.

#### .5.2.6 Merger Screening Activity

Pre-Merger Notification Reports required by the Hart-Scott-Rodino Antitrust Improvements Act (1976) are filed with and reviewed by the Associate Director for Premerger Notification for prompt selection of all those matters that may require immediate enforcement determinations. Regional office or bureau staff

recommendations relating to mergers or joint ventures should be forwarded to the appropriate Assistant Director for approval.

The Associate Director for Premerger Notification and the Assistant Directors will forward approved recommendations concerning mergers to the Merger Screening Committee, chaired by a Deputy Director, and composed of representatives of the Bureaus of Competition and Economics. They review all notification reports and other information taken from trade and financial publications, etc., for selection of additional merger and joint venture activities that may warrant routine investigation. The Committee makes recommendations and reviews staff recommendations to the Director of the Bureau of Competition for initiation of investigations, and for closing investigations. If the need for expedition prevents full Committee consideration, the Deputy Director may contact those Committee members he or she chooses prior to making his/her decision or recommendation. The Bureau Director is responsible for making a determination whether each matter to be investigated will be handled in the Bureau or an appropriate regional office.

Bureau staff recommendations with regard to mergers and joint ventures are made by a memorandum routed to the appropriate Assistant Director who, if in agreement, forwards the request to the Merger Screening Committee. Regional office proposals should be directed, after approval by the Regional Director, to the Assistant Director for Regional Operations, who will forward the matter to the Merger Screening Committee.

If an investigation is approved under the procedures outlined above, clearance will be sought from the Department of Justice. If clearance is obtained, the matter is returned to staff for further action.

#### .5.2.7 Evaluation of Other Matters

All investigative proposals not relating to mergers, joint ventures, or acquisitions will be reviewed by the Evaluation Committee process.

Bureau staff should direct its investigative proposals to the appropriate Assistant Director who attaches his or her recommendation and forwards the request to the Evaluation Office. Requests originating in the regional offices must be reviewed by the Regional Director who then routes the proposal with a recommendation to the Evaluation Office via the Assistant Director for Regional Operations. All possible law violations or matters deserving attention which are considered by the Evaluation Office are divided into three categories: A, B and C. Category C matters are considered by the Associate Director for Evaluation (and, if warranted, a Deputy Director), but are not circulated to the Evaluation Committee members. An investigation will normally not be initiated unless it is included within category A or B.

All proposals for investigations are circulated to the permanent Committee members on a bi-weekly basis by the Associate Director for Evaluation and include two cover sheets: the first briefly describing the matters; and the second discussing the pros and cons of the proposed investigation and recommending specific action or disposition with regard to the matter. Each circulated matter is designated as either category A or B. Category A includes those matters of major significance that should be considered at the next meeting of the Committee; and category B includes those matters requiring consideration by the permanent Committee members but not necessarily requiring discussion at a Committee meeting.

With respect to category B matters, the recommendation of the Associate Director for Evaluation constitutes the Committee's recommendation to the Director, unless a permanent member of the Committee exercises the negative option of placing the matter on the agenda of the next Committee meeting, through a



communication with the Associate Director for Evaluation, within 10 days of the distribution date. Alternatively, a permanent Committee member may disagree with the Associate Director's recommendation (or add other thoughts) by memorandum to the Associate Director received within 10 days of the distribution date, without requiring that the matter be discussed at a meeting of the Committee. The Associate Director for Evaluation or the Bureau Director then has the option of placing the matter on the next Committee agenda.

The Evaluation Committee's function is advisory. The Bureau Director makes the final determination on the initiation of each matter. These decisions are made as soon as possible following the 10-day period after circulation of category B matters. Decisions on category A matters are made at the Committee meeting, or as soon thereafter as possible. Sheets showing "Director Determinations" are circulated on a regular basis to all Commissioners, permanent members,, and other interested individuals.

#### .5.2.8 Economic Comment

All substantive program development and enforcement recommendations, whether or not reviewed by the Evaluation Committee, may be considered and may be commented upon by the Bureau of Economics, Division of Economic Evidence. The Bureau of Economics also makes routine analysis of various industries and submits reports and recommendations thereon to the Evaluation Committee for consideration in the formulation and development of new enforcement programs and activities.

### .5.3 BUREAU OF CONSUMER PROTECTION PROCEDURES

#### .5.3.1 Evaluation Responsibilities

The Deputy Director for Policy and Evaluation has responsibility for case evaluation and policy planning functions in the Bureau of Consumer Protection. Control over mission resources and operational activities are the responsibilities of the Deputy Director for Operations. The role of the Program Advisors is discussed below at .5.3.3.

#### .5.3.2 Evaluation Committee

The Evaluation Committee is chaired by the Deputy Director for Policy and Evaluation. Its membership consists of the two Deputy Directors, an Assistant for Evaluation, the Program Advisor for the matter, and representatives from the Bureau of Economics, the Office of Policy Planning, the Office of General Counsel, and a Regional Office on a rotating basis.

The Evaluation Committee reviews requests by bureau divisions and regional offices for expenditure of Commission resources, including:

- . Requests for investigations involving a substantial commitment of resources
- . Requests for compulsory process
- . Issuance of Part 3 complaints and notice orders
- . Requests for injunctions or temporary restraining orders
- . Requests for consumer redress under FTCA Sec. 19

- . Issuance of a proposed TRR or Guide
- . Initiation of action for civil penalties (included in this category are requests to initiate full compliance investigations and recommendations to file lawsuits for civil penalties against a nonrespondent or for enforcement of a TRR)
- . cases arising directly under one of the special statutes (see Ch. 9)

Matters are routed directly to the Evaluation Committee via the Bureau Record Room. The Assistant for Evaluation does a cursory review for completeness and adequacy and sets a tentative date for the Evaluation Committee meeting. The matter and a summary prepared by the Program Advisor is circulated to the Committee members and the staff involved. After the meeting, the Deputy Director for Policy and Evaluation makes the decision and forwards the matter to the Bureau Director. The process is intended to move all matters through review by the Evaluation Committee to approval or denial by the Bureau Director within 30 days. Where a matter requires expedited treatment, e.g., an injunction or a TRO, the Assistant for Evaluation should be notified by telephone in advance and the memorandum should be marked priority. The Evaluation Committee will endeavor to consider the mater immediately. Routine requests for investigations that include requests for compulsory process will not actually be considered at the Evaluation Committee meeting. Instead, Committee members will sign off on a walk-around basis.

The forwarded materials should include (1) the basic memorandum giving a brief chronology of the major events in the life of a case, including date of opening of the 7-digit, date of the resolution, date of transmission to the Bureau Director, result before the Commission, including votes and reasons, and (2) a short one or two page summary discussing:

- a) the action requested
- b) the nature and extent of consumer injury
- c) the available remedies and supporting legal theories
- d) the effects on the public, respondents, and their competitors, and
- e) the critical policy questions and staff positions on each.

The transmitted memorandum must include, in addition to the factors mentioned in Ch.3.3.5.1.4, a discussion of the appropriateness of the matter for an injunction and for consumer redress.

### .5.3.3 Program Advisors

Program advisors in the Bureau of Consumer Protection are responsible for coordinating all activities within programs and for assuring that Commission-approved programs are being implemented consistent with the Commission's directions and general Bureau policy; advising regional offices and division staff who are working within the program of Commission and Bureau policy; preparing a summary of matters for presentation to the Evaluation Committee; advising staff on legal analysis of issues (especially in cases with novel legal theories or new remedies); and advising the staff whether matters that are forwarded to the Bureau Director are consistent with prior and pending cases and established policy guidelines. Although program advisors do not formally review matters, they can provide advice and coordination at all stages of investigation and consent negotiation.

**.6 OFFICE OF POLICY PLANNING**

The Office of Policy Planning (OPP) is concerned with a variety of activities, among the most important of which is to review recommendations to the Commission by the operating bureaus on the professional resource requests for each substantive program area. These recommendations are based on OPP's view of the content of each program area.

OPP also serves in a "research and development" capacity by generating specific new enforcement proposals. It also participates with the operating bureaus in carrying out impact evaluations of specific programs and rules. OPP may independently evaluate other aspects of Commission policy, as well as review and make recommendations on investigations, programs, orders, etc., in response to specific referrals from the Commission on an ad hoc basis.

OPP sends a representative to the Merger Screening Committee meetings and to the Evaluation Committee meetings of both enforcement bureaus. OPP works with the operating bureaus in developing the policy protocols and the case selection criteria.

OPP is available for consultation with the staff in respect to changes in existing programs or development of new programs. This affords the staff an early opportunity to consider the recommendations OPP will eventually make to the Commission.

An electronic version of Illustration 1 is not available.