



# **PERFORMANCE & ACCOUNTABILITY REPORT**

**FISCAL YEAR 2003**



## Message from the Chairman

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I am pleased to present the Federal Trade Commission's first Performance and Accountability Report. This Fiscal Year 2003 report is an overview of the FTC's mission and our achievements and financial management activities.

The FTC works to ensure that the nation's markets are vigorous, efficient, and free of restrictions that harm consumers. Experience demonstrates that competition among firms yields products at the lowest prices, spurs innovation, and strengthens the economy. Markets also work best when consumers can make informed choices based on accurate information.

To ensure the smooth operation of our free market system, the FTC enforces federal consumer protection laws that prevent fraud, deception, and unfair business practices. The FTC also enforces federal antitrust laws that prohibit anticompetitive mergers and other business practices that restrict competition and harm consumers. Whether the FTC is combating telemarketing fraud, Internet scams, or price-fixing schemes, its primary mission is to protect consumers. In June 2003, the FTC launched the National Do Not Call Registry, one of the most widely recognized federal government programs. Since its inception, consumers have registered more than 58 million telephone numbers – and over 92 percent of these consumers report getting fewer telemarketing calls.

This report also contains the results of the FY 2003 financial audit. The independent audit resulted in the FTC's seventh unqualified opinion, the highest audit opinion available. The audits of the FTC's financial statements, structure, policies, systems, and operations, are conducted under the requirements of the Chief Financial Officers Act. Current and prior audit reports are available at the FTC's Web site at <http://www.ftc.gov/oig/oigaudit.htm>.

The FTC's Web site, <http://www.ftc.gov>, provides comprehensive information on our activities and access to public legal documents, press releases, educational materials, the consumer complaint form, and the National Do Not Call Registry. Also, we maintain two toll-free telephone numbers to report consumer complaints (1-877-FTC-HELP) and identity theft complaints (1-877-ID-THEFT). I invite readers of this 2003 Performance and Accountability Report to visit our Web site to learn more about the FTC and its most recent activities.

Timothy J. Muris  
Chairman

**Performance and Accountability Report  
March 2004**

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## **PART I:**

# **PROGRAMS AND OPERATIONS OVERVIEW**

# PART I: PROGRAMS AND OPERATIONS OVERVIEW

## About the Report

This Fiscal Year (FY) 2003 Performance and Accountability Report is the Federal Trade Commission's (FTC) first consolidated report prepared under the Reports Consolidation Act of 2000. The Report is required by the Accountability of Tax Dollars Act of FY 2002 (Public Law 107-289) and subject to regulations issued by the Office of Management and Budget.

This report combines and enhances the information in the FTC's FY 2003 Performance Report, prepared pursuant to the Government Performance and Results Act (GPRA), and the FY 2003 Audited Financial Statements. Unless otherwise noted, the examples and statistics used in the Report represent FY 2003 activities, spanning the period of October 1, 2002, to September 30, 2003.

Part I of this report contains introductory material about the FTC's mission, programs, and FY 2003 activities, and an overview of the agency's challenges and performance. Part II presents the results of the FTC's 2003 performance in relation to its GPRA strategic plan as measured by performance targets set for each goal and objective. Part III of the report sets forth the FTC's FY 2003 financial statements and the results of the independent audit.

In its first Performance and Accountability Report, the FTC has worked to present information in a clear and understandable manner. The agency will continue to refine its process and format in future years to make this report a valuable tool for FTC managers, stakeholders, and members of the public interested in the accountability, performance, and activities of the agency.

## About the FTC

The FTC is a small, consumer-centered, results-oriented agency with a large mission. It affects the lives of consumers every day through, for example, the receipt of fewer telemarketing calls, lower prescription drug prices due to the availability of generic drugs, care labels in clothing, energy labels on appliances, health warnings on cigarette packages, or competitive prices for goods as a result of a blocked merger. The FTC is the only federal agency with broad jurisdiction to enhance consumer welfare in most sectors of the economy.



As described in detail in this report, the FTC has two major law enforcement bureaus, Consumer Protection and Competition, supported by the Bureau of Economics and regional and mission support offices. It enforces laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers. It also promotes informed consumer choice and public understanding of the competitive process. The work of the FTC is critical in protecting and strengthening free and open markets in the United States and, increasingly, the world.

## Mission

At the start of the 21st century, global markets, high-technology innovation, and markets in transition to new ways of competing dominate the economic landscape. The FTC continues to adapt its mission strategies and workforce in response to these marketplace forces.

Consumer protection and antitrust law enforcement have played an important role in maintaining the competitiveness of U.S. markets. The FTC ensures that free markets work – that competition among producers and accurate information in the hands of consumers create the incentives to generate the best products at the lowest prices, spur efficiency and innovation, strengthen the economy, and produce benefits for consumers.

For competition to thrive, consumers must receive accurate information about products and services. Through its consumer protection mandate, the FTC protects consumers from fraud, deception, and unfair practices in the marketplace. It works to foster the exchange of accurate, non-deceptive information, allowing consumers to make informed choices in their purchasing decisions and to participate with confidence in the traditional and electronic marketplaces. The FTC addresses current issues of importance to consumers, including identity theft, consumer privacy, telemarketing fraud, Internet fraud, health care, and consumer credit.

At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from unreasonable restrictions on competition. Through its maintaining competition mandate, the agency enforces the laws that prohibit anticompetitive mergers and business practices. It promotes free and open competitive markets, which bring consumers lower prices, innovation, and choice among products and services. A significant portion of the FTC's resources are devoted to market segments that matter most to consumers, including energy, health care, prescription drugs, grocery retailing, and high tech. The FTC works to remove restrictions on competition so that markets can function at their best.

Five principles guide the development of the FTC's strategies for consumer protection and competition activities:

- Stop conduct that most threatens consumer welfare, such as anticompetitive horizontal agreements between competitors and fraudulent and deceptive practices;
- Employ a systematic approach for identifying and addressing serious misconduct, with special attention to harmful behavior in key economic sectors;
- Apply all elements of the agency’s distinctive portfolio of policy instruments to address consumer protection and competition issues – e.g., investigations, litigation, rule promulgation, research, studies, workshops, advocacy, and education;
- Improve the institutions and processes by which consumer protection and competition policies are formulated and applied; and
- Promote competition and the unfettered exchange of accurate, non-deceptive information through strong law enforcement and focused advocacy.

The two complementary parts of its mission make the FTC the only federal consumer protection agency with jurisdiction over a wide spectrum of consumer issues. In addition to enforcement authority, the FTC has unique jurisdiction to gather, analyze, and make public certain information concerning the nature of competition as it affects U.S. commerce. It also contributes to the policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments.

The FTC’s legislative mandate to serve as a locus of professional expertise on competition and consumer protection issues makes the FTC highly distinctive among antitrust and consumer protection agencies worldwide. To position itself to make intelligent contributions to consumer protection and competition policy through litigation or non-litigation instruments, the FTC must make substantial investments in what might be called “policy research and development.” Its capacity to enforce the antitrust and consumer protection laws, and its credibility as a voice for sound public policy, requires a continuing commitment to conduct research that increases its understanding of how markets and firms operate, the conditions under which business conduct is likely to harm consumers, and the effects of its previous enforcement efforts.



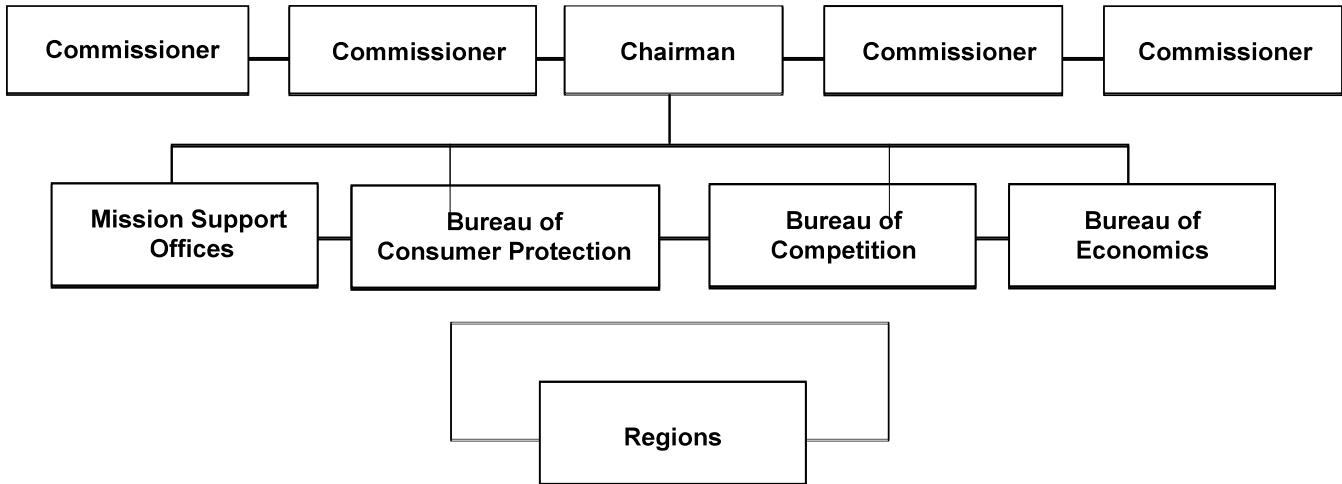
## Strategic Goals and Objectives

The FTC's Strategic Plan sets forth the agency's Vision and Mission for its two goals. These goals, and their corresponding objectives, are the framework of the activities the agency pursues during the course of each fiscal year. Performance measures help the agency assess the impact of these annual activities.

FTC's Strategic Plan			
<b>Vision</b>	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.		
<b>MISSION</b>	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.		
<b>GOAL 1</b>	Prevent fraud, deception, and unfair business practices in the marketplace.	<b>GOAL 2</b>	Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.
<b>OBJECTIVE 1.1</b>	Identify fraud, deception, and unfair practices that cause the greatest consumer injury.	<b>OBJECTIVE 2.1</b>	Identify anticompetitive mergers and practices that cause the greatest consumer injury.
<b>OBJECTIVE 1.2</b>	Stop fraud, deception, and unfair practices through law enforcement.	<b>OBJECTIVE 2.2</b>	Stop anticompetitive mergers and practices through law enforcement.
<b>OBJECTIVE 1.3</b>	Prevent consumer injury through education.	<b>OBJECTIVE 2.3</b>	Prevent consumer injury through education.

## Organizational Structure

As the organization chart displayed below shows, the FTC is an agency headed by a five-member Commission. It has two major mission bureaus, Consumer Protection and Maintaining Competition, supported by a Bureau of Economics, mission support offices, and regions. The following two sections describe these organizational components and their functionality in detail.



## Key Reporting Components

**The Commission** The FTC is an independent agency that reports to Congress on its actions. The agency is headed by five Commissioners, who are nominated by the President and confirmed by the Senate, and who serve staggered seven-year terms. The President chooses one Commissioner to act as Chairman. No more than three Commissioners can be of the same political party. At the end of FY 2003, the Chairman was Timothy J. Muris, and the Commissioners were Mozelle W. Thompson, Orson Swindle, Thomas B. Leary, and Pamela Jones Harbour.

**Bureau of Competition** The Bureau of Competition is the FTC's antitrust arm. It acts to prevent business practices that restrain competition, such as illegal monopolization or anticompetitive mergers. It thereby ensures that the marketplace continues to provide a full range of product and service options for consumers, which in turn helps to ensure that consumers have the benefit of low prices and good product variety. The Bureau's actions include individual company investigations,

administrative and federal court litigation, and consumer and business education. The Bureau also serves as a research and policy resource on competition issues. It prepares reports and testimony for Congress, and may present comments on specific competition issues pending before other agencies. The antitrust laws are enforced by both the FTC's Bureau of Competition and the Antitrust Division of the Department of Justice. To prevent duplication of effort, the two agencies consult before opening any case.

**Bureau of Consumer Protection** The Bureau of Consumer Protection's mandate is to protect consumers against unfair, deceptive, or fraudulent practices. The Bureau enforces a number of consumer protection laws enacted by Congress, as well as trade regulation rules issued by the Commission. Its actions include individual company investigations, law enforcement sweeps coordinated with other law enforcement agencies, administrative and federal court litigation, and consumer and business education. The Bureau also contributes to the FTC's ongoing efforts to inform Congress and other government entities of the impact that proposed legislation could have on consumers.

**Bureau of Economics** The Bureau of Economics helps ensure that the FTC considers the economic impact of its actions. To achieve this, the Bureau provides economic analysis and support to antitrust and consumer protection casework and rulemaking. It also analyzes the impact of economic government regulation on competition and consumers and provides Congress, the Executive Branch, and the public with economic analyses of market processes as they relate to antitrust, consumer protection, and regulation.

**Regions** The Regions comprise the Northeast, Southeast, East-Central, Midwest, Northwest, Southwest, and Western regions, served by offices in New York, Atlanta, Cleveland, Chicago, Seattle, Dallas, and Los Angeles and San Francisco, respectively (see [http://www.ftc.gov/ro/ro\\_map2.htm](http://www.ftc.gov/ro/ro_map2.htm)). Their program activities are coordinated through the Bureau of Consumer Protection, and to a lesser extent, the Bureau of Competition. These offices conduct investigations and litigation, recommend new cases, provide advice to state and local officials on the competitive implications of proposed actions, provide local outreach services to consumers and business persons, and coordinate activities with local, state, and regional authorities. The regional offices frequently sponsor conferences for small businesses, local authorities, and consumer groups.

**Mission Support Offices** The FTC also includes these offices, which provide support to the FTC missions: Policy Planning, General Counsel, Secretary, Administrative Law Judges, Executive Director, Congressional and Public Affairs, and Inspector General.

## Major Program Areas

### Consumer Protection

The Consumer Protection Mission is advanced by four law enforcement programs – Advertising Practices, Marketing Practices, Financial Practices, and Enforcement – augmented by Planning and Information, International Consumer Protection, Consumer and Business Education, Economic and Consumer Policy Analysis, and Program Management. Staff in the FTC’s seven regions also support the mission by bringing a variety of consumer protection cases in the programs and maintaining important contacts with state Attorneys General and other state and local consumer protection officials.

- **Advertising Practices Program** This Program enforces the nation’s “Truth-in-Advertising” laws. Whether ads appear on television or radio, in newspapers or magazines, or on the Internet, these laws require companies to tell the truth and to back up their claims with reliable, objective evidence. The Program uses a variety of tools to protect consumers from misleading claims, including law enforcement actions in federal and administrative courts, guidance to industries, advocating effective self-regulation by the advertising industry and better ad screening by the media, and consumer and business education. Working to protect consumers’ health, safety, and economic interests, the Program’s efforts span a broad range of products and practices.
- **Marketing Practices Program** This Program fights schemes that use high and low technology to defraud consumers. The Program studies trends, brings law enforcement actions, conducts regulatory and policy reviews, and educates consumers about deceptive practices relating to sales of consumer goods and services. The priorities of the Program keep pace with fraudulent and deceptive schemes causing the greatest harm to consumers, including Internet, spam (unsolicited commercial e-mail), telemarketing, new communications technologies, investment opportunity, and direct mail fraud.
- **Financial Practices Program** This Program promotes fairness and accuracy in the provision of financial services and the use of financial information. Financial services, including credit and leasing, play important roles in the daily lives of most Americans, who use credit cards, take out loans, and lease major products routinely. These services also present challenging consumer protection issues, such as protecting the privacy of sensitive personal information both online and offline while at the same time encouraging consumer confidence. The Financial Practices Program identifies and addresses these issues, so that consumers continue to benefit from the widespread availability of financial services.
- **Enforcement Program** This Program focuses on deceptive advertising and marketing practices, in both English and Spanish language media, that cause

consumers economic losses. Targeted practices include deceptive offers of fake international driver's permits, government job opportunities, scholarships, weight loss products and exercise equipment; sales of products involving credence claims (such as automobile engine treatments); and negative option marketing of buying clubs and other products. The Program also ensures that companies ordered to stop deceptive practices do, in fact, stop. Compliance is monitored in traditional as well as new media. Relief sought includes both civil penalty actions for violations of administrative orders and actions for civil and criminal contempt for violations of federal court orders. The Program also enforces a number of laws and rules that require that consumers receive important information required by law or rule to help them make accurate comparisons and informed decisions. As an adjunct, the Program regularly reviews these rules to keep them current. Finally, the Program oversees class action fairness matters.

- **Planning and Information Program** This Program develops, analyzes, and supplies information to target law enforcement and educational efforts, measure the impact of mission activities, and allocate resources. The Program is responsible for various projects and functions, including: the Consumer Response Center and Consumer Information System; *Consumer Sentinel*; Identity Theft Program; and Internet Lab; and for administering the core financial, administrative, and litigation support activities of the Mission.
- **International Consumer Protection Program** Due to the growing importance of international matters and increasing international aspects within FTC cases, the FTC created the International Division of Consumer Protection within the Bureau of Consumer Protection in FY 2002. This Program addresses consumer protection issues associated with the globalization of the marketplace. Its focus has been on combating cross-border fraud and fostering an international e-commerce environment that promotes consumer confidence.
- **Consumer and Business Education Program** This Program plans, develops, and implements creative, practical, plain-language campaigns that are mission-related and directed to both broad and segmented consumer and industry audiences. These efforts encourage informed consumer choice and competitive business practices in the marketplace, and are viewed by the FTC as a cost-effective way to help minimize consumer injury and obtain compliance with the law. To leverage expertise and limited resources, the Program partners with businesses, trade associations, consumer groups, and other government agencies when appropriate, exhibits at national conferences and conventions, and produces public service messages for radio, print, and the Internet. A consumer and/or business education component is included in each major consumer protection law enforcement initiative.
- **Economic and Consumer Policy Analysis Program** This Program supports economic projects and advocacy activities that foster understanding of consumer

good markets and consumer protection policy choices. The Program also aims to ensure that consumer interests are represented before various governmental and self-regulatory bodies dealing with consumer-related issues.

- **Program Management** This Program is responsible for the overall management of the Consumer Protection Mission and the accomplishment of its goal and objectives. The goal of the mission is to prevent fraud, deception, and unfair business practices in the marketplace. Under the mission's strategic plan, resources are devoted to three broad objectives: (1) monitoring the marketplace to identify illegal practices and emerging "frontier" issues and educate FTC staff about them; (2) stopping fraud, deception and unfair practices through law enforcement, regulation, and guidelines, and by encouraging industry self-regulation; and (3) educating consumers and businesses.

## **Maintaining Competition Mission**

The Maintaining Competition Mission seeks to prevent anticompetitive mergers and to ensure that the marketplace is free from anticompetitive business practices. The mission is carried out through six law enforcement-related programs – the Premerger Notification Program, the Merger and Joint Venture Enforcement Program, the Merger and Joint Venture Compliance Program, the Nonmerger Enforcement Program, the Nonmerger Compliance Program, and the Antitrust Policy Program. In each program, staff seek to protect consumers' interests by preventing anticompetitive conduct or mergers without interfering with businesses' legitimate activities.

- **Premerger Notification Program** Mergers and joint ventures (for convenience, "mergers") can generate efficiencies, and most mergers are either procompetitive or competitively neutral. Mergers that are anticompetitive, however, can raise consumer prices by millions of dollars every year. Such mergers can also significantly diminish product quality and output, consumer choice, and innovation. To find anticompetitive mergers, the FTC relies primarily on the premerger notification required by the Hart-Scott-Rodino (HSR) Act. To distinguish between mergers that threaten free markets and those likely to promote them, the FTC uses sophisticated economic analysis and thorough factual investigation.
- **Merger and Joint Venture Enforcement Program** This Program works to prevent consumer harm that may result from anticompetitive mergers. The FTC has acted to protect consumers against potential effects, such as diminished product quality and output, consumer choice, and innovation, in any market in which it has reason to believe a merger is likely to substantially lessen competition, including high-priority areas for consumers: health care, pharmaceuticals, energy, defense, information and technology, and consumer goods and services. In some instances, it is possible to arrive at narrowly tailored relief, such as partial divestiture, that prevents injury to competition but allows the overall transaction to proceed. In other

instances, this cannot be accomplished without preventing the merger entirely or, where this is not possible, undoing it.

- **Merger and Joint Venture Compliance Program** Commission orders issued under this Program, whether the products of negotiation or litigation, can only achieve the intended results of maintaining or restoring competition if they are well-designed, made effective in a timely fashion, and faithfully complied with once they become effective. The Program deals with all three of these interrelated issues, sharing the first two concerns with the Merger Enforcement Program and bearing primary responsibility for the third.
- **Nonmerger Enforcement Program** This Program encompasses all of the Maintaining Competition Mission's enforcement jurisdiction outside of the merger programs. A wide variety of business practices may harm consumers, allowing firms to raise prices beyond competitive levels, or to reduce output, quality, services, innovation, or choice for consumers. The nonmerger actions of the FTC may be divided into three broad categories of antitrust violations: horizontal restraints, distributional restraints, and single firm violations. Identifying and proving these types of violations requires 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.
- **Nonmerger Compliance Program** As with merger enforcement, the orders obtained through the FTC's nonmerger enforcement efforts must be both well-designed and faithfully observed in order to produce the desired restoration or preservation of competition. The appropriate design of orders calls for close consultation between enforcement and compliance staff. Divestiture relief will seldom be involved for anticompetitive conduct in nonmerger matters. Instead, the most significant order provisions are generally prohibitory. Thus, while the timeliness of relief is still a significant issue, ensuring it is more often a matter of the speed with which the order was obtained after violations were detected than of post-order processes.
- **Antitrust Policy Analysis Program** This Program provides FTC and other policy makers with information to assess the effects of competition policy. Economic research in this Program is designed to improve FTC's understanding of those market situations where antitrust activity would result in a more competitive market. The Program also aims to ensure that consumer interests are represented before various governmental and self-regulatory bodies addressing market and competition issues.
- **Other Direct Mission Resources** The Maintaining Competition Mission includes several other functions that directly support the law enforcement, including: program planning, evaluation, and review; competition advocacy; clearance



procedures with the Department of Justice; state and international liaison; and administering the core financial, administrative, and litigation support activities of the Mission.

## Mission Support

Mission Support consists of management and support programs within the FTC that address the evolving needs of the direct Missions' challenges. Mission Support programs develop and implement new, more efficient products and services to meet the FTC's challenges.

- **Commissioners** The Commissioners are responsible for ensuring that the FTC effectively and efficiently executes its congressionally mandated responsibilities. They formulate Commission policy, which guides and directs the staff's work. They also allocate the resources required to implement courses of action and monitor the FTC's progress in accomplishing stated goals.
- **Policy Planning Task Force** The Policy Planning Task Force is responsible for developing recommendations on a wide array of issues. Its staff study, obtain public input about, report on, and analyze changes in the economy, the competitive process, consumer and competition issues, and other areas of the law related to the FTC's enforcement responsibilities. It also coordinates the advocacy activities of the FTC and, upon request, provides assistance in the development of cases that involve novel or complex legal issues. The Task Force researches and explores the most effective and appropriate means by which the FTC may approach competition and consumer protection policy issues, while at the same time providing cost-effective services to those subject to the FTC's enforcement orders and policies.
- **Office of the General Counsel** The General Counsel is the FTC's chief legal officer and adviser. The Office's major functions are representing the FTC in court and providing legal counsel to the Commission, the operating bureaus, and other offices. In its litigating capacity, the Office defends actions seeking judicial review of FTC orders and trade regulation rules, handles appeals of FTC actions seeking preliminary and permanent injunctive relief, and assists the bureaus in actions for injunctive relief in district court. In its counseling capacity, the Office provides confidential legal guidance to the FTC on a wide range of procedural and substantive issues in adjudicative matters. The Office also assists the FTC in developing policy recommendations on a wide array of issues, including competition policy in connection with innovation and intellectual property, deregulation and markets in transition, and Internet issues. It also advises agency staff on personnel, labor-management relations, equal employment opportunity, procurement law, and appropriations law matters.



- **Office of the Secretary** This Office is the custodian of critical FTC documents and records. Its major functions are to implement the FTC's voting and other decision-making procedures and create official records of Commission decisions; to review, validate, and serve all official documents; to receive and process all filings before the Commission; and to support the FTC's law enforcement efforts by designing and implementing agency-wide systems for storing, accessing, and archiving the agency's official records. The Office is also responsible for submitting and maintaining documents posted to the Formal Actions portion of the agency's Web site. In addition, the Office provides guidance on procedural issues; maintains and, as necessary, revises the Operating Manual; publishes Federal Register notices, as appropriate, and volumes of FTC Decisions; and provides historical research and analysis to the Commission and to the staff. The Office is also responsible for the efficient processing – from receipt to completed response – of letters received from Members of Congress each year.
- **Office of Administrative Law Judges** This Office performs the initial adjudicative fact-finding in FTC administrative complaint proceedings, guided by statutes, precedent, and rules of practice. The administrative law judge assigned to handle each complaint issued by the Commission holds pre-hearing conferences, resolves discovery, evidentiary, and procedural disputes, decides motions for summary decision, and conducts the full adversarial evidentiary hearings. The judge's initial decision sets out relevant and material findings of fact with record citation, explains the correct legal standard, and applies the law to the facts. This Office also conducts rulemaking proceedings for the FTC.
- **Office of the Executive Director** This Office serves as the managerial and administrative arm of the FTC, with responsibility for the overall operation of the agency. The Office manages agency-wide projects on a variety of matters, including agency reauthorization and annual appropriations and budgets. It works closely with the bureaus on strategic planning and assessing the management and resource implications of any proposed action. The Equal Employment Opportunity Office is located in the Office of Executive Director, as well as the following:
  - **Financial Management Office** This Office is centrally responsible for agency-wide budget, acquisition, and financial accounting services. It accomplishes these critical responsibilities through three branches – Budget, Acquisitions, and Finance. The Office liaisons with other federal agencies having government-wide financial management responsibilities, and ensures that the FTC complies with various financial management regulations and statutes.
  - **Human Resources Management Office** This Office is responsible for enabling the FTC to accomplish its mission through workforce planning, recruitment, employee development, retention, compensation, performance

management programs, and the Human Capital Initiatives of the President's Management Agenda.

- **Administrative Services Office** This Office is an integral component of the FTC's support service network. It is responsible for providing appropriate space, security, and support services to allow the agency to accomplish its missions. The central provision and coordination of those services ensures that other agency staff can focus on law enforcement activities.
- **Information and Technology Management Office** This Office is responsible for the FTC's technological infrastructure, direct mission support applications and services, and related office systems. The overall mission of the Office is to support and improve the productivity and effectiveness of the FTC through the effective use of those information resources.
- **Office of Legislative and Public Affairs** This Office is responsible for proactively informing the news media, as well as the public at large, about the activities of the FTC. Additionally, the Office responds to media inquiries about FTC actions and policy. In its mission of congressional service, the Office develops, coordinates, and executes a consolidated program of legislative advocacy for the FTC; plans and implements liaison activities with Congress; reviews and/or drafts legislation on issues within the FTC's jurisdiction; tracks legislation, and keeps agency officials advised on matters affecting the FTC; and briefs congressional committee staff on substantive issues of legislation concerning the agency and the implementation of such legislation. In serving as liaison between the FTC and the media, the Office produces news releases announcing official actions of the FTC, provides assistance to media involved in covering FTC activities, and ensures that FTC releases, supporting documents, and consumer education materials are disseminated as well as available to the media and the public on the Internet.
- **Office of Inspector General** The Office of Inspector General was created in FY 1989 in accordance with the Inspector General's Act of 1978, as amended, for the purpose of preventing and detecting fraud, waste, and abuse in agency programs and operations. The Office meets its mission responsibilities by conducting independent audits and investigations. The inspector general is charged with keeping both the agency head and Congress fully and currently informed about problems and deficiencies relating to the administration of FTC programs.

## Significant Events

The FTC has a major impact on consumers and the marketplace, and its achievements demonstrate a significant return-on-investment for consumers and businesses alike. Significant events and ongoing activities of FY 2003 are described below.

- **Do Not Call – Stopping Unwanted Telemarketing Calls.** At a Rose Garden ceremony in June 2003, the President announced the opening of the FTC's National Do Not Call Registry. Through this registry, subsequently adopted by the Federal Communications Commission, consumers can elect not to receive most telephone solicitations from telemarketers. Telemarketers are required to scrub their calling lists to remove any telephone numbers included in the registry. Registration is free to consumers; the registry will be paid for by fees collected from telemarketers that use the registry. Through March 2004, the registry logged more than 58 million telephone numbers. In the months and years ahead, the FTC will monitor compliance by telemarketers and bring any needed enforcement actions.



- **Redress Orders – Money Ordered to Be Returned to Consumers.** The FTC continued to attack fraud and deception in FY 2003. The FTC filed 87 complaints in federal district court, obtained 98 federal court judgments ordering \$873 million in consumer redress, and obtained 19 orders assessing \$2.8 million in civil penalties. The total redress ordered greatly exceeds the aggregate consumer redress ordered in FTC cases in FY 2002 (\$155 million) and FY 2001 (\$252 million) combined.

- **Pharmaceuticals – Protecting the Availability of Lower-Cost Prescription Drugs.** The FTC has engaged in a host of activities to ensure the prompt availability of lower-cost prescription drugs to consumers. For example, the FTC obtained settlements to prevent anticompetitive effects of three major pharmaceutical industry mergers, including the \$60 billion combination of Pfizer Inc., the largest pharmaceutical company in the world, and Pharmacia Corporation, in which the FTC's action protected competition in nine separate and wide-ranging product markets. The FTC also has brought law enforcement actions to prevent conduct by branded drug manufacturers to delay or obstruct the entry of lower-cost generic drugs on the market, notably including a landmark consent agreement with Bristol-Myers Squibb to resolve charges that the company abused regulatory procedures to interfere with entry of generic

**Generic Drugs:  
Saving Money at the Pharmacy**  
<http://www.ftc.gov/bcp/online/pubs/health/generic.pdf>

competition for two anti-cancer drugs and an anti-anxiety agent. The FTC has also used non-enforcement tools to address related issues, for example, by providing comments to Congress and the Food and Drug Administration on the potential for misusing Hatch-Waxman Act procedures governing the entry of generic drugs, based on the findings of an in-depth FTC study. In June 2003, the FDA adopted a new rule, incorporating certain FTC recommendations, that promotes the timely approval of low-cost generic drug alternatives. In December 2003, Congress passed the Medicare Prescription Drug Improvement and Modernization Act, which made changes in the FDA's final rule, consistent with the findings of the FTC study.

- **Home Mortgages – Stopping Deceptive or Abusive Lending Practices.** The FTC continued to attack deceptive or abusive lending practices targeted toward the most vulnerable groups in the population. In May 2003, a federal court finalized a settlement with The Associates, now owned by Citigroup, Inc., to resolve FTC charges of deceptive subprime mortgage lending practices. The settlement is expected to provide \$215 million in redress to approximately 850,000 homeowners. A related class action settlement is expected to yield an additional \$25 million.


The Associates is just one in a series of cases in which the FTC has pursued such pernicious practices. The FTC also challenged the lending practices of First Alliance Mortgage Company (FAMCO). In November 2002, the FTC received its first redress payment in FAMCO. Those monies were distributed to nearly 28,000 consumers within 45 days of receipt. Currently, the FTC is preparing a second distribution to borrowers. Ultimately, the FTC expects to distribute at least \$63 million of redress in FAMCO.

Other cases include the FTC's ongoing litigation against Capital City Mortgage Corp. and a proposed agreement with Fairbanks Capital Holding Corp. The proposed Fairbanks agreement, announced in November 2003, settles allegations of various unfair, deceptive, and illegal practices in the servicing of subprime mortgage loans.

- **Spam – Protecting E-Mail Through Research, Education, and Law Enforcement.** In April 2003, the FTC conducted a three-day public forum that examined the proliferation of, and potential solutions to, spam (unsolicited commercial e-mail) and released a report that found that 84.5 percent of examined spam contained elements of obvious deception or sold an illegitimate product or service. The FTC has targeted deceptive spam for aggressive law enforcement actions, including one in which an innocent-appearing spam message led consumers, including children, to sexually explicit material. To address spam more broadly, the FTC has created a Federal/State Spam Task Force with state and federal law enforcement partners. This Task Force provides

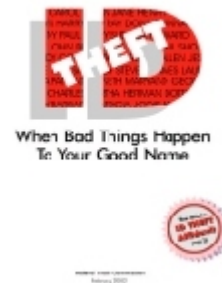


a forum for members to address the interstate and international nature of spam and the latest spamming technology, spammer ploys, and investigational techniques. The FTC also educated consumers and businesses about steps they can take to reduce the amount of spam they receive.

- **Internet – Protecting E-Commerce.** The Internet holds great promise as an efficient marketplace for the sale of goods and services to consumers worldwide, but it also has presented some new competition and consumer protection issues. In response, the FTC has brought more than 300 cases to help keep e-commerce free from fraud, deception, and unfair practices. During FY 2003, the FTC brought 58 cases involving fraudulent or deceptive marketing practices related to the Internet. The agency also has formed an Internet Task Force to explore these issues. So far, the Task Force has analyzed state regulations that may restrict the entry of new Internet competitors and has hosted public workshops on potential anticompetitive barriers to e-commerce. The logo features a green background with a gold coin icon on the left, the text 'CONSUMER INFORMATION SECURITY' in white and yellow, and a green cartoon character holding a globe on the right. Below the character is a 'CLICK HERE' button.
- **Energy – Preventing Anticompetitive Gasoline Prices.** The energy market is a vital sector of the U.S. economy. In FY 2003, the FTC issued a complaint against the Union Oil Company of California that, according to the complaint, could save consumers hundreds of millions of dollars per year in gasoline purchases. In November 2003, an FTC Administrative Law Judge dismissed the complaint. This matter is currently on appeal before the Commission. The FTC also continued merger enforcement activity in energy markets, including a consent order designed to preserve competition in the market for the delivery of natural gas to the Kansas City area following the sale of a major Midwestern natural gas pipeline.
- **Intellectual Property (IP) – Keeping Pace with Market Innovations.** The FTC recognizes the importance of applying the most current knowledge about evolving markets to its enforcement policies. For example, the FTC and the Department of Justice concluded a series of hearings on “Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy” responding to the growth of the knowledge-based economy, and to harmonize requirements under both IP and antitrust law to fulfill their common goal of promoting innovation. These hearings, which took place over 24 days and involved more than 300 panelists, formed the basis for an FTC report issued in October 2003, entitled “To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy.” This report offers recommendations for the patent system and describes the FTC’s plans and proposals to facilitate increased communication between antitrust agencies and patent institutions.
- **Health Care – Protecting Consumers from Anticompetitive Medical Fees.** During FY 2003, the FTC settled cases with eight groups of physicians for allegedly

colluding to raise consumers' costs and issued an administrative complaint against another group. These enforcement actions put a stop to, or seek to stop, allegedly collusive conduct that harms employers, individual patients, and health plans by depriving them of the benefits of competition in the purchase of physician services. In addition, the FTC challenged for the first time a provider organization engaged in collusive conduct in providing hospital services. Also in FY 2003, the FTC, working with the Department of Justice, completed nearly 30 days of hearings over seven months to explore developments in the dynamic health care market. The hearings focused on the specific challenges and complications involved in applying competition law and policy to health care, as well as a wide range of more specific health care and competition law and policy issues, such as hospital mergers, the significance of non-profit status, vertical integration, quality and efficiencies, the boundaries of the state action and *Noerr-Pennington* doctrines, monopsony power, the adequacy of existing remedies for anticompetitive conduct, and the implications of the FTC's consumer protection mandate with regard to the performance of the health care financing and delivery markets.

- **Law Enforcement Sweeps.** The FTC leveraged its resources through coordinated actions with other law enforcement agencies against specific types of fraud and deception. In FY 2003, the FTC and more than 100 law enforcement partners targeted Internet scams, charitable fundraising scams, Internet auction fraud, and international drivers permit scams. These sweeps resulted in nearly 175 law enforcement actions, including 30 FTC cases.
- **Consumer Privacy and Security.** Consumer complaints and inquiries to the FTC regarding identity theft have risen from 36,000 in FY 2000 to 321,000 in FY 2003. Identity theft occurs when someone uses a consumer's personal information such as name, Social Security number, credit card number, or other identifying information without permission, to commit fraud or other crimes. The identity theft reports and other information collected from these calls are made available through *Consumer Sentinel*, a secure Web site, to more than 940 of the FTC's law enforcement partners. To help consumers avoid or recover from identity theft, the FTC has distributed more than 1.3 million print copies of the FTC brochure "Identity Theft: When Bad Things Happen to Your Good Name" and recorded more than 1.4 million "inquiries" to the electronic version of the brochure on the FTC's Web site. To assist consumers further, the FTC has developed a universal ID Theft Affidavit – a standard form accepted by all three major credit reporting agencies and other creditors from victims seeking to report fraudulent accounts opened in their names. The brochure and the affidavit are also available in Spanish. In May 2003, after encouragement from the FTC, the three major credit reporting agencies implemented a one-call system enabling consumers to secure copies of their credit reports and have fraud alerts placed on their files at each of the credit reporting agencies.





The FTC also brings law enforcement actions to protect consumer privacy. In FY 2003, the agency settled charges that Microsoft Corporation had misrepresented the measures it used to collect and maintain the security of personal information collected through its Passport Web services. Since October 2002, the FTC has announced settlements with three companies that allegedly collected extensive personal information from millions of high school students and then sold that information to commercial marketers, despite promising the information would be shared only with colleges, universities, and other education-related service providers.

- **Weight Loss Advertising and Products.** An FY 2002 FTC staff report, *Weight-Loss Advertising: An Analysis of Current Trends*, concluded that the use of false or misleading claims is rampant in weight-loss product advertising. To follow up, the FTC held a workshop in November 2002 in which participants – scientific and medical experts, industry members, and representatives of media organizations and outlets – discussed the current science of weight loss, deceptive weight loss advertising, and possible ways for the media to more effectively screen ads. Over the last decade, the FTC has brought more than 100 cases challenging misleading claims for all types of weight loss products, including over-the-counter supplements, commercial weight loss centers, weight loss devices, and exercise equipment.



## President's Management Agenda

In 2001, the Administration announced a strategy for improving the management of the federal government called the President's Management Agenda (PMA). It focuses on five areas of management weakness across the government for which improvements and the most progress can be made. The FTC is committed to this effort and is managing its resources effectively and achieving immediate, concrete, and measurable results in each of the five initiative areas of the PMA: human capital; competitive sourcing; e-government; financial management; and integration of budget and performance.

Demands on the agency have grown dramatically over the past decade as commerce has become increasingly electronic and the economy has become high-tech and global. During this period, the agency has found new ways to meet these growing demands and reach out to more consumers and businesses without an appreciable addition of personnel. To address these issues, the FTC has been engaged in long-term, concerted efforts to work smarter and more effectively. The FTC continues to work to improve management and program performance. The agency has a solid record of assessment, realignment, innovation, and improvement. There are several efforts underway to address, among other areas, recruitment and training, performance and costs, and reporting and systems.

### Initiative: Human Capital Management

- **Knowledge Management** The FTC is engaged in a systematic program to improve staff training of all types – professional, managerial, technical, and administrative. Training is a key component to working smarter and improving productivity. It is also critical in managing FTC attrition, especially in the ranks of lawyers and economists, where career training and professional development are valued highly. New and innovative training programs have resulted in increased interest and participation from all segments of the workforce. For the past four years, the FTC's training and development program has been guided by its Training Council, composed of representatives throughout the agency. In FY 2003, the FTC implemented its first e-learning program. E-learning offers an array of self-directed training opportunities in all mission-critical areas as well as personal and professional areas. A sampling of the areas covered by e-learning includes management effectiveness, leadership, team building, finance, accounting, communications, project management, strategic planning, administrative support, and a wide range of information technology classes.
- **Leadership** As a key part of its management improvement efforts, the FTC implemented several training programs. The *Manager Series* is the cornerstone of the agency's management development and is mandatory for all supervisors and managers. The program focuses on employee relations, performance management, and labor relations. The *Leadership Series* introduces participants



to contemporary issues and concepts for today's manager. The *Best Practices in Management and Leadership Series* provides participants with current theory and best practice approaches to important areas of human resource management. In FY 2003, the FTC offered *Performance Management: Ideas into Action*, the final scheduled course on the agency's revised performance management program. This program emphasizes a comprehensive approach to performance management, from establishing performance plans through preparing performance evaluations. The course is based on a five-step performance management model and matches each step with the FTC's performance policy. Over 100 supervisors and managers attended the training course.

- **Performance Management** During the past year, the FTC completed a study of its performance management system. The study involved four steps: collecting information from inside and outside the FTC; identifying issues and possible solutions; obtaining input from FTC managers and employees on the identified solutions; and preparing a report with findings and recommendations. The final report recommended that the current system be retained with minor improvements. The study also served to focus managers on good performance management. As a result of manager input, guidelines were issued in FY 2003 to clarify and strengthen performance elements and standards for positions with the largest population of employees. Management-wide training on the updated performance management policy is continuing (see Leadership section above).
- **Strategic Alignment** The FTC continues to examine a range of management and support positions to determine which ones can be eliminated to put more staff at the front lines of the agency's missions. As part of this effort, in the late 1990s, the agency reduced by 24 percent the Office of the Executive Director, the agency's management and administrative organization. The FTC moved some administrative positions to other organizations where the work could be performed more efficiently, but eliminated most of these positions to free positions for attorneys, investigators, and others at the front lines of the agency's consumer protection and competition missions. These examinations are ongoing.
- **Core Competencies** In the rapidly growing electronic and global marketplace, the FTC needs professionals with specialized skills to investigate complex economic issues and apply sophisticated legal precedents to antitrust and consumer protection litigation. Attorneys account for approximately 53 percent of the FTC's permanent workforce, and Ph.D. economists account for an additional 8 percent. These professionals are supported by staff with technical skills and expertise, such as paralegals, data analysts, and computer specialists, and a core complement of staff with management and operational skills. The FTC is working to recruit and retain highly qualified individuals by offering hiring and relocation bonuses, moving expenses, high starting salaries, and large cash awards, as well as non-monetary benefits such as time off, training and development opportunities, and assignments

to high-profile cases. The agency is identifying core competencies to recruit applicants with specific knowledge and skills needed to support its mission, particularly in the legal area.

- **Continuing Assessment of Support Workforce** Across the FTC, a number of support staff will retire over the next five years, and the development of new technology will allow for accomplishment of more administrative tasks electronically. The agency will transfer these support positions to the front lines of the missions, either in law enforcement or consumer education. The FTC is focusing on training and employee development for staff who are not yet ready to retire, but who are performing tasks that could be automated. The agency is also analyzing statistics for potential retirements among the supervisory and management ranks and developing strategies for knowledge management and succession.
- **Workforce Alignment** The FTC launched a study of legal support positions at the agency. The study focuses on paralegals, federal trade investigators, merger analysts, and similar positions that provide direct support to the attorneys throughout the agency. The study will look at which and how many different positions provide direct legal support, the grade levels and career ladders of the jobs, and the real and perceived differences among jobs with different classifications and titles. Results of the study will be used to assess the adequacy and effectiveness of current legal support occupational groupings, to construct potential legal support program improvements, and to develop recruitment strategies for legal support positions.
- **Workforce Mix** In 1996, the agency began an Honors Paralegal Program to relieve attorneys of the routine tasks in investigations and litigation, and to allow them to focus on complex matters of policy, analysis, and strategy. Honors Paralegals are recent college graduates, hired at the GS-7 level under expedited procedures of the Outstanding Scholar Program, and they generally work for the agency for one to three years under term appointments before moving on to graduate or professional school. The Bureau of Competition and Consumer Protection and the Office of the General Counsel participate in the program, which has approximately 50 Honors Paralegals at any given time. The Bureau of Economics established a similar program, focusing on recent college graduates with degrees in economics to provide technical support to Ph.D. economists.
- **Delaying** The agency also examines program decision processes to eliminate layers of review. For example, several years ago, the Bureau of Competition removed a level of management from its reporting structure, which streamlined decision making on recommendations to the Commission concerning investigations and litigation. The Bureau of Consumer Protection also streamlined review to ensure that actions were considered at an early stage, thus eliminating unnecessary work on investigations and projects. The Office of General Counsel capped the

number of reviewers' signatures on official memoranda at two, speeding recommendations to the Commission and other agency actions. The General Counsel also delegated approval or decision-making authority to lower-level managers on several types of matters.

- **Restructuring** In 1999, the FTC restructured its regional office system to use positions more efficiently. The agency closed two offices (Boston and Denver) located in areas of the country with a relatively low incidence of consumer fraud. The agency also consolidated regional competition mission positions into three offices (New York, San Francisco, and Seattle) so they could handle resource-intensive merger cases more effectively. Previously, the FTC had also consolidated regional consumer contact functions into the FTC's centralized Consumer Response Center (CRC). The CRC now offers two toll-free telephone numbers that allow consumers from across the country to contact the FTC with fraud and identity theft complaints and requests for consumer education materials.

### **Initiative: Competitive Sourcing**

- **Federal Activities Inventory Reform (FAIR) Act** The FTC identified 53 commercial full-time equivalent (FTE) positions in its 2003 FAIR Act inventory (under "Special Notices" <http://www.ftc.gov/ftc/who.htm>). In the past two years, the FTC has converted 15 percent of its total 2000 baseline year's commercial FTE inventory to commercial positions. In 2004, the agency will commence a comprehensive examination of its workforce functions to look for opportunities to compete commercial positions. One area of focus will be on several functions currently performed by clerical and administrative staff who will retire over the next five years.
- **Reimbursable Support Service Arrangements** The FTC streamlined clerical support, administrative, and technical functions, and replaced positions with reimbursable support service arrangements with other federal agencies. The areas in which these changes occurred include significant agency services such as payroll/personnel, accounting/payment system operations, health unit, retirement counseling, and the transit subsidy program.
- **Performance-Based Service Contracting** The FTC exceeded the Office of Management and Budget's 20-percent target of using performance-based contracts for services. The agency's largest service contracts are performance-based, including the National Do Not Call Registry, Consumer Response Center, Computer Help Desk Services, and Consumer Redress Fund Administration.

## Initiative: Expanding e-Government

- **National Do Not Call Registry** The FTC launched the National Do Not Call Registry on June 27, 2003, to make it easier and more efficient for consumers to stop getting telemarketing calls they do not want. Consumers can register online or by calling a toll-free number. Registration is free and is available in both English and Spanish. Consumers are adding their telephone numbers to the National Do Not Call Registry at a vigorous pace. From July to March 2004, more than 58 million telephone numbers were logged into the registry. The effort also demonstrates how agencies of the federal and state governments can work together, each using their particular jurisdiction and expertise, to protect U.S. consumers.
- **e-Government** The FTC has been a leader in the use of technology and the Internet to inform citizens of its mission without having to enlarge its workforce significantly. Starting in the mid 1990s, the FTC began building interlinked public consumer protection Web sites, many in connection with other domestic or foreign law enforcement agencies, to educate consumers and to collect and analyze data on a broad range of consumer protection issues, including high-tech fraud and identity theft. In June 2003, the FTC premiered a newly designed <http://www.ftc.gov> Web site. The new design reflects a year-long effort of an agency-wide Web design working group. The new site provides better navigation, a faster load time, and a cleaner look. This is the first phase of a complete Web site redesign, which will be implemented over the next several months.
- **Integrated One-Stop Systems** The FTC Web site, provides a wide array of information about the actions and operations of the agency, and direct access to consumer and business education information and publications. In the last three years, electronic distribution of education materials has surpassed print distribution. The site also permits citizens to file online complaints about consumer fraud and identity theft. These complaints are used to target the agency's law enforcement and education efforts. Consumers currently can access the Web site (including the complaint form) in four languages. Through the <http://www.consumer.gov/sentinel> link, consumers can view summary data collected by the FTC, such as the scams that garner the most frequent consumer complaints; the scams that cost consumers most; the number of identity theft complaints, by state; the types of identity theft most frequently reported; and how to spot and avoid fraud and deception online and off. The FTC Web site also has a direct link to the government-wide public site, <http://www.firstgov.gov>, and to the Small Business Administration's (SBA) one-stop services: the U.S. Business Advisor (<http://www.business.gov>) and SBA's online business guide to legal and regulatory information (<http://www.businesslaw.gov>).



- Citizen Information Access** The FTC for many years has recognized that the complexity of the federal government makes it difficult for citizens to know where to go for information and assistance on consumer issues. In 1997, the FTC led a group of five agencies with consumer protection responsibilities to create a Web site, <http://www.consumer.gov>, as a one-stop link to a broad range of federal consumer information resources available online. *Consumer.gov* links to documents located on the Web sites of its participating federal agencies – which have grown from the original five to 180 agencies. This site has become the portal for interagency consumer information that the federal government provides to the public through <http://www.firstgov.gov>.



- Cross-Agency Information Sharing** The FTC Consumer Response Center receives consumer complaints and inquiries through two toll-free telephone lines and postal and electronic mail. Information from these complaints and inquiries is collected in a database, which contains nearly 3.2 million entries. The FTC also developed and hosts a secure Web site, *Consumer Sentinel*, that makes the consumer complaints accessible to other federal, state, local, and international law enforcement partners. The more than one million fraud complaints in the database are accessible to more than 940 law enforcement partners (e.g., the FBI, the Postal Inspection Service, 50 State Attorneys General), and the nearly 500,000 identity theft complaints are accessible to more than 940 domestic partners (e.g., the Secret Service, Social Security Administration Inspector General, U.S. Attorney Offices). Collecting this information in one database and sharing it electronically with other agencies reduces redundancy and helps the law enforcement community identify general trends in consumer issues, track the illegal activities of specific businesses, and coordinate investigations and litigation. In February 2003, *Consumer Sentinel* received an Excellence.Gov finalist award from the Industry Advisory Council's E-Gov Shared Interest Group, in partnership with the Federal CIO Council.



- Electronic Filing** The FTC is close to implementing a process that will permit electronic filing of required information about proposed mergers and acquisitions under the Hart-Scott-Rodino Premerger Notification Act. This system will be shared with the Department of Justice (DOJ) Antitrust Division. A single integrated system is more efficient for business filers as well as taxpayers. Business filers need only file at a single location and the taxpayer does not need to support two redundant systems. The FTC has managed the development and deployment of this integrated bi-agency system and will operate this system on behalf of the FTC and DOJ. Electronic options will allow businesses to select the submission method that



is most effective and efficient for them, and will reduce the government's administrative cost of reviewing and analyzing the filings.

- **Reducing Litigation Burden** The growing use of sophisticated electronic systems and software in litigation requires the FTC to keep its technology current to remain competitive in the courtroom. The FTC has developed the ability to interface with computerized document production systems that allow law firms to provide documents and information to the agency more efficiently. In addition, the agency is employing state-of-the-art computerized systems that support agency attorneys' litigation preparation and courtroom presentations.
- **Developing e-Procurement** The FTC's planned and ongoing procurement enhancements are designed around the Integrated Acquisition Environment (IAE), one of the Administration's e-government initiatives. As requirements arise, the FTC uses the government-wide FED BIZ OPPS Web site. This site provides a single location at which interested vendors can view and, if interested, respond to government requirements for goods and services. The FTC also converted to the Business Process Network (BPN) Web site, an expansion of the Central Contract Registration Web site. This site provides Federal agencies with a single source for vendor contact and payment information and requires that each vendor maintain all appropriate information on a current basis. Additionally, the FTC plans to register in BPN for intra-governmental transactions. The FTC is also preparing for the implementation of the new Federal Procurement Data System - Next Generation, a central point for consolidated collection and access of statistical and management information related to government acquisitions.
- **Information Requirements** The FTC has initiated an agency-wide management information requirements project and related Intranet site to provide managers with ready information to support data gathering and decision making. An effort is underway to develop standard data definitions for use across agency applications. An important goal of the project is to provide timely, accurate, and useful standard reports and ad hoc reporting capabilities.
- **Improving Productivity** An analysis of agency information requirements revealed that efficient and effective document management is the primary need. In response, the FTC implemented a comprehensive document management system with the fundamental goal of streamlining the process of sending documents and other information through any electronic channel (e.g., Internet, database, e-mail), in any spoken language, regardless of its original data format. The cycle of creating, editing, approving, publishing, and removing outdated content traditionally has been filled with impediments. The agency is continuing to re-engineer basic work processes to enable targeted, accurate interchange of electronic information without technological barriers. Users will be able to generate, publish, and find information with virtually no learning curve or technical assistance. By establishing

consistent work flows and templates that cross organizational boundaries, the system will ensure that information from across the agency can be readily shared, re-used, re-combined, and re-purposed to a variety of uses.

### **Initiative: Improved Financial Performance**

- **Audited Financial Statements** Before there was a statutorily mandated requirement, the FTC prepared Audited Financial Statements in a timely manner that complied with government-wide accounting standards for six consecutive years (1997 - 2002). Each year, the agency has received an unqualified opinion with no material weaknesses. The agency received its seventh unqualified opinion in 2003.
- **Accurate and Timely Financial Information** The FTC maintains a small, highly skilled, in-house financial staff and contracts with the Department of Interior's National Business Center (NBC) for more routine accounting, payroll, personnel, and voucher payment services. The result is the best use of agency resources and a significant improvement in the accuracy and timeliness of financial data available to agency managers. The FTC meets all Treasury, OMB, and agency financial reporting deadlines.
- **Federal Accounting and Transaction Standards** The FTC is in general compliance with all federal accounting principles and standards. The FTC's accounting system conforms in all material respects with the principles, standards, and related requirements specified in the Federal Financial Management Improvement Act of 1996. The Joint Financial Management Improvement Program has evaluated and qualified the American Management System's Federal Financial System (FFS) software, used by NBC.
- **Integrating Financial and Performance Management Systems** The FTC maintains a data warehouse, updated daily, that accommodates both financial and program performance data. Costs are related to Mission activities in the data warehouse and support day-to-day operations. Efforts are continuing to improve the integration of the data by tying a broader range of costs (e.g., training, information technology, performance awards, furnishings) to program performance activities in the financial system.
- **Purchasing Improvements** In 2003, the FTC improved financial services for credit card transactions. Financial staff were trained on a new and interactive online verification and reconciliation system for credit card transactions. Guidance and instructions were developed and issued. To ensure FTC credit card users are familiar with the new process, training and certification requirements were established. The FTC also expanded the use of GSA Advantage, an online supply purchasing system, to its operating bureaus. This system permits online purchase of supplies at a competitive price through a streamlined and paperless acquisitions process.

- **Cash Management** The FTC implemented a paper check conversion process to deposit checks electronically with the Federal Reserve Bank to facilitate the processing of merger filing fees and other payments. This process saves staff time, provides an electronic record of deposits, and creates a seven-year archive of checks with a Federal Reserve sponsored deadline. Also, the FTC coordinated the seamless use of existing Treasury fee deposit and tracking capabilities to collect and track telemarketers' payments associated with the National Do Not Call Registry. The agency also worked to ensure that it can track, through a secure database, certain payment information that may be too personal to house elsewhere.
- **Capitalization Improvements** The FTC improved its policy for agency-wide capitalization of FTC-developed software and leasehold improvements. It also improved tracking of contract service obligations and expenditures that cross fiscal years.

### **Initiative: Integrating Budget and Performance**

- **Integrating Planning/Evaluation and Budget** The FTC assigns responsibilities to its budget staff according to program area. The FTC's Budget Office works closely with the programs to build budget plans that ensure the most efficient use of the agency's resources to achieve the goals of the annual GPRA Performance Plan. The agency also monitors implementation of operating plans by programs through the use of financial systems and periodic reports. The Budget Office conducts detailed reviews of the status of programs' budget execution throughout the fiscal year to ensure that funds are sufficient to meet objectives. The FTC requires program managers to report on GPRA Performance Measures each quarter, and the FTC's Commissioners review this information twice a year.
- **Linking Goals and Objectives to Results** The FTC's Strategic Plan under the Government Performance and Results Act (GPRA) identifies five-year strategies and performance measures that are an integral part of the fiscal year budget requests. Over the past year, the FTC re-examined its performance measures and revamped those that did not effectively measure its outcomes. The FTC developed a Strategic Plan for FY 2003 - 2008 that articulates strategies and measures that effectively relate to outcomes and that integrate budget and performance (see <http://www.ftc.gov/opp/gpra/index.htm>). In addition, the annual Performance Plans provide an assessment of the savings and benefits to consumers and businesses expected from the requested level of resources. Budget requests tie to the GPRA objectives, and all requests to increase resources are justified in the Performance Plan and tie to programs.
- **Aligning Budget Accounts and Program Activities** The agency allocates resources to programs based on program goals and workload projections. As workload projections change throughout the year, the agency shifts resource



allocations accordingly, making certain to comply with congressional parameters. The FTC uses its annual GPRA Performance Plan as the guideline to align agency resources to achieve targets. FTC budget staff work closely with program managers to ensure alignment of budget accounts, staff, and program activities to support program goals.

- **Integrating Technology** The FTC implements a life cycle management approach to managing and developing agency technology. Through this approach, the agency identifies existing products and services, determines how frequently each should be reassessed, and schedules reassessments for the next several years. When a new project is proposed, technical staff evaluate its cost and relative need and, if the project is justified, make a recommendation to senior program managers. Review and decision making by program managers ensure that technological projects are aligned with the agency mission and integrated with performance in budget requests.
- **Improving Integration** The agency is working to improve the link between performance and budget, both by refining the selection and the measurement of performance goals and measures, and by developing improved management processes for data use and analysis. Over time, this work will enhance agency performance by improving the quality, access, and timeliness of management information throughout the FTC.

## Ongoing Challenges

### Consumer Protection

The FTC currently enforces a number of statutes and regulations that address consumer privacy. Consumers increasingly are concerned about the ways in which their personal information is used; consequently, companies that make specific privacy promises need to live up to them. Doing so will enhance the confidence that consumers have in the marketplace. The FTC is concerned with the misuse of personal information and is committed to both law enforcement and education of consumers and businesses on this subject. Areas of current focus include telemarketing, spam, identity theft, and pretexting (obtaining consumers' personal financial information under false pretenses), as well as enforcement of the Children's Online Privacy Protection Act (COPPA), the Gramm-Leach-Bliley Act, the Telemarketing Sales Rule (TSR), as amended in December 2002, and Section 5 of the Federal Trade Commission Act.

Recent amendments to the TSR include initiatives designed to afford consumers greater privacy protections. Most significantly, the amended TSR created a National Do Not Call Registry, enabling consumers to protect themselves from unwanted and often intrusive telemarketing calls. A national survey shows that registered consumers are receiving significantly fewer telemarketing calls. Those registered can file a complaint when a covered telemarketer calls. Further, the amendments to the TSR address pretexting, the use of "pre-acquired account information" – a situation in which, unbeknownst to consumers, a telemarketer has their billing information in hand before initiating a sales call. Account information that has been "pre-acquired" can be misused, resulting in unauthorized charges on consumers' accounts. The TSR amendments also impose new restrictions on the practice of "call abandonment" – where a consumer answers the telephone only to find "dead air" – and require telemarketers to transmit caller-ID identifying information.

The FTC also continues to focus on spam. In April 2003, the Bureau of Consumer Protection released a study – the first extensive review of the likely truth or falsity of claims appearing in spam. Reviewing a random sample of 1,000 pieces of spam, the study found that 84.5 percent contained at least one form of deception or sold an illegitimate product or service. During FY 2003, the FTC also hosted a public forum to explore issues relating to the proliferation of and potential solutions to spam. The forum also examined how the unique qualities of spam both contribute to and hinder fraud and its prosecution. The FTC will continue to bring law enforcement actions targeting deceptive spam and will continue to focus on the policy challenges relating to the increasing amount of spam.

Another major challenge is the problem of identity theft. In September 2003, the FTC released the results of a survey showing that 27.3 million Americans have been victims of identity theft in the last five years, and that identity theft losses to businesses, financial institutions, and consumer victims are in the billions of dollars. The FTC will continue to focus efforts on combating identity theft.

## **Maintaining Competition**

The ongoing globalization of the economy and new information technologies have a significant impact on Maintaining Competition activities. The continuing growth of commerce beyond national boundaries has resulted in myriad antitrust enforcement regimes in various jurisdictions, and variations in these regimes can interfere with the common goal of promoting a competitive economy. In addition, the increasingly technology-driven and knowledge-based economy has both policy and practical implications.

Antitrust enforcement no longer stops at U.S. shorelines. Antitrust matters involving activity in many different jurisdictions, with varying sets of competition statutes, can be costly and inefficient. For example, the number of jurisdictions with merger enforcement regimes has grown from just a handful in 1990 to over 65 today. The resulting costs include the cost of complying with different regulatory mechanisms, as well as the risk of differing outcomes. Seeking to increase both procedural and substantive convergence among numerous merger oversight regimes throughout the world will continue to be a high priority for the foreseeable future.

## Future Plans/Objectives

### Consumer Protection

Ongoing globalization and new information technologies create potentially enormous benefits for consumers, but can also raise new consumer protection concerns. Examples include opportunities for online fraud, identity theft, loss of privacy, and cross-border frauds, such as international telephone and foreign lottery scams. The FTC's experience demonstrates that fraudulent operators frequently are among the first to take advantage of new technologies. The Internet has become an especially fertile ground for scam artists who can reach vulnerable consumers easily and cheaply online and immediately access both a national and an international marketplace. The use of fraudulent spam highlights this problem. Similarly, telemarketing fraud and Internet fraud are increasingly cross-border phenomena.



Dewie the Turtle helps the FTC remind consumers to stay safe online and develop a culture of security.

To combat fraud, the FTC monitors all marketplaces – traditional and electronic – and focuses on the areas identified through its Consumer Information System database to be most harmful to consumers. Attacking telemarketing and business opportunity fraud continues to be a priority, as does protecting consumers from more traditional scams that have found new life on the Internet, including pyramid schemes and health-related fraud. The agency also uses an internal review program (Project Scofflaw) to monitor compliance with outstanding court orders and to take appropriate action to ensure compliance.

The law enforcement challenges in this global marketplace are considerable, and there is little evidence that traditional scams will go away. Instead, high-tech scams likely will grow and be more difficult to detect and pursue as they cross national borders.

Thus, it is not surprising that the FTC's future efforts will include significant activity to combat spam and cross-border fraud. In the spam arena, the agency works to protect consumers from fraudulent spam and reduce the impact of deceptive spam by bringing law enforcement actions to stop deceptive or unfair spam practices, conducting research on this topic to assist consumers, businesses, and public policy efforts, and teaching consumers and businesses how to avoid and deal with unwanted spam. The agency's continuing international efforts include conducting workshops and cultivating public/private partnerships to fight cross-border fraud, reporting to Congress on legislative changes that would strengthen its ability to fight cross-border fraud, and pursuing bilateral and multilateral cooperation arrangements with international agencies.

To reflect growing consumer concerns, the FTC has made the general and financial privacy of consumers a top priority. During the next several years, the FTC will continue

to take enforcement action to stop deceptive lending practices and improper usage of pre-acquired account information, and to implement the TSR, as amended in December 2002, which established a National Do Not Call Registry.

The agency also continues to take action to target fraud more effectively and efficiently through analysis of consumer complaint data that it gathers. FTC databases – *Consumer Sentinel*, Identity Theft Data Clearinghouse, Consumer Information System, and spam database – enable the agency and its law enforcement partners to detect fraudulent trends and problems as they occur. FTC’s prospective challenges include maintaining a rich array of data, ensuring that its systems are fully used by the agency and its law enforcement partners, and ensuring that the information it collect is reliable. The FTC also continually strives to identify new methods of mining the data and sharing the results in innovative ways to assist its law enforcement partners. These efforts bear fruit in the cases brought by the FTC and other law enforcement agencies who have access to this data. As part of these efforts, the FTC conducted a consumer fraud survey and currently is analyzing the results to learn whether the complaints received by the FTC are representative of most consumers’ actual experiences. The agency will use the results to evaluate the reliability of the complaints that it receives and to more carefully target outreach and enforcement efforts. In addition to targeting the most serious problems for law enforcement action, it also encourages non-regulatory solutions that are effective but do not impede legitimate business activity. One particular area of focus in the next several years is fraud affecting Hispanic consumers. The FTC will use *Consumer Sentinel* and other data to target deceptive and fraudulent advertising and other practices aimed at this growing segment of the nation’s population. The agency also will develop a more systematic approach when coordinating with criminal law enforcers as the FTC works to increase the number of criminal prosecutions of consumer fraud.

## **Maintaining Competition**

The increasingly worldwide scope of antitrust enforcement and the proliferation of differing regulatory mechanisms governing mergers can impose significant costs on companies, and ultimately, on consumers. Thus, the FTC and the Department of Justice are involved in several formal and informal efforts to increase and improve bilateral and multilateral cooperation in antitrust enforcement.

In addition, the growing significance of technology and intellectual property typifies the evolutionary nature of the economy, which requires the FTC to adapt continuously. Moreover, industrial organization economics, which underpins antitrust law and policy, also continuously produces new learning. Thus, a key part of the FTC’s ongoing responsibilities is to ensure that the agency remains at the leading edge of knowledge of both economic theory and the real-world developments in the economy. The agency does so in a variety of ways, including sponsorship of workshops, conferences, and hearings, and conducting its own research.

## Management's Discussion and Analysis

### Consumer Protection

The goal of the Consumer Protection Mission is to prevent fraud, deception, and unfair business practices in the marketplace. The Mission works to accomplish this goal through three objectives: (1) identify fraud, deception, and unfair practices that cause the greatest consumer injury; (2) stop fraud, deception, and unfair practices through law enforcement; and (3) prevent consumer injury through education.

#### Objective 1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury

The FTC measures performance in this objective by determining the number of consumer complaints and inquiries that are added annually to its Consumer Information System database. The complaints in this database are used to identify problem areas as reported by the public. This enables the agency to detect and respond rapidly to fraud, deception, and other illegal practices, resulting in effective targeting of the agency's law enforcement resources. The continuous input of new complaints into the database helps the FTC and its enforcement partners determine where and how the latest incidents of fraud may be occurring. The target for fiscal year 2003 was to add at least 450,000 entries into the database. At the end of the fiscal year, 944,000 entries had been added, including 321,000 relating to identity theft, 166,000 over the target of 155,000.

The FTC also shares complaints about fraud and deception relating to telemarketing, direct mail, and the Internet with its law enforcement partners through *Consumer Sentinel*, a secure Web site that provides access to nearly 1.4 million fraud and identity theft complaints. *Consumer Sentinel* is accessed by more than 940 law enforcers in the United States, Canada, and Australia through an encrypted Web site to determine whether a particular fraudulent scheme is local, national, or cross-border in nature, and also to help spot larger trends for law enforcement action. The number of law enforcement partners grew by nearly 300 during fiscal year 2003, and the FTC will continue to expand *Consumer Sentinel's* reach in the law enforcement community.

#### Objective 2: Stop fraud, deception, and unfair practices through law enforcement

The FTC measures the effectiveness of its law enforcement efforts to stop fraud by estimating the amount of money it has saved consumers based on the annual fraudulent sales of defendants. Saving consumers money is the ultimate goal of these efforts. Consumers save money each time a fraudulent operator is stopped by successful litigation or settlement with the agency. Savings to consumers are increased when the agency leads joint law enforcement initiatives with federal, state, and international partners. The target for fiscal year 2003 was to save consumers \$400 million. The year ended with savings to consumers of approximately \$606.3 million, exceeding the target by 52 percent.

In fiscal year 2003, the FTC established two new performance measures under this objective to report the number of data searches by FTC and other law enforcement personnel of the FTC's *Consumer Sentinel* complaints and the number of data searches by law enforcement personnel of the FTC's identity theft complaints. The actual number of *Consumer Sentinel* searches was 27,685 (exceeding the goal of 20,000 by 38 percent.) The actual number of identity theft searches by law enforcement personnel was 2,167 (exceeding the goal of 1,400 by 55 percent.) These new measures will be used, along with the identity theft survey results, to refine the agency's enforcement and education efforts relating to identity theft. The FTC, along with the Secret Service and Department of Justice, initiated a training program in March 2002 to provide local and state law enforcement officers with practical tools to enhance combined efforts to combat identity theft, including information about accessing *Consumer Sentinel* data. Through September 2003, the FTC and its partners held 9 seminars and trained more than 1,000 persons from more than 165 agencies. Additional training is planned and likely will result in increased use of the *Consumer Sentinel* system.

### **Objective 3: Prevent consumer injury through education**

Consumer and business education represents the first line of defense against fraud, deception, and unfair practices. Most FTC law enforcement initiatives include a consumer and/or business education component aimed at preventing consumer injury and unlawful business practices. Public education programs benefit consumers by alerting them to their rights under various consumer protection laws and providing practical tips on how to recognize and avoid scams and rip-offs. To reach the broadest possible audience, the FTC makes maximum use of the national media and outreach to lead more consumers to the FTC's Web site ([www.ftc.gov](http://www.ftc.gov)) and the one-stop government Web site for consumer information ([www.consumer.gov](http://www.consumer.gov)). Messages also reach the public through the Consumer Response Center (at 1-800-FTC-HELP), and hundreds of partners who distribute FTC materials, link to the Web site, or post the FTC's messages on their Web sites. The goal in fiscal year 2003 was to reach an audience of at least 14 million with FTC education publications. At year end, 28 million publications had been distributed, double the goal. The large number of consumers accessing Do Not Call Registry information on the FTC's Web site contributed to this dramatic increase in distribution. For the fourth consecutive year, more publications were distributed online (22.6 million) than in print (5.3 million). Of the 28 million publications distributed, 458,000 were in Spanish. The goal for FY 2003 was to distribute 2.5 million identity theft publications; the agency exceed its goal by distributing 3 million publications.

To reach the expanding population of Hispanic consumers in the U.S., the FTC instituted a Hispanic Outreach Program in 2002. This effort includes the creation of a dedicated Spanish-language page on the FTC Web site to mirror the English-language page and translation of more than 60 consumer publications. The program also includes significant media outreach, with FTC staff speaking about important consumer protection issues on major Spanish-language networks' news shows and the FTC disseminating public service announcements to the Spanish-language media.



## Maintaining Competition

The increasingly worldwide scope of antitrust enforcement and the proliferation of differing regulatory mechanisms governing mergers can impose significant costs on companies, and ultimately, on consumers. Thus, the FTC and the Department of Justice are involved in several formal and informal efforts to increase and improve bilateral and multilateral cooperation in antitrust enforcement.

In addition, the growing significance of technology and intellectual property typifies the evolutionary nature of the economy, to which the FTC must continuously adapt. Moreover, industrial organization economics, which underpins antitrust law and policy, also continuously requires new learning. Thus, a key part of the FTC's ongoing responsibilities is to ensure that it remains at the leading edge of knowledge of both economic theory and the real-world developments in the economy. The agency does so in a variety of ways, including sponsorship of workshops, conferences, and hearings, and conducting its own research.

The goal of the Maintaining Competition Mission is to prevent anticompetitive mergers and other anticompetitive business practices in the marketplace. The Mission works to accomplish its goal by: (1) identifying mergers and business practices that harm consumers by restricting competition; (2) using its law enforcement powers to stop anticompetitive mergers and business practices; and (3) working to increase knowledge and understanding of the antitrust laws and the benefits of competition among consumers, the business community, and other government officials. These three endeavors represent the FTC's objectives under its Maintaining Competition Mission.

During most of the last decade, unprecedented levels of merger activity in the marketplace dominated the FTC's Maintaining Competition agenda, with the number, size, and scope of proposed mergers increasing year after year. While the level of merger activity is down considerably from its peak in 2000, the current level volume of merger transactions remains significant by historical standards. Moreover, evidence suggests a continuing long term trend toward larger and more complex merger transactions, which typically require broader and more time consuming antitrust review than is necessary for smaller transactions.

During FY 2003, the FTC continued its recent emphasis on the nonmerger portion of its Maintaining Competition Mission, begun in 2001 as the merger wave started to ebb. In addition, the agency has focused attention to the educational aspect of the Maintaining Competition Mission, a key responsibility since the FTC's inception.

### **Objective 1: Identify anticompetitive mergers and practices that cause the greatest consumer injury**

The FTC uses premerger notification reports required under the Hart-Scott-Rodino (HSR) Act as its primary means for identifying potentially anticompetitive mergers. Over the past



two years, a less active economy and revised HSR filing thresholds have kept the number of transactions reported to the antitrust agencies at moderate levels. The modified reporting thresholds did not alter the standard of legality for mergers under Section 7 of the Clayton Act, however, so the FTC has increased efforts to identify mergers not reported under HSR, that might harm competition. These efforts have included monitoring trade press and Internet resources, as well as following up on information from Congressional offices, other Executive Branch agencies, state and local governments, consumers, businesses, and the antitrust bar about possibly anticompetitive mergers. The FTC uses similar means to identify business practices that may harm consumers.

The FTC determined its success in identifying anticompetitive mergers and business practices by measuring: (1) the percentage of significant merger investigations (defined by the issuance of a formal request for additional information (a “second request”) from the parties under the HSR Act) that result in enforcement action; and (2) the number of new nonmerger investigations opened.

The agency seeks to balance its available resources and the need for careful review of all potentially anticompetitive merger transactions, so that between 60 percent and 80 percent of HSR requests for additional information result in enforcement action. A percentage below 60 percent may suggest that the FTC is targeting enforcement resources ineffectively and unduly burdening businesses by investigating too many competitively benign transactions, while a percentage higher than 80 percent could suggest that the agency may be allowing anticompetitive mergers to go forward by focusing its review too narrowly. In FY 2003, the percentage of completed second request investigations resulting in enforcement action was 70 percent, exactly at the midpoint of the targeted range of 60 to 80 percent.

The Mission determined its success in identifying anticompetitive business practices by counting the number of nonmerger investigations opened during the year, with a goal of 45 to 70 new investigations. This figure fluctuates based on the demands of the agency’s merger caseload, which is subject to statutory time constraints, and the status of investigations already underway at the beginning of the year. In FY 2003, the Maintaining Competition Mission opened 50 new nonmerger investigations. This figure, representing a modest decline from the 59 nonmerger investigations opened in 2002, reflects the greater proportion of resources devoted to litigating significant nonmerger matters identified and developed during the past two years.

## **Objective 2: Stop anticompetitive mergers and practices through law enforcement**

The FTC employs its law enforcement authority to stop anticompetitive mergers and practices both directly and indirectly. Through federal court or administrative litigation or by negotiated settlement, the agency saves consumers millions of dollars annually by preventing harmful mergers from taking place, by arranging for restructuring of transactions to eliminate anticompetitive effects, or by stopping unlawful business practices. In addition to these direct actions, an effective FTC enforcement presence indirectly serves its

objective by demonstrating to the business and legal communities that the agency can and will take successful legal action to stop anticompetitive transactions and practices.

In FY 2003, the FTC undertook 44 antitrust enforcement actions, almost equally divided between merger (21) and nonmerger matters (23). This total represents an increase of 33 percent over the 33 enforcement actions in 2002, and an increase of 63 percent over the 27 enforcement actions in 2001. In the merger area, the FTC authorized the staff to seek preliminary injunctions in three matters, issued one administrative complaint, and accepted seven consent agreements for comment. In addition, merger parties abandoned ten merger transactions in the face of likely FTC action. The FTC issued seven nonmerger administrative complaints and accepted 16 nonmerger consent agreements for comment.

The FTC determined its success in stopping anticompetitive mergers and practices in FY 2003 by measuring: (1) the percentage of positive outcomes obtained in antitrust enforcement actions; (2) the estimated savings to consumers resulting from FTC merger enforcement actions; and (3) the estimated savings to consumers resulting from FTC nonmerger enforcement actions.<sup>1</sup>

A positive outcome for an enforcement action includes abandonment of an anticompetitive transaction following an FTC challenge, a consent agreement to resolve antitrust concerns, or a successful result in court after all proceedings, including appeals, have concluded. A negative outcome occurs when parties refuse to settle antitrust concerns raised by the agency, and the agency is unsuccessful in obtaining relief through the courts. The FTC significantly exceeded its goal of positive outcomes in 80 percent of its enforcement actions, achieving a positive result in all 37 of the administrative and federal court enforcement actions it concluded during the year.

As part of its 2000 - 2005 Strategic Plan, the FTC set a goal of \$4 billion in consumer savings from merger enforcement over the five-year period. The reason for using an aggregate figure for the period rather than yearly goals was that external factors cause significant fluctuations in merger activity. Because this measure is being discontinued before the end of the five year period covered under the previous Strategic Plan, the FTC has revised the goal proportionately to \$2.4 billion over the three year period 2001-2003. During those years, the estimated consumer savings from FTC merger enforcement was about \$3.495 billion, exceeding the target by over 45 percent.

The FTC also set a goal of \$1 billion in consumer savings from nonmerger antitrust enforcement over the same 5-year strategic plan period, and similarly revised the goal proportionately to \$600 million over three years. Over the three year period, the agency's nonmerger enforcement resulted in approximately \$606 million, exceeding the target. Moreover, the combined three-year merger and nonmerger consumer savings exceeded \$4.1 billion, a figure 37 percent higher than the combined goal of \$3 billion for the period.

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<sup>1</sup> The FTC has adopted revised measures to replace two of these measures, beginning in FY 2004.

### Objective 3: Prevent consumer injury through education

The FTC increases awareness of antitrust law and policy and promotes compliance with the antitrust laws by educating the public about its activities and communicating its enforcement intentions. The agency's methods of informing the public include development and publication of antitrust guidelines and policy statements; press releases and public dissemination of documents describing its formal actions; and well-publicized testimony, speeches, and publications.

The FTC determined its success in educating the public about antitrust law and policy by measuring: (1) the number of initiatives (including speeches, testimony, reports, policy statements, etc.) undertaken to educate the public during the year; and (2) the extent to which members of the public visited antitrust related content on the FTC's Web site.

In FY 2003, agency representatives undertook 306 antitrust outreach efforts, including speeches, testimony, written comments on regulatory proposals, policy statements, etc. This figure represents more than twice the number reported for 2001 and about 7 percent more than the number reported for 2002. Although improvements in counting methodology likely accounted for some of the gain, the result still shows a significant expansion in the FTC's public outreach efforts during 2003.

The FTC's Web site recorded more than 10 million hits on antitrust-related content in FY 2003, a significant increase from 4.3 million hits in 2002 and 2.6 million hits in 2001. This measure is significant in that it represents initiative taken by the public, to seek out FTC information, rather than merely reflecting agency activities.

**Promoting Competition,  
Protecting Consumers:**

**A Plain English Guide to Antitrust Laws**  
<http://www.ftc.gov/bc/compguide/index.htm>

## **PART II: PROGRAM PERFORMANCE**

## **PART II: PROGRAM PERFORMANCE**

### **Goal 1: Prevent Fraud, Deception, and Unfair Business Practices in the Marketplace**

Congress has charged the FTC with the broadest legislative mandate of any federal consumer protection agency. While most federal consumer protection agencies have jurisdiction over a specific market sector, the FTC possesses broad law enforcement authority that encompasses most segments of the economy, including business and consumer transactions on the Internet. As the nation's leading consumer protection agency, its goal is to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace. It applies three related objectives to achieve this broad-reaching goal:

- **Identifying fraud, deception, and unfair practices that cause the greatest consumer injury.**
- **Stopping fraud, deception, and unfair practices through law enforcement.**
- **Preventing consumer injury through education.**

First, the FTC identifies practices that cause consumer injury by analyzing the consumer complaint data collected in its Consumer Information System database, holding public discussions, and monitoring the marketplace, including the Internet. Next, the FTC uses this information to target law enforcement efforts. Its law enforcement program aims to stop and deter fraud and deception, protect consumers' privacy, and increase compliance with its consumer protection statutes to ensure that consumers have accurate information for purchasing decisions. Finally, the FTC targets its education efforts to give consumers the information they need to protect themselves from injury, and explains to businesses how to comply with applicable laws.

One of the greatest challenges the FTC faces is safeguarding consumer information in the electronic marketplace so consumers will enjoy the same confidence in these commercial transactions that they enjoy in the traditional marketplace. Online commerce has the potential to deliver goods and services, often more conveniently, faster, and at lower prices than traditional brick-and-mortar operations. Online commerce promises significant 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 is enabling consumers to tap into rich sources of information that they can use to make better informed purchasing decisions.

There is real risk, however, that these benefits may not be realized if consumers associate the Internet with fraudulent operators. The boom in e-commerce has opened up fertile ground for fraud. In the FTC's experience, fraudulent operators are always among the first to appreciate the potential of a new technology and then use that potential to exploit and deceive consumers. Of particular concern is that Internet health fraud continues to plague consumers looking for solutions to serious illnesses. Traditional scams, such as pyramid schemes, also have found new life on the Internet. The FTC is using all the tools at its disposal – such as its consumer complaint database – to help target areas of consumer problems, and is fashioning law enforcement and educational efforts to respond quickly and vigorously to these concerns.

Privacy of personal information is important, and companies that make specific promises to consumers about privacy must honor those promises. Companies that honor their promises add to consumer confidence in the marketplace. The FTC is concerned with the misuse of personal information and is fully committed to both enforcement and education in this area. For example, the FTC is charged with enforcing the Children's Online Privacy Protection Act (COPPA) and its implementing Rule, which became effective in April 2000. In FY 2003, the FTC brought two enforcement actions challenging alleged COPPA rule violations. This brings the total number of COPPA enforcement actions to eight. It also continued an extensive education campaign on children's privacy directed to businesses, parents, and educators.

The FTC's comprehensive, multi-year review of the Telemarketing Sales Rule (TSR) revealed widespread consumer frustration over unwanted telephone solicitations, which some see as a violation of privacy in their home. To address this concern, in December 2002, the FTC amended the Rule to establish a National Do Not Call Registry. The Registry is up and running and being enforced. Covered telemarketers are prohibited from calling consumers who place their telephone numbers in the Registry. By the end of December 2003, the Registry contained more than 55 million telephone numbers. Further, the amendments to the TSR address the use of "pre-acquired account information" – a situation in which, unbeknownst to consumers, a telemarketer has their billing information in hand before initiating a sales call. Account information that has been "pre-acquired" can be misused, resulting in unauthorized charges on consumers' accounts. The TSR amendments also impose new restrictions on the practice of "call abandonment" – where a consumer answers the telephone only to find "dead air" – and require telemarketers to transmit caller-ID identifying information.

The FTC also works on policy and enforcement efforts related to spam (unsolicited commercial e-mail). In April 2003, the Bureau of Consumer Protection released the first extensive review of the likely truth or falsity of claims appearing in spam. The study included a random sample of 1,000 pieces of spam from three FTC data sets and found

that 84.5 percent contained false “From” lines, “Subject” lines, or message text or sold an illegitimate product or service. During FY 2003, the FTC also hosted a public forum to explore issues relating to the proliferation of and potential solutions to spam. The forum also examined how the unique qualities of spam both contribute to and hinder fraud and its prosecution. The FTC brought 19 enforcement actions targeting deceptive spam during FY 2003.

Identity theft is another area where the FTC continued to protect consumers during FY 2003. In September 2003, the FTC released the results of a survey that found that 27.3 million Americans have been victims of identity theft in the last five years, including 9.9 million in the last year alone. Last year’s identity theft losses to businesses and financial institutions totaled nearly \$48 billion, and consumer victims reported \$5 billion in out-of-pocket expenses.

### **Objective 1.1: Identify Practices That Cause Consumer Injury**

The first step in preventing fraud, deception, and unfair business practices in the marketplace is to identify the practices that cause the greatest consumer injury.

#### **Strategies**

To identify consumer protection problems, the FTC collects and analyzes data from many sources. Its Consumer Response Center receives consumer complaints and inquiries via a toll-free number (1-877-FTC-HELP), mail, and the Internet. Partners such as the National Fraud Information Center of the National Consumers League, the Internet Fraud Complaint Center (a partnership between the FBI and the National White Collar Crime Center), Better Business Bureaus, and PhoneBusters (the Canadian fraud database), also share the consumer complaint data they collect with the FTC.

All of this information is entered into the Consumer Information System database and then analyzed by FTC staff to identify trends and target fraudulent, deceptive, and unfair business practices. The agency shares the fraud complaints that it collects with more than 940 other law enforcement agencies across the United States, Canada, and Australia via an encrypted Web site called *Consumer Sentinel*. Although the FTC is not empowered to act on behalf of individual consumers, consumer complaint data obtained through *Consumer Sentinel* enables the FTC and its other law enforcement partners to coordinate their enforcement efforts, and to spot trends and target the most serious consumer problems. Summary and trend data are shared on the public *Consumer Sentinel* site (<http://www.consumer.gov/sentinel>). The constant input and analysis of fresh complaint data have allowed the FTC to move quickly to stop illegal practices before they cause more harm to consumers.

Consumers can call the FTC’s second toll-free number, 1-877-ID-THEFT, or view its Web site to obtain information about and report identity theft. When they call the FTC or visit its Web site, consumers also can receive guidance on the steps they can take to resolve



credit and other problems that may have resulted from identity theft. In FY 2003, the agency received 321,000 identity theft complaints and inquiries, 70 percent more than the 185,000 it received in FY 2002. The FTC uses this data to spot patterns that can help criminal law enforcement agencies prosecute identity theft and help businesses avoid the financial consequences of this crime. Although most ID theft cases are criminal, the FTC staff systematically examine complaint data for civil cases within its jurisdiction and will bring those cases where appropriate. Criminal cases are identified by the joint FTC and U.S. Secret Service Case Referral Program and strong leads are referred to regional task forces, many led by the Secret Service Financial Crimes Division.

In addition to receiving and analyzing consumer complaints, the FTC monitors the growing online marketplace through Web surfs, where it and partner organizations systematically surf the Internet to identify Web sites engaged in questionable practices. In FY 2003, the FTC led or coordinated seven surfs, focusing on spam, HIV home test kits, e-tailer holiday shopping, bioterrorism, online gambling, SARS protection products, and other health-related products. When suspect sites are identified during a surf, e-mail warnings are sent to the operators explaining the law and providing a link to the FTC Web site for further information. If a Web operator ignores the warning, the FTC or one of its partners may file suit.

## Performance Measures and Results

### Performance Measure 1.1.1

Annual number of consumer complaints and inquiries entered into database.

FY 2001 Actual: 430,000  
 FY 2002 Actual: 680,000  
 FY 2003 Target: 450,000  
 FY 2003 Actual: 944,000

### NEW

### Performance Measure 1.1.2

Annual number of consumer complaints and inquiries related to identity theft entered into database.

FY 2003 Target: 155,000  
 FY 2003 Actual: 321,000

To assess its effectiveness in identifying fraudulent and deceptive practices, the agency measured the number of consumer complaints and inquiries added to the Consumer Information System database. Additional consumer data enables the agency to more effectively spot trends, identify emerging scams, and coordinate activities with other law enforcers. In FY 2003, the FTC added 944,000 entries, exceeding its target of 450,000 by 110 percent. Under a new performance measure for FY 2003, the FTC added 321,000 consumer complaints and inquiries related to identity theft into its database, exceeding its target of 155,000 by 107 percent. These results reflect the increasing interest of organizations in contributing complaint data and consumers' growing awareness of the FTC's online complaint form and toll-free telephone numbers, and gives the FTC a broader view of what reporting consumers are experiencing. The

database allows the FTC and its law enforcement partners to identify and develop cases against fraudulent operators that cause the greatest consumer injury. By analyzing consumer complaints, the FTC can identify and ultimately refine its enforcement and education efforts to target the most serious consumer problems, which currently include identity theft, online auction fraud, Internet service provider scams, unauthorized billing scams, pyramid and other investment schemes, travel and vacation fraud, pay-per-call solicitation frauds, high-tech Internet-based fraud, and health care fraud.

## Performance Assessment and Future Trends

Not only does the FTC's database help identify the most serious consumer protection problems, it quickly informs the agency of emerging scams so that the agency can move rapidly to stop consumer injury. In addition, by collecting data from consumers and other sources and sharing it with other law enforcers, the FTC is able to coordinate and, thus, augment the effectiveness of law enforcement agencies across the country and in Canada and Australia. To make the database even more valuable, the FTC continues to pursue new international partnerships to increase its collection of information from consumer agencies in other countries. For example, through the [econsumer.gov](http://econsumer.gov) Web site, the agency partners with other members of the International Consumer Protection Enforcement Network, an international group that identifies and shares information about worldwide consumer protection issues. Through [econsumer.gov](http://econsumer.gov), consumers in the 17 participating countries can file complaints using an online form and obtain consumer education materials. Law enforcement members can access a nonpublic site to obtain specific information about the complaints that consumers have filed.

The FTC will continue to expand the complaint database and increase its use by recruiting and training additional law enforcement partners. It also will make better use of its rich store of data by identifying repeat offenders and sharing this information with other law enforcers. In addition, the FTC will increase its capacity to analyze data quickly in order to identify and respond to frauds and identity theft in their early stages and prevent consumer injury. The data will be used to provide more information to the public – by giving consumers information to protect themselves from scams and identity theft, and informing public policy discussions about consumer protection issues in the marketplace. The FTC also will continue to collect data on consumers' experiences and general inquiries and upgrade its system to track and analyze privacy-related complaints more effectively.

The new performance measure regarding identity theft complaints and inquiries is proving very timely in light of the identity theft survey results that the FTC released in September 2003. The number of victims and the dollars lost to identity theft are dramatic – 27.3 million American victims in the last five years and billions of dollars in losses to businesses, financial institutions, and consumer victims. The FTC will continue to devote resources to combat identity theft by fine-tuning its efforts in consumer education and outreach and working with law enforcement authorities.

FTC staff also continue to work to analyze the results of a consumer fraud survey. Through this survey, the FTC seeks to learn whether complaints in the database are representative of consumers' actual experiences. The agency also expects that the survey results will help determine whether certain classes of consumers are not represented in the database, so that it can target those populations with information about the fraudulent scams they may encounter and information on how to submit complaints to the FTC either through its toll-free numbers or *Consumer Sentinel*. After reviewing the survey results, the FTC will analyze its enforcement efforts to ensure that it is addressing the most costly and prevalent forms of fraud through legal action. Based on the information received through

the survey, the FTC also intends to review and, if appropriate, revise its performance measures. To assist in reaching these goals, the agency expects to conduct this survey periodically.

## **Objective 1.2: Stop Practices That Cause Consumer Injury**

Once fraud, deception, and unfair business practices are identified in the marketplace, the FTC focuses its law enforcement efforts on areas where it can have the greatest impact for consumers.

### **Strategies**

The FTC plays a vital role in protecting consumers' privacy, emphasizing both enforcement and education. It focuses on telemarketing, spam, identity theft, and pretexting (the use of pre-acquired account information), as well as enforcement of the Gramm-Leach-Bliley Act, the TSR as amended in December 2002, and Section 5 of the FTC Act.

Telemarketing fraud continues to be a significant law enforcement priority. The FTC will continue to pursue telemarketing cases and enforce the National Do Not Call Registry. Other priorities include protecting consumers from more traditional scams that have moved to the Internet.

One of the most effective tools in the battle against fraud has been the law enforcement sweep – simultaneous law enforcement actions by federal, state, and/or local partners against numerous defendants nationwide that focus on a particular, widespread type of fraud. Each sweep is supported by consumer education aimed at preventing future losses to the public. Since its first sweep in 1995, the FTC and its partners have brought more than 2,200 law enforcement actions in 78 sweeps against fraudulent operators. This total includes 522 actions brought by the FTC alone. Thus, for every action that the FTC brings, its partners bring an average of three. In FY 2003, the FTC led 5 sweeps resulting in a total of 175 actions, including 30 FTC actions. In addition to leveraging agency resources, sweeps generate substantial local, regional, and international interest, thus further raising consumer awareness.

The number of consumer protection cases with an international component continues to rise. In October 2002, the Chairman unveiled a five-point plan to fight cross-border fraud. Work has been completed on two points – a workshop on public/ private partnerships to fight cross-border fraud (held in February 2003) and an OECD Recommendation on Cross-Border Fraudulent and Deceptive Commercial Practices. Two more prongs of the plan – pursuing bilateral and multilateral cooperation arrangements and providing technical assistance to developing countries on consumer protection issues – are ongoing. Work also continues on the fifth project – issuing a report to Congress with recommendations for legislative changes strengthening the FTC's ability to combat cross-border fraud.

In the nonfraud area, the FTC works to ensure compliance with the consumer protection

statutes that it enforce. Given its broad jurisdiction and limited resources, it focuses on the most serious identified problems, using varied enforcement tools and encouraging self-regulation in appropriate situations. Information obtained from its Consumer Information System database and from monitoring national advertising enables the agency to focus its law enforcement actions on areas that pose the greatest risks to consumer health, safety, and economic well-being. The FTC also works with industry and interested groups to support private initiatives where appropriate.

## Performance Measures and Results

The FY 2003 goal was to save consumers more than \$400 million by stopping fraudulent and deceptive practices in the marketplace. The FTC surpassed this target, saving consumers an estimated \$606.3 million. Consumer savings are measured by estimating the annual fraudulent and deceptive sales made by defendants in the 12 months prior to filing a complaint. The savings calculation actually may underestimate the FTC's impact because it assumes that the fraud and deception would have continued for only one additional year; however, it provides a uniform method for calculating savings and minimizes speculation about the likely duration of the fraud and deception. The law enforcement actions included in this measure were taken against individuals or small companies, as well as scam artists operating large schemes on the Internet. The FTC's experience in most cases is that once it files a complaint in federal district court and obtains a court order, the defendants stop their fraudulent practices; if they fail to comply, they are subject to contempt proceedings. Thus, in stopping these frauds, the agency stops further consumer losses to these defendants. By publicizing these law enforcement actions and distributing consumer education materials, it seeks to alert consumers to fraudulent and deceptive practices, educate them to avoid such practices in the future, and ultimately increase consumer confidence in the marketplace, while deterring similar behavior by would-be violators.

**Performance Measure 1.2.1**  
Dollar savings for consumers from FTC actions that stop fraud and deception.

FY 2001 Actual: \$487 million  
FY 2002 Actual: \$561 million  
**FY 2003 Target: \$400 million**  
**FY 2003 Actual: \$606 million**

**NEW**

**Performance Measure 1.2.2**  
Number of data searches conducted by FTC and law enforcement personnel of the FTC's *Consumer Sentinel* database.

**FY 2003 Target: 20,000**  
**FY 2003 Actual: 27,685**

**NEW**

**Performance Measure 1.2.3**  
Number of data searches by law enforcement personnel of the FTC's identity theft database.

**FY 2003 Target: 1,400**  
**FY 2003 Actual: 2,167**

The FTC established two new performance measures under this objective in FY 2003 to report the number of data searches by FTC and other law enforcement personnel of its *Consumer Sentinel* complaints and the number of data searches by law enforcement personnel of its identity theft complaints. With 27,685 data searches of the *Consumer Sentinel* database, the agency surpassed its target of 20,000. Also, with 2,167 data searches by law enforcement personnel of the identity theft database, it surpassed its target of 1,400.

## Performance Assessment and Future Trends

Based on *Consumer Sentinel* data, Internet fraud is significant and growing. The FTC is targeting the most pervasive online fraud and moving quickly to stop large, fast-growing Internet scams. In FY 2003, the FTC brought 58 cases involving fraudulent or deceptive marketing practices related to the Internet, bringing the total number of Internet cases filed by the FTC since 1994 to more than 300. The FTC expects fraud to continue to grow as the use of the Internet rises and, in response, it will increase its efforts to slow online fraud and prevent consumer injury. In particular, online fraud has the potential to reach consumers worldwide and cause great economic injury. As its technological expertise continues to develop, the agency will be better able to detect and deter online fraud before these schemes take hold. This effort, combined with strategies such as law enforcement sweeps, demonstrates its effectiveness in preventing consumer injury.

With an estimated \$350 billion to spend, the Hispanic population in the United States is attracting many advertisers. Given the size and influence of this growing market, the FTC will be targeting deceptive and fraudulent advertising and other practices aimed at Hispanic consumers. The FTC will target frauds on the basis of *Consumer Sentinel* and other data identifying the top problems for Hispanic consumers, products and services that are extensively advertised, particularly in major media, and practices causing significant economic or other harm.

The FTC also will enhance coordination with criminal law enforcers. By developing contacts with criminal prosecutors in a more systematic manner, the agency hopes to increase the number of criminal prosecutions of consumer fraud, including conduct that FTC staff have discovered, investigated, or prosecuted civilly.

In addition to fighting fraud, the FTC also focuses on compliance through traditional advertising laws and FTC Rules and Guides. It works cooperatively with its law enforcement partners, industry, and consumer groups to extend the reach of its efforts to increase compliance. The scope of the agency's current and upcoming priorities spans its broad jurisdiction, and this broad jurisdiction makes it difficult to measure the overall impact of its nonfraud activities. The FTC is exploring using new performance measures that focus its impact in more narrowly defined areas. Nonetheless, it will continue to use business and consumer education, as well as selective enforcement, to ensure broad compliance with the rules and regulations it enforces.

With respect to identity theft, although Congress established the FTC as the central clearinghouse for identity theft complaints, the FTC – a civil law enforcement agency – has no enforcement authority to prosecute identity theft crimes. The information contained in its database, however, directly supports such criminal prosecutions. The agency has learned from experience that hands-on information and training provided to its customer law enforcement agencies greatly enhances their abilities to mine the information in the complaint database and ultimately prosecute identity theft crimes more successfully. Consequently, the FTC initiated identity theft training for local, state, and federal criminal



enforcement groups and, through September 2003, trained more than 1,000 law enforcers from more than 385 agencies. Through the new performance measures, the FTC will monitor the success of these training programs to determine how such training should be modified to better meet the needs of its partner agencies.

### **Objective 1.3: Prevent Consumer Injury Through Education**

Consumer and business education is a first line of defense against fraud and deception.

#### **Strategies**

The FTC is committed to using education and outreach as cost-effective methods of preventing consumer injury, increasing business compliance, and adding an extra dimension to its law enforcement program. Virtually every consumer protection effort contains an educational component, from compliance surfs and law enforcement sweeps to the announcement of new rules and regulations. Through reports, publications, Web sites, media events, speeches, advocacies (e.g., the FTC's comment to the Department of Housing and Urban Development on the Real Estate Settlement Procedures Act and its comment to the Food and Drug Administration on trans-fatty acid labeling and claims), and collaborative activities with other organizations, the FTC reaches tens of millions of consumers and businesses every year. In FY 2003, the agency issued 105 new or revised publications – 92 for consumers and 13 for businesses – covering traditional subjects such as charitable donations and credit issues; high-tech subjects such as electronic banking, Internet auctions, and spam; and timely subjects such as identity theft, telemarketing, and privacy.

The Consumer Information System database helps the FTC tailor its education efforts to topical areas where fraud, deception, unfair practices, and information gaps are causing the greatest injury. Consumers are given the tools they need to spot potentially fraudulent and other illegal promotions, and businesses are advised how they can comply with the law. As with the agency's law enforcement, more of its educational efforts now involve the Internet. The FTC not only addresses consumer issues involving the Internet, such as shopping online, but it also uses the Internet as a tool to reach consumers, for example, through its Web sites, online banner public service announcements, and online distribution of informational pieces called "news consumers can use."

The FTC coordinates with hundreds of private and public partners to provide information about specific promotions, products, and services. It continues to manage the consumer.gov Web site, which is linked with the interagency firstgov.gov Web site, which offers one-stop access to federal consumer information. The FTC continues to increase the federal agency partnership base for consumer.gov, with more than 180 agencies participating. In FY 2003, the FTC took the lead for the fifth consecutive year in organizing National Consumer Protection Week. This year's theme campaign was information security. Its partner organizers were the National Association of Consumer Agency Administrators, AARP, the National Consumers League, the Council of Better Business

Bureaus, the Consumer Federation of America, the U.S. Postal Service, the U.S. Postal Inspection Service, the National Association of Attorneys General, and the Department of Justice.

To reach the expanding population of Hispanic consumers in the United States, the FTC instituted an Hispanic Outreach Program. This outreach effort included a dedicated Spanish-language page on the FTC Web site and translations of more than 60 consumer publications, including 32 publications during FY 2003.

## Performance Measures and Results

The FTC gauges the impact of its education efforts by tracking the number of consumer and business education publications it distributes to the public in response to consumer requests. Ideally, the agency would like to measure the extent to which its educational materials improve consumer understanding and help them get better value for their money. This effect would be extremely difficult to measure, but tracking the distribution of publications provides a rough idea of how many consumers believe its information will prove useful. In FY 2003, the FTC exceeded its goal of 14 million publications by distributing 28 million publications.

<b>Performance Measure 1.3.1</b>	
Total number of education publications distributed to or accessed electronically by consumers.	
FY 2001 Actual:	15.0 million
FY 2002 Actual:	19.3 million
<b>FY 2003 Target:</b>	<b>14.0 million</b>
<b>FY 2003 Actual:</b>	<b>28.0 million</b>
<b>NEW</b>	
<b>Performance Measure 1.3.2</b>	
Number of education publications related to identity theft distributed to or accessed electronically by consumers.	
<b>FY 2003 Target:</b>	<b>2.5 million</b>
<b>FY 2003 Actual:</b>	<b>3.0 million</b>
<b>NEW</b>	
<b>Performance Measure 1.3.3</b>	
Number of Spanish-language education publications distributed to or accessed electronically by consumers	
<b>FY 2003 Target:</b>	<b>TBD</b>
<b>FY 2003 Actual:</b>	<b>458,000</b>

In FY 2003, the FTC established two new performance measures to report the annual number of education publications distributed to or accessed electronically by consumers relating to identity theft, and the annual number of Spanish-language publications distributed to or accessed electronically by consumers. The FTC distributed 3.0 million publications related to identity theft, exceeding its goal of 2.5 million. The FTC also distributed 458,000 Spanish-language publications. Since the Hispanic Outreach program is relatively new and publications have been translated into Spanish only recently, no target was established for FY 2003. The FY 2003 actual number will be used to establish the target in future fiscal years.

## 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 plays an integral role in the FTC's education, deterrence, and enforcement efforts, permitting the agency to reach vast numbers of consumers and businesses quickly, simply, and at low cost.



The measure of the number of publications distributed by the FTC indicates its impact in educating consumers, although it does not fully capture the millions of FTC publications that are distributed to consumers by others. While the number of print publications the FTC distributed remained relatively static, the number of publications accessed through the Internet soared as more consumers and businesses go online. In 1996, the agency distributed only 140,000 publications online. In FY 2003, it distributed 22.6 million through its Internet Web site alone. These numbers illustrate the Internet's coming of age as a mainstream medium and highlight its usefulness in any large-scale educational campaign. Consequently, the FTC will increase its use of the Web site, <http://www.ftc.gov>, and the multi-agency Web site, <http://www.consumer.gov>, to reach consumers, businesses, law enforcement officials, and the media more efficiently and effectively.

In FY 2004, the FTC will continue to focus consumer and business education efforts on subjects identified by its consumer complaint databases where information gaps cause the greatest injury, such as globalization, Internet scams, fraudulent schemes, and identity theft. In the privacy area, it will use an approach that has proven successful in the past by establishing an outreach program to increase consumer awareness of and business compliance with the privacy information required by the Gramm-Leach-Bliley Act. The FTC will continue to creatively use technology, including new interactive media, to extend the reach of consumer and business education. Also, as highlighted by its new performance measures, the agency will continue to focus outreach in the identity theft arena and its efforts to reach the nation's growing Hispanic population. The FTC will continue to work to identify and educate underserved consumer groups to help protect them from becoming victims of fraud.

## **Goal 2: Prevent Anticompetitive Mergers and Other Anticompetitive Business Practices in the Marketplace**

Competition among sellers in an open marketplace gives consumers the benefit of lower prices, higher quality products and services, maximum choice, and innovation leading to beneficial new products and services. Anticompetitive mergers and business conduct that diminishes competition deny consumers these benefits, and are illegal under the antitrust laws. Thus, the FTC's goal is to promote vigorous competition by applying the antitrust laws to: (1) prevent anticompetitive mergers; and (2) stop business practices that diminish competition, such as agreements among competitors about prices or other aspects of competition (referred to as nonmerger enforcement). The agency applies three related objectives to achieve this broad-reaching goal:

- **Identifying anticompetitive mergers and practices that cause the greatest consumer injury.**
- **Stopping anticompetitive mergers and practices through law enforcement.**
- **Preventing consumer injury through education.**

First, the FTC staff identify mergers and business practices that have resulted in or are likely to result in anticompetitive effects by conducting thorough factual investigations and applying economic analysis to distinguish between actions that threaten the operation of free markets and those that are benign or procompetitive. This step is critical because a merger or business practice may be either neutral, 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 in the marketplace may do more harm than good.

Second, once the FTC identifies a harmful or potentially harmful merger or business practice, it takes enforcement action under the antitrust laws to stop it, either through an administrative challenge or in federal court. In many instances, the agency is able to reach a consent agreement that remedies its competitive concerns and avoids litigation.

Third, the FTC seeks to prevent anticompetitive activity by educating businesses and consumers about the antitrust laws and its efforts to ensure competitive markets. Increased knowledge and understanding facilitate businesses' efforts to comply with the law, and

enable consumers to identify anticompetitive activity more readily and bring it to the FTC's attention for possible enforcement action.

### **Objective 2.1: Identify Anticompetitive Mergers and Practices That Cause Consumer Injury**

The first step in preventing anticompetitive mergers and anticompetitive business conduct is determining which mergers and business practices are anticompetitive.

#### **Strategies**

The FTC seeks to identify anticompetitive mergers and practices with as much accuracy as possible, because both under- and over-enforcement can harm consumers' interests. Thus, the agency seeks to undertake enforcement action against transactions or conduct that harms consumers, but at the same time, avoids taking enforcement action that prevents businesses from completing transactions or engaging in practices that fundamentally benefit consumers. The agency also tries to accomplish this task as efficiently as possible so that it can devote the bulk of its resources to further investigation of and possible challenge to the most problematic mergers and practices. A collateral, but important, consideration is to conduct the inquiry in a way that minimizes the cost or inconvenience to businesses.

The premerger notification requirements of the Hart-Scott-Rodino (HSR) Act are the agency's primary means for identifying potentially anticompetitive mergers, acquisitions, and joint ventures (collectively referred to as mergers). The HSR Act requires companies to report certain proposed mergers to the FTC and Department of Justice (which jointly enforce the HSR Act), and wait for a specified period (usually 30 days) to allow antitrust review.

The FTC's staff carefully examine each transaction reported under HSR to determine whether it poses a threat to competition. The agency seeks to identify as many of the competitively harmless transactions as possible within the initial waiting period, both to conserve resources and to minimize the delay imposed on businesses by the HSR requirements. In most cases, the staff can make a reasonable judgment about whether a merger has the potential to be anticompetitive or not after an initial screening based on materials filed with the HSR notification. The agency may authorize a more extensive investigation of transactions that raise more difficult questions. Under the HSR Act, the agency may issue a formal request for additional information from the parties (a "second request"), which extends the initial waiting period. Because of the typical scope and complexity of the issues, and the fact that the HSR statute permits only one request for additional information relating to a transaction, an investigation extended by the issuance of a second request almost always requires a significant investment of resources by both the agency and the parties.

Most HSR transactions raise no antitrust issues, and the antitrust agencies permit these

to proceed. Together, the FTC and the Department of Justice Antitrust Division issued second requests in less than 5 percent of reported mergers in FY 2003. Moreover, the enforcement agencies frequently complete the initial screening in less time than is allowed under the HSR Act. In these instances, the government grants “early termination” of the HSR waiting periods, allowing transactions to go forward more quickly. Approximately 63 percent of filed transactions received early termination in FY 2003.

Amendments to the HSR Act, effective in 2001, modified the criteria governing when the reporting requirement applies. Thus, the antitrust agencies now receive fewer formal notifications of proposed mergers under the HSR Act. This change in HSR filing thresholds did not change the standard of legality under the antitrust laws, however. While the vast majority of potentially problematic mergers continue to be subject to the revised HSR filing requirements, smaller merger transactions may still be anticompetitive. Consequently, the agency now devotes more effort to identifying non-reportable mergers that may harm (or may have harmed) competition. This effort involves monitoring the trade press, industry sources, and the Internet to stay informed of industry developments; following up on case leads from congressional offices, other Executive Branch agencies, and state and local governments; and encouraging consumers, businesses, and the bar to notify the FTC of possibly anticompetitive mergers. Consistent with this increased focus, more than a quarter of the agency’s merger enforcement actions in FY 2003 involved transactions not subject to HSR reporting requirements.

In FY 2003, even though the FTC had fewer mergers to review compared to recent fiscal years, the volume of merger activity remained significant by historical standards and the agency examined a number of very large and complex transactions. Antitrust review of large transactions, such as the \$60 billion merger of Pfizer, Inc. and Pharmacia Corporation reviewed by the FTC this fiscal year, is invariably much more complex and time consuming than is the case for smaller transactions. Large, multifaceted transactions are more likely to raise antitrust issues, and those issues may involve a number of separate product and geographic markets, each requiring separate analysis. For example, from FY 1999 to FY 2003, the FTC’s review of 17 grocery retailing and petroleum industry mergers required examination of the mergers’ competitive effects in 305 separate markets, an average of nearly 18 markets per transaction. The agency opened more merger investigations in FY 2003 than in FY 2001 or FY 2002, perhaps foreshadowing an upswing in merger activity in the coming fiscal years.

In the nonmerger area, agency staff review complaints received from consumers, businesses, congressional offices, and elsewhere to identify potentially anticompetitive nonmerger business practices. In addition to responding to complaints from the public, the FTC pursues a “positive agenda” of planned initiatives; that is, it takes a systematic and proactive approach to identifying specific conduct that is likely to pose the greatest threat to consumer welfare. Fundamentally, the focus is on the types of practices, such as agreements among competitors, that are most likely to harm consumers. Other relevant considerations include:

- Whether the relevant sector of the economy is one, such as health care or energy, that has a significant impact on consumers' daily lives;
- The deterrent effects of antitrust enforcement on businesses;
- Whether the FTC has enforcement experience in an area that will enable the agency to make an impact quickly and more efficiently; and
- Whether the matter presents an opportunity to contribute positively to the development of antitrust law.

Thus, in FY 2003, for example, the FTC brought several important nonmerger cases resulting from the work of two task forces focusing on substantive areas of law (the *Noerr-Pennington* and State Action doctrines). In addition, the agency has increased its focus on the health care sector of the economy, which is of crucial importance to consumers. In addition to continuation of a lengthy series of hearings on antitrust in the health care sector, the agency obtained ten consent agreements and issued three administrative complaints in the health care area during FY 2003.

### Performance Measures and Results

The FTC used two performance measures to gauge how well it identified anticompetitive mergers and practices in FY 2003.

The first measure was the percentage of HSR second request investigations concluded during the fiscal year that ultimately resulted in enforcement action (i.e., consent agreements, administrative complaints, Commission authorizations to seek a preliminary injunction, and merger transactions abandoned after the FTC initiated an antitrust investigation). The goal for this measure was for at least 60 percent, but no more than 80 percent of second request investigations, to result in an enforcement action. The universe for this measure consists of investigations completed during the fiscal year, regardless of when the second request was issued, because second request investigations often extend beyond fiscal year boundaries. Matters ultimately resulting in enforcement action typically entail more investigation than those that do not, so limiting the universe to those transactions in which a second request was issued and the matter was concluded within the same fiscal year could skew the results by disproportionately excluding enforcement outcomes.

**Performance Measure 2.1.1**  
Percent of HSR requests resulting in enforcement action.

FY 2001 Actual: 68%  
FY 2002 Actual: 68%  
**FY 2003 Target: 60-80%**  
**FY 2003 Actual: 70%**

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

FY 2001 Actual: 56  
FY 2002 Actual: 59  
**FY 2003 Target: 45-70**  
**FY 2003 Actual: 50**

Meeting the minimum percentage set by the goal (60 percent) signifies that the agency

effectively identified likely candidates for enforcement action during the initial HSR waiting period. The upper bound of the target range on this measure is also important, though the rationale may be less clear. Because the need for enforcement is apparent from the beginning in many transactions, the agency could raise its percentage under this measure by setting overly rigorous standards – perhaps approaching certainty of a violation – for the issuance of second requests. However, such an approach would likely screen out some matters for which a fuller investigation would demonstrate the need for enforcement. Thus, a result approaching 90 or 100 percent on this measure would suggest that the agency potentially had failed to pursue some illegal mergers.

In FY 2003, the FTC took enforcement action in 70 percent (14 of 20) of the second request merger investigations concluded during the fiscal year, a slight increase over the 68 percent reported for both FY 2001 and FY 2002, and precisely at the midpoint of the desired range for this measure.

The FTC measured success in identifying possibly illegal conduct by counting the number of nonmerger investigations opened. While the mere opening of a formal investigation does not signal the presence of anticompetitive conduct, evidence and a viable legal/economic theory of consumer harm are prerequisites for opening investigations. The FTC's staff screen hundreds of allegations of illegal conduct each fiscal year, but few present sufficient grounds for formal investigation. Therefore, the number of investigations opened reflects the FTC's success in identifying conduct that may be anticompetitive, along with the level of resources available to devote to this area.

FY 2003 was successful in terms of identifying anticompetitive conduct in the marketplace. Based on historical data, the FTC established a goal of opening 45 to 70 nonmerger investigations over the course of each fiscal year. The agency met this goal in FY 2003, opening 50 nonmerger investigations. These investigations, following 59 nonmerger investigations opened in FY 2002, reflect the greater proportion of resources devoted to litigating significant nonmerger matters identified and developed during the past two fiscal years.

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

The issuance of a second request is a significant step in a merger investigation. Because the law permits only one second request, the FTC typically issues a very comprehensive request that calls for all relevant information on all possible issues in the investigation. Given the size of the parties involved and the necessarily broad scope of the inquiry, a response may consist of hundreds (or even thousands) of boxes of documents. Gathering and examining this material involves a major resource commitment by the parties and by FTC attorneys and economists. Moreover, the law prevents the parties from proceeding with the merger while this process is taking place. Consequently, a second request can sometimes result in significant delays in closing a transaction.

For all of these reasons, the FTC does not lightly issue a second request. In fact, it does

as much as possible within the initial waiting period to determine which transactions pose no competitive threat, so that the truly benign mergers may proceed without the delay and expense of a second request. In FY 2003, for example, the FTC issued second requests in less than 2 percent of the mergers reported under HSR. At the same time, it is far easier to remedy an anticompetitive merger *before* it is consummated, so the agency makes every effort to identify and give careful scrutiny to potentially harmful mergers during the HSR waiting period.

The first measure, the percentage of HSR second request investigations concluded during the fiscal year that ultimately resulted in enforcement action, reflects the balance between these two considerations. If the staff uses the initial HSR waiting period effectively, the agency should be able to “clear” the great majority of reported transactions, permitting them to go forward without further delay or burden. The FTC should also be able to isolate for more intensive investigation those transactions that could be harmful. While the initial screening process should permit as many benign transactions as possible to pass through, the focus should not be so narrow that only those transactions in which an antitrust problem is relatively obvious are subject to further investigation, while other transactions that may be similarly harmful, but in more subtle ways, can proceed unchallenged.

The result for FY 2003 (70 percent) indicates that the FTC issued second requests only when a violation was more likely than not. In fact, in each of the past three fiscal years, it was more than twice as likely as not that a second request would result in enforcement action. While the imposition of some burden on parties to benign transactions is inescapable, the agency has kept it to a minimal level. In FY 2003, parties to only six transactions (about 0.6 percent of all reported transactions) had to undergo the time and expense of a second request production that ultimately demonstrated no violation.

The number of merger enforcement actions in FY 2003 is consistent with the numbers from earlier fiscal years, so there is no cause to question whether the presence of this measure affected agency decision-making. In FY 2003, the FTC took 21 merger enforcement actions, similar to the results for FY 2001 and FY 2002 (23 and 24 enforcement actions, respectively).

The number of new nonmerger investigations in FY 2003 reflects a continued shift in the makeup of the agency’s caseload rather than a change in performance and the number of investigations, and is consistent with the renewed emphasis on nonmerger enforcement since 2001. During FY 2001 and FY 2002, following the decade-long merger wave of the 1990s, the FTC was able to devote increased attention to the nonmerger portion of its Maintaining Competition Mission. In particular, the FTC emphasized new case generation, since the demands imposed by merger activity in previous fiscal years had left few staff resources available to pursue nonmerger matters.

As a result of the renewed emphasis, the FTC opened 56 and 59 new nonmerger investigations, respectively, in FY 2001 and FY 2002. The agency’s success in generating nonmerger investigations during the previous two fiscal years allowed it to focus instead



on bringing many of those matters to completion in FY 2003, as discussed more fully below. Thus, the significant nonmerger enforcement accomplishments over the course of FY 2003 reflect the emphasis on nonmerger case generation during FY 2001 and FY 2002.

This performance measure provides useful, but limited, information about the agency's performance in identifying anticompetitive conduct. To assess its performance more comprehensively, the FTC will use a new performance measure, beginning in FY 2004, in lieu of the number of new nonmerger investigations. The new measure involves a ratio similar to that used to measure success in identifying anticompetitive mergers; that is, the FTC will compute the percentage of significant nonmerger investigations (those in which the Commission has authorized the use of its compulsory process authority) that ultimately result in enforcement action. Based on an assessment of past experience and the agency's best judgment, the initial goal will be a result of at least 60 percent but not more than 80 percent. As with mergers, a percentage below 60 percent may suggest that the FTC is targeting enforcement resources ineffectively by investigating too many competitively benign practices (and unduly burdening businesses as a result). A percentage higher than 80 percent may suggest that the agency is focusing too narrowly and thus potentially allowing problematic business practices to go forward without sufficient review.

## **Objective 2.2: Stop Anticompetitive Mergers and Practices Through Law Enforcement**

Law enforcement represents the most direct method by which the FTC pursues its goal of stopping mergers and business practices that significantly threaten competition and harm consumers. In both merger and nonmerger enforcement, the FTC focuses primarily on transactions or practices most likely to harm consumers, that is, mergers of firms competing in the same market or markets, and agreements among direct competitors. Other activities, such as unilateral action by a single firm, or a merger or agreement involving a supplier and customers or between a firm and a potential competitor, also may threaten competition and are therefore subject to FTC scrutiny.

The FTC directs much of its attention and resources to segments of the economy that are particularly important to consumers and in which it has particular expertise. These include energy and natural resources, food, health care, consumer goods and services, pharmaceuticals, and technology.

### **Strategies**

To stop potentially anticompetitive mergers and practices through law enforcement, the FTC seeks legal remedies under the antitrust laws, through federal court action, administrative proceedings, or negotiated settlements. For mergers, the preferred – that is, the most effective and cost-efficient – strategy is to prevent anticompetitive mergers before they occur. The agency implements this strategy primarily through its authority to seek a federal court injunction preventing the transaction. In many cases, the merger parties elect not to defend a court challenge, and instead agree to resolve competitive

concerns through a consent agreement. This approach is suitable when the competitive problem relates to only a portion of the transaction, so a divestiture of assets sufficient to preserve or restore competition will allow other, competitively neutral or beneficial aspects of the merger to go forward.

In other instances, the parties may abandon a transaction after assessing the likely outcome of an FTC court challenge. When a merger already has been consummated, the FTC generally relies on its internal administrative remedial powers to restore competition lost as a result of the merger. Administrative litigation seeking to restore competition following an alleged illegal merger likely will be more frequent in light of the revisions to HSR premerger filing thresholds.

In nonmerger matters, the FTC seeks to stop ongoing activity that harms competition. The Commission may initiate administrative proceedings before an Administrative Law Judge to adjudicate the issues and establish a basis for an order that the respondents (the parties to the proceeding) “cease and desist” the conduct. The FTC also has authority to seek relief in federal courts, though it uses this option sparingly in nonmerger matters. Again, the agency is often able to negotiate a consent agreement with the parties that remedies the problem without need for litigation.

In both merger and nonmerger matters, thorough investigation, as well as sophisticated legal and economic analysis, is of critical importance to ensuring accurate assessment of the potential for competitive harm resulting from the transaction or conduct in question and, if necessary, to demonstrating the likelihood of harm before an adjudicative body. When the FTC concludes that the likelihood of such harm indicates a law violation, and no settlement is possible, the Commission authorizes its staff to litigate the matter. The agency’s staff prepare thoroughly for litigation, whether before an Administrative Law Judge or in federal court. The high percentage of settlements in FTC antitrust cases (or, in the case of mergers, the parties’ abandonment of the anticompetitive transaction) results, in large measure, from the FTC’s readiness to obtain the needed relief through litigation, if necessary.

The FTC has placed increasing emphasis on crafting remedies that will successfully eliminate the anticompetitive effects of the activity in question and do so in a timely fashion. As part of this strategy, the agency studies and evaluates the remedies used in past antitrust cases, particularly divestiture orders used to resolve merger cases. This ongoing process focuses on what makes divestiture orders most effective in preserving or restoring competition, and on how to expedite the completion of curative divestitures.

The FTC also studies current or emerging topics involving possible antitrust enforcement to develop policy positions. For example, in early FY 2003, the FTC’s Bureau of Economics invited prominent experts to participate in a roundtable discussion entitled “Understanding Mergers: Strategy and Planning, Implementation and Outcomes.” The roundtable helped the agency’s staff to gain a better understanding of the mergers and acquisitions process from a corporate strategic perspective, as well as the factors that

determine whether mergers succeed or fail. In addition, the FTC is conducting retrospective studies on cases involving hospitals, the oil industry, and branded consumer products. The learning derived from this and other research and development initiatives, besides facilitating selection of better cases with higher positive impact, provides important economic support that helps the agency succeed in the enforcement matters it pursues.

## Performance Measures and Results

The FTC has used three measures to document success in stopping potentially anticompetitive mergers and practices through law enforcement. These measures include: (1) the percentage of positive outcomes when the FTC challenges anticompetitive mergers and practices; (2) the estimated savings to consumers resulting from FTC merger enforcement efforts; and (3) the estimated savings to consumers resulting from FTC nonmerger enforcement efforts.

Economic theory and evidence demonstrate that competition results in lower prices, better quality, and more innovation in markets. Because successful enforcement of the antitrust laws protects competition and therefore promotes these consumer benefits, it is important that the FTC usually succeed when it challenges anticompetitive mergers and practices.

Even if the agency successfully identifies an anticompetitive merger or practice, consumers derive no benefit unless it obtains a positive outcome – that is, appropriate relief, either through settlement or by persuading an adjudicator to order such relief.

Thus, the frequency with which the agency obtains positive outcomes is an important indicator of its success in producing tangible benefits for consumers. The FTC's goal is to obtain a positive result in at least 80 percent of the matters in which it determines that a merger or a course of conduct is anticompetitive. Positive results include the parties' abandonment of an anticompetitive transaction after antitrust concerns are identified, an administrative consent agreement to resolve antitrust concerns, or a successful challenge in court. A negative result occurs when parties refuse to settle antitrust concerns raised by the agency and court action fails to achieve the agency's objectives.

This is not to say that the FTC, or any law enforcement agency, should win every case. Some cases involve very close questions, on which reasonable minds can and do differ. Other cases may be very difficult from a litigation standpoint, but still worth pursuing, and all of the FTC's antitrust challenges are defended by highly competent and well-financed counsel.

In addition, the FTC's responsibilities include taking action to help shape the development of the antitrust laws. Fulfillment of this duty requires occasionally litigating cases involving more than the usual degree of risk, such as where there is no clear precedent and the FTC is seeking to establish a new legal principle. In other instances, the FTC brings cases seeking to benefit consumers by clarifying, or perhaps improving upon, existing precedent. For example, the FTC now has several cases pending in administrative litigation that may provide an opportunity for clarification of the scope of the *Noerr-Pennington* and State

Action doctrines, two exemptions to the antitrust laws that have increasing impact following court decisions that seemingly have broadened their reach. The FTC's mission includes bringing cases that highlight difficult issues such as these and seeking to persuade the courts of the merit of its views on what the law should be. Bringing cases that test the boundaries of the law is an important part of the FTC's responsibilities, even though the results are far from certain. Thus, the goal on this measure reflects the reality that, even when the agency brings a meritorious case and litigates it well, success is not assured.

Moreover, setting the standard too high could be detrimental if the effect were to deter the agency from bringing important, but risky, cases.

<b>Performance Measure 2.2.1</b> Positive outcome of cases brought by FTC due to alleged violations.
FY 2001 Actual: 94%
FY 2002 Actual: 100%
<b>FY 2003 Target: 80%</b>
<b>FY 2003 Actual: 100%</b>
<b>NEW</b>
<b>Performance Measure 2.2.2</b> Dollar savings for consumers resulting from FTC actions.
<b>FY 2003 Target: \$800 million</b>
<b>FY 2003 Actual: \$292 million</b>
<b>NEW</b>
<b>Performance Measure 2.2.3</b> Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.
<b>FY 2003 Target: \$200 million</b>
<b>FY 2003 Actual: \$211 million</b>

The agency exceeded its goal for this measure in FY 2003, achieving relief through litigation, reaching a successful settlement agreement, or persuading parties not to proceed with an anticompetitive acquisition in all 37 enforcement matters brought to conclusion during the fiscal year.

Antitrust enforcement saves consumers money by preventing price increases that likely would have occurred due to the loss of competition if an anticompetitive merger had gone forward unchallenged, or by stopping anticompetitive conduct that raises prices. In past years, the FTC estimated the dollar savings to consumers resulting from its enforcement actions by applying an arbitrary percentage to the volume of commerce in the affected markets (1 percent of the market, for two years in merger cases and for one year in nonmerger cases) as a very rough proxy for the actual consumer benefit. As some

stakeholders have noted, however, this methodology is flawed in certain respects. Accordingly, the agency will replace the two "consumer savings" measures beginning in FY 2004, as discussed below.

As noted in the FTC's FY 2000-2005 Strategic Plan, external factors, such as level of merger activity, may cause the results on the consumer savings measures to fluctuate significantly from fiscal year to fiscal year. In consideration, the goals for these measures were expressed in terms of aggregate targets for the five-year strategic plan period, rather than as yearly targets. Because these measures are being replaced before the end of the original five-year period, the agency has adjusted the targets on a pro rata basis, based on three instead of five fiscal years. For merger enforcement, the adjusted target is \$2.4 billion in consumer savings over three fiscal years (based on the original target of \$4 billion over five fiscal years). The combined estimated consumer savings from FTC merger enforcement from FY 2001 through FY 2003 is over \$3.5 billion, which exceeds the target by 46 percent.

Nonmerger enforcement also benefits consumers by stopping anticompetitive activity that

raises prices or restricts nonprice competition. As with mergers, the FTC set a goal based on an aggregate target for the FY 2000-2005 period under the previous Strategic Plan. The adjusted target for this measure is \$600 million over three fiscal years (based on the original target of \$1 billion over five years). The combined estimated consumer savings from FTC nonmerger enforcement from FY 2001 through FY 2003 is \$454 million, somewhat lower than the adjusted target. Based on the upward trend on this measure, and the number of nonmerger investigations and cases currently pending, the FTC expects that it would exceed the original five-year performance target on this measure if it remained in use.

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

In FY 2003, the FTC achieved a positive outcome in 100 percent of the challenges initiated by the agency (e.g., court orders in litigated cases and negotiated settlements), exceeding by a significant margin its goal of an 80 percent success rate. This level of success was due, in part, to the high percentage of cases that were resolved through consent agreements, as well as a number of merger transactions abandoned by the parties who chose not to contest an FTC challenge. This does not diminish the accomplishment, however, because the FTC is more likely to obtain settlements when the parties anticipate that they are not likely to prevail in court. The FTC realistically does not expect to succeed in every litigated case every fiscal year, however. A law enforcement agency that prevails in every litigated matter may do so because it pursues only the cases that are easiest to win. Particularly given the FTC's responsibility to aid in antitrust policy development, it will sometimes undertake difficult cases with no clear precedent. Several matters involving difficult issues currently are pending in administrative litigation, and the outcome is uncertain in each instance. The FTC will continue to bring law enforcement actions where it has reason to believe that the merger or practice in question is unlawful and harms consumers, even where litigation risks may exist. Thus, in fiscal years in which litigated cases make up a larger proportion of the total number of resolved cases, the FTC's success rate may be closer to the target of 80 percent.

The pattern of consumer savings in FTC merger and nonmerger cases reinforces the point made in the FY 2000-2005 Strategic Plan about significant fluctuations in results based on external factors. Notably, about 70 percent of the estimated merger consumer savings over three fiscal years is attributable to only one fiscal year, FY 2001. That fiscal year came at the end of a period of unprecedented merger activity. One consequence, in addition to the very high estimated consumer savings resulting from FTC merger enforcement, was a very modest level of nonmerger enforcement resulting from the necessary shift in resources from nonmerger to merger work. Thus, the estimated consumer savings for nonmerger cases was \$157 million in FY 2001 and \$86 million in FY 2002 (because very few nonmerger investigations had been initiated in prior fiscal years, when merger review dominated the agency's antitrust workload). In FY 2003, by contrast, following two fiscal years in which the agency's investment in developing nonmerger matters rose sharply, the estimated nonmerger consumer savings was \$211 million.

What these results indicate, besides the fluctuation in results between fiscal years even with comparable levels of effort and success, is the tradeoff between merger and nonmerger enforcement. For this reason, it perhaps is more useful to look at the combined results of merger and nonmerger enforcement as a gauge of the agency's overall antitrust activity. During the period FY 2001 through FY 2003, the total consumer savings attributable to FTC merger and nonmerger enforcement was \$3.95 billion, nearly 32 percent higher than the adjusted combined target of \$3 billion.

As noted above, the FTC concluded, after careful study, that the disadvantages of the consumer savings measures outweigh their advantages. Among the difficulties was the implied precision in the estimates, suggesting a greater degree of accuracy in measuring consumer benefit than realistically is possible. A related difficulty involves the assumptions implicit in these measures. For example, the measures reflect an implicit assumption that every agency enforcement decision is correct, for purposes of the consumer savings measures. This assumption is problematic, however, because merger enforcement involves making predictions about the future performance of markets under complex alternative scenarios. While the FTC's predictions are informed by broad knowledge about economic theory, as well as intensive investigation into the transactions and relevant market(s) in question, the process nevertheless requires the agency to make predictions and, thus, is subject to error. In short, the consumer savings estimate always has been a prediction of the effects that the agency hoped its actions would have, rather than an evaluation of the actual effects of those actions.

Beginning in FY 2004, the FTC will replace the consumer savings measures with new indicators that also seek to reflect the scope of antitrust enforcement activities, but without attempting to quantify the specific benefit to consumers. For both merger and nonmerger enforcement, the FTC will measure the volume of commerce in markets in which it takes enforcement action. Because external factors may cause the results to fluctuate significantly from fiscal year to fiscal year, the targets are expressed in terms of an aggregate target for the five-year strategic plan period, rather than as yearly figures. These measures should provide a very similar indicator of the scope of FTC antitrust enforcement activity, but will not include the troublesome aspects of the previous consumer savings measures.

### **Objective 2.3: Prevent Consumer Injury Through Education**

In addition to its law enforcement activity, the FTC provides substantial information to the business community and consumers about the role of antitrust laws, and businesses' obligations under those laws.

### **Strategies**

The FTC uses education and outreach to help prevent consumer injury, increase business compliance, and augment its law enforcement efforts. The agency pursues this strategy through guidance to the business community; outreach efforts to federal, state, and local

agencies, business groups, and consumers; development and publication of antitrust guidelines, policy statements, and reports; and speeches and testimony. By using these mechanisms to signal its enforcement policies and priorities, the FTC deters would-be violators of the antitrust laws.

FTC law enforcement efforts also are made more effective by public awareness of what types of conduct are likely to be challenged as law violations. Through press releases about FTC actions and publication of related materials on the agency Web site, the public facts underlying FTC actions provide bases for companies to evaluate the likelihood that other transactions likely would face challenge.

In addition, the FTC educates the public through guidelines; congressional testimony (such as testimony on gasoline pricing and competition in the pharmaceutical industry); conferences, hearings, and workshops (such as the series of hearings on the interrelationship between antitrust and intellectual property law, a second conference on factors contributing to the price of refined petroleum products, and hearings on health care and competition law and policy); advisory opinions (addressing issues such as the scope of the Nonprofit Institutions Act); and reports (such as the FTC staff's study on sale of wine via the Internet).

As a complement to FTC enforcement activity, the agency also advises other federal and state government officials about the possible effect that various regulatory proposals may have on competition. By providing economic analysis and other informed guidance, the FTC can help policymakers better understand the impact of their decisions in creating, maintaining, or forestalling competitive markets. The FTC has a long and distinguished history in this area. Currently, the FTC advocates market-based solutions through the publication of studies and reports, as well as participation in state and federal legislative and regulatory forums. The agency also participates as an *amicus curiae* (friend-of-the-court) in judicial proceedings when the FTC's involvement can help remove protectionist regulations, when substantial questions of antitrust law are involved, or when the FTC can add a different perspective to the deliberations because of special knowledge or experience.

Finally, the FTC seeks to make its law enforcement presence visible and its enforcement policies transparent in order to serve its objectives through deterrence. Each successful enforcement action not only promotes competition in specific market(s), but also serves to communicate to the business and legal communities that the FTC can and will move successfully to challenge the type of merger transaction or conduct at issue. The agency explains the relevant facts and issues of cases in which it obtains a consent agreement in press releases and in published "Analyses To Aid Public Comment" so the nature of the problem is clear. In addition, the FTC has sought to provide greater transparency concerning its decision-making by issuing statements explaining why it declined to take action in merger investigations of significant public interest. More generally, the Bureau of Competition and Economics each have released materials describing investigational procedures and methods of analysis.



Opinions issued by the Commission in adjudicative matters not only serve as legal precedent, but also help to explain in depth the FTC's policies and their underlying rationale. For example, in an adjudicative decision issued during FY 2003, the Commission described the analytical framework it will employ for defining the bounds of acceptable collaboration between direct rivals – including joint ventures and price fixing agreements.<sup>2</sup> The Commission's opinion "synthesized" the applicable case law and sought to eliminate confusion resulting from differing interpretations of common antitrust labels by establishing a sliding scale approach.

As of the end of 2003, ten antitrust matters were in administrative proceedings, far more than at any time in the past two decades. Each will provide an opportunity for the FTC to set out in detail its analysis of important legal issues. Understanding fully what kinds of transactions or conduct the FTC is likely to challenge, and why, greatly facilitates antitrust lawyers' counseling of their clients, and prevents many anticompetitive mergers from being proposed or anticompetitive practices from being implemented.

## Performance Measures and Results

In FY 2003, the FTC advised the public on its enforcement decisions by:

- Issuing press releases and related documents describing enforcement actions and other significant non-enforcement activities;
- Issuing public explanations of its reasons not to take enforcement action in appropriate instances to increase transparency in decision-making;
- Studying and reporting, consistent with its historic role, on significant policy issues and competitive conditions in particular markets;
- Responding to requests from other government entities for advice on the implications for competition and consumers of proposed regulatory actions;
- Appearing before business, bar, and consumer groups, as well as before congressional committees, to address competition-related subjects; and
- Maintaining effective coordination and liaison with foreign competition authorities.

The FTC uses two performance measures to assess its public education efforts: (1) the number of initiatives, including speeches, testimony, reports, policy statements, etc., taken to educate the public during the fiscal year; and (2) the number of times that members of the public visit antitrust-related content on the FTC's Web site. Since the FTC publishes virtually all significant public documents on its Web site, the number of "hits" on antitrust content is a good indicator of the quantity of information provided to the public, as well as

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<sup>1</sup> Polygram Holding, Inc., et al., Docket 9298 (July 28, 2003).

its quality (because visitors will stay longer and return more often if the information is helpful).

In FY 2003, agency representatives undertook 306 antitrust outreach efforts, including speeches, testimony, written comments on regulatory proposals, policy statements, etc., an increase of 7 percent over FY 2002. Notably, FTC representatives presented congressional testimony or major speeches on topics such as competition in the pharmaceutical industry, legal restrictions on the development of e-commerce, new economic arguments and evidence in antitrust investigations, and health care and competition law and policy in the 21<sup>st</sup> century. The agency also issued a lengthy report analyzing and making recommendations on the State Action doctrine and a study on the impact of state laws restricting Internet sales of wine. Competition advocacy filings submitted by the agency in FY 2003 addressed competition in markets for legal services, gasoline, electricity, and natural gas, and the agency also released a number of advisory opinions providing guidance on the legality of proposed actions by health care providers.

The FTC makes all of its reports, speeches, competition advocacy filings, advisory opinions, and other similar materials readily available to the public via its Web site. The agency also regularly publishes press releases announcing its antitrust law enforcement actions, with links to significant underlying documents providing ample detail. This collection of material serves as an invaluable resource for businesses, antitrust lawyers, academic scholars, and consumers seeking to learn more about the FTC's maintaining competition efforts. The Web site recorded over 10 million hits on antitrust-related content in FY 2003, more than double the number reported in FY 2002, and nearly 40,000 hits each business day. Although some of the increase may result from increased overall use of the Internet as an information resource, this level of information dissemination reflects significant public interest in the FTC and its Maintaining Competition Mission. Moreover, the broad distribution of FTC educational and policy materials represents a significant leveraging of the resources devoted to the FTC's antitrust enforcement work.

<p><b>NEW</b> <b>Performance Measure 2.3.1</b> Quantify number of education and outreach efforts.</p> <p><b>FY 2003 Target: TBD</b> <b>FY 2003 Actual: 306 million</b></p> <p><b>NEW</b> <b>Performance Measure 2.3.2</b> Quantify number of antitrust information of FTC Web.</p> <p><b>FY 2003 Target: TBD</b> <b>FY 2003 Actual: over 10 million</b></p>
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### Performance Assessment and Future Trends

As described above, the FTC's public education efforts take many different forms, and thus are not fully revealed by the summary statistics. The FTC is strongly committed to the importance of education and outreach and will continue to place emphasis on and expand its activities in this area in future fiscal years.

The FTC fills two educational roles in the Maintaining Competition Mission. First, education serves to leverage the FTC's enforcement resources by explaining the scope

of the antitrust laws, demonstrating that the FTC is active in bringing enforcement actions against certain types of mergers and practices, and signaling future enforcement intentions – all of which serve to deter harmful marketplace activity. Just as citizens benefit from the effect of the local “cop on the beat” in deterring crime, consumers ultimately benefit when the FTC makes its presence visible. As noted by the American Bar Association Section of Antitrust Law, “private compliance efforts are a critical prophylactic against anti-competitive behavior, and the effectiveness of private compliance efforts is directly affected by the nature and clarity of the communication of enforcement priorities.”<sup>3</sup>

Second, the FTC has a unique set of tools and capabilities for analyzing important policy issues and conveying information about competition policy to a larger community, including, on occasion, issues over which the FTC has no direct authority. As one example of the value of FTC analysis and information dissemination efforts, the Food and Drug Administration relied significantly on an FTC report entitled “Generic Drug Entry Prior to Patent Expiration” to support new rules, issued in June 2003, designed to foster competition in the pharmaceutical industry.

Although the number of public outreach efforts in written or oral form does not directly relate to outcomes in the marketplace, evidence nevertheless indicates that success in communicating enforcement priorities has a strong impact on the level of anticompetitive activity taking place. The agency has determined after careful examination, however, that the current performance measure does not effectively measure its performance in this area. The various items counted are not of equal weight. For example, a successful amicus brief persuading a court to adopt a pro-consumer position likely will have far more impact than a speech simply recounting past actions before a small group, yet no effective way of distinguishing among different efforts has been identified. Second, measurements of activities, such as the number of speeches given, may indicate the level of effort put toward an objective, but not the agency’s effectiveness in accomplishing it.

With the importance of the Internet as a vital source of information in today’s society, the number of “hits” on antitrust education and outreach material on the FTC’s Web site is a more meaningful indicator of FTC success in educating those who influence policy, as well as the general public, and in stimulating public interest in the agency’s work. Use of the Internet to disseminate information about antitrust and other competition-related matters plays an integral role in the FTC’s education and deterrence efforts, permitting the agency to convey a wealth of information quickly, simply, and inexpensively to the business, legal, and regulatory communities, and to consumers. This measure more directly reflects the FTC’s effectiveness because it measures outcomes based on the agency’s constituencies’ assessment of the utility of the agency’s published materials. That is, the level of activity on the FTC Web site depends to a large degree on the scope, utility, and reliability of the information made available there. People will revisit the site to the extent that what they find there is of value. Matters that are of great importance to the public – as determined by

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<sup>2</sup> American Bar Association Section of Antitrust Law, *The State of Federal Antitrust Enforcement - 2001*, 11 (Jan. 2001).

the public – will draw a large number of visitors. But if the material presented is irrelevant, difficult to understand, or misleading, then interest in the site inevitably will diminish.

Because the FTC's prevention objective has two different components – (1) educating the legal and business communities about applicable legal standards and enforcement policies to facilitate compliance with the law; and (2) educating the public in general, as well as policymakers, about the benefits of competition – the FTC will use two new measures, beginning in FY 2004. The new measures will be based on the level of traffic on pages on the FTC's Web site relevant to each of the two components.

**Fiscal Year 2003 Performance Measures**  
as of September 30, 2003

**Consumer Protection Mission**

<b>Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.</b>			
	<b>FY 2003 Target</b>	<b>FY 2003 Actual</b>	<b>Percent Accomplished</b>
Objective 1.1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury.			
Measure 1.1.1: Annual number of consumer complaints and inquiries entered into database.	450,000	944,000	210%
Measure 1.1.2: Annual number of consumer complaints and inquiries related to identity theft entered into database.	155,000	321,000	207%
Objective 1.2 -- Stop fraud, deception and unfair practices through law enforcement:			
Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud and deception.	\$400 million	\$606.3 million	152%
Measure 1.2.2: Number of data searches conducted by FTC and law enforcement personnel of the FTC's <i>Consumer Sentinel</i> database.	20,000	27,685	138%
Measure 1.2.3: Number of data searches by law enforcement personnel of the FTC's identity theft database.	1,400	2,167	155%
Objective 1.3 -- Prevent consumer injury through education:			
Measure 1.3.1: Total number of education publications distributed to or accessed electronically by consumers.	14 million	28 million	200%
Measure 1.3.2: Number of education publications related to identity theft distributed to or accessed electronically by consumers.	2.5 million	3.0 million	120%
Measure 1.3.3: Number of Spanish-language education publications distributed to or accessed electronically by consumers.	establish baseline	458,000	n/a

## Maintaining Competition Mission

<b>Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace</b>			
	<b>FY 2003 Target</b>	<b>FY 2003 Actual</b>	<b>Percent Accomplished</b>
Objective 2.1 -- Identify anticompetitive mergers and practices that cause the greatest consumer injury.			
Measure 2.1.1: Percent of HSR second requests resulting in enforcement action.	60-80%	70%	n/a
Measure 2.1.2: Number of nonmerger investigations opened per fiscal year.	45-70	50	n/a
Objective 2.2 -- Stop anticompetitive mergers and practices through law enforcement :			
Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.	80%	100%	n/a
Measure 2.2.2: Dollar savings for consumers resulting from FTC actions.	\$800 million	\$292 million	37%
Measure 2.2.3: Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.	\$200 million	\$211 million	101%
Objective 2.3 -- Prevent consumer injury through education			
Measure 2.3.1: Quantify number of education and outreach efforts.	establish baseline	306	n/a
Measure 2.3.2: Quantify number of hits on antitrust information of FTC Web.	establish baseline	over 10 million	n/a

**PART III:**

**FINANCIAL STATEMENTS AND  
AUDITOR'S REPORT**



## **PART III: FINANCIAL STATEMENTS AND AUDITORS REPORT**

### **Message from the Chief Financial Officer**

The Federal Trade Commission recognizes the importance of public disclosure and accountability. This report is a demonstration of our commitment to fulfill the Commission's fiduciary responsibilities to American taxpayers.

I am pleased to present the Federal Trade Commission's financial statements for FY 2003. For the seventh consecutive year, our inspector general, aided by an independent public accounting firm, issued an unqualified opinion on the Commission's consolidated financial statements. This is the highest possible audit result.

These financial statements fairly present the Commission's financial position and were prepared in accordance with the hierarchy of accounting principles approved by the Federal Accounting Standards Advisory Board and the Office of Management and Budget Bulletin 01-09, "Form and Content of Agency Financial Statements." The FTC is fully committed to the principles of the Chief Financial Officers Act of 1990 and the Federal Financial Management Improvement Act of 1996.

Our goals for the current fiscal year include continuing the same high level of quality financial services that resulted in our unqualified opinion and improving those services. We will focus on preparing quarterly financial statements, developing a five-year financial plan, and evaluating our requirements for a new integrated financial management system. Through these efforts, we will strive to continue to produce timely, reliable, and useful data.

Henry Hoffman  
Chief Financial Officer

Statement of Assurance:  
Federal Managers Financial Integrity Act



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

December 17, 2003

The President  
The White House  
Washington D.C. 20500

Dear Mr. President:

I am pleased to report for the period ending September 30, 2003, that the Federal Trade Commission's (FTC) management control and financial systems provided reasonable assurance that the objectives of the Federal Managers Financial Integrity Act (FMFLA) are being achieved. The FTC has no FMFLA material weaknesses or deficiencies to report.

This annual report is based on a variety of information provided from various sources. These include FTC managers, Office of Inspector General (OIG) reports, Chief Information Officer (CIO) reports, consistent unqualified audit opinions on the FTC's financial statements, and related U. S. Department of the Interior's Federal Financial System (FFS) audits. The U.S. Department of the Interior hosts the FTC's financial accounting, payroll, and personnel systems. Further, FTC program officials have attested that their management controls comply with the accountability and control guidance found in Office of Management and Budget (OMB) Circular A-123, and related guidance found in the General Accounting Office's (GAO) November 1999 release of "Standards for Internal Control in the Federal Government".

Internal Control Reviews under Section 2 of the FMFLA -

The audit results, management reviews, and statements provided by agency officials and external financial service providers furnish reasonable assurance under Section 2 of the FMFLA that the FTC's internal accounting and administrative controls generally conform to the principles and standards developed by the Comptroller General of the United States (CG), OMB, JFMIP, and the Department of the Treasury.

The agency's OIG conducted a review of the FTC's computer security program required under the Federal Information Security Management Act of 2002 (FISMA). In this review, the OIG identified two areas related to computer security that he characterized as significant deficiencies. The identified deficiencies were that the "FTC's Systems were not Certified and Accredited" and its "Plan of Action and Milestones (POAM) tracking did not meet OMB requirements." Both weaknesses have been resolved and are in the process of being corrected. Neither our IG nor CIO believes that either of these deficiencies meet the criteria of a material weakness under FMFLA.

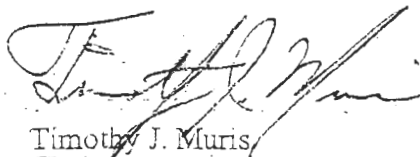
The President  
December 17, 2003  
Page 2

Accounting System Review under Section 4 of the FMFIA -

The audit results, management reviews, and statements provided by agency officials and external financial service providers, provide reasonable assurance under section 4 of the FMFIA that the FTC's financial systems generally conform to the principles and standards developed by the Comptroller General of the United States (CG), OMB, JFMIP, and the Department of the Treasury. Pursuant to Section 4 of the FMFIA, OIG audits have included selected Commission accounting and financial systems in use over the past fiscal year. Separately, each FTC financial management systems' manager and service provider has attested to the systems under his or her control.

In conclusion, the FTC is managing its programs, policies, organizations structure, and administrative procedures effectively with the goal of better serving its customers at less cost. The FTC internal control review program, OIG audits, and other independent reviews, play a significant role in ensuring effective and responsive agency operations. Our strategic and performance planning efforts further enable us to identify steps to obtain efficiencies.

Sincerely,



Timothy J. Muris  
Chairman

Enclosures

## Federal Trade Commission FMFIA Statistics

Section Two: Integrity Act Statistics						
Agency	Adequate and effective Management Controls		Pending as of 09/30/02	Newly Reported in 2003	Corrected in 2003	Pending as of 09/30/03
	Yes	No				
FTC	X		1	None	0	1

Section four: Integrity Act Statistics						
Agency	Compliance of Financial management Systems with Government-wide Requirements		Number of Material Non-Conformances			
	Yes	No	Pending as of 09/30/02	Newly Reported in 2003	Corrected in 2003	Pending as of 09/30/03
FTC	X		None	None	None	None

**Federal Trade Commission  
Statistical Summary of Performance**

**Section 2. Internal Control**

**Material Weakness Statistics**

	<b>Number reported for the first time</b>	<b>For that year, number that have been corrected</b>	<b>For that year, number still pending</b>
<b>Prior Years</b>	<b>None</b>	<b>N/A</b>	<b>N/A</b>
<b>2002 Report</b>	<b>None</b>	<b>N/A</b>	<b>N/A</b>
<b>2003 Report</b>	<b>None</b>	<b>N/A</b>	<b>N/A</b>
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>

Of the total number corrected how many were corrected in 2003: N/A

**Section 4. Financial Management Systems**

**Material Non Conformance Issues statistics**

	<b>Number reported for the first time</b>	<b>For that year, number that have been corrected</b>	<b>For that year, number still pending</b>
<b>Prior Years</b>	<b>None</b>	<b>N/A</b>	<b>N/A</b>
<b>2003 Report</b>	<b>None</b>	<b>N/A</b>	<b>N/A</b>
<b>Total</b>	<b>None</b>	<b>N/A</b>	<b>N/A</b>

Of the total number corrected, how many were corrected in 2003: N/A

# Office of the Inspector General Opinion Letter



FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Chairman Muris:

The Office of Inspector General has audited the Federal Trade Commission's (the Commission) Balance Sheets as of September 30, 2003 and 2002, and the related Statements of Net Cost, Statements of Changes in Net Position, Statements of Budgetary Resources, Statements of Financing, and Statements of Custodial Activity for the years then ended, and has considered internal control over financial reporting and the FTC's compliance with laws and regulations.

### *Opinion on Financial Statements*

In our opinion, the financial statements referred to above, including the notes thereto, present fairly, in all material respects, the Commission's assets, liabilities and net position as of September 30, 2003 and 2002, and the net costs and changes in net position, its budgetary resources, financing and custodial activities for the years then ended, in conformity with accounting principles generally accepted in the United States.

### *Other Accompanying Information*

Our audits were conducted for the purpose of forming an opinion on the FY 2003 and 2002 principal financial statements of the Commission taken as a whole. The information discussed below is presented for purposes of additional analysis and is not a required part of the principal financial statements.

- The information in the Required Supplementary Information section has been subjected to the auditing procedures applied in the audit of the Commission's principal financial statements and, in our opinion, is fairly stated in all material respects in relation to the principal financial statements taken as a whole.
- The information in the Management Discussion and Analysis of the Commission's annual financial statements is supplementary information required by the Federal Accounting Standards Advisory Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the supplementary information. However, we did not audit the information and express no opinion on it. This information is, however, addressed in our assessment of internal control discussed below.

### *Opinion on Internal Control*

In planning and performing our audits, we considered the Federal Trade Commission's internal control over financial reporting by obtaining an understanding of the Commission's internal control, determined whether internal controls had been placed in operation, assessed control risk, and performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 01-02, "*Audit Requirements for Federal Financial Statements*". We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982, such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide assurance on internal control. Consequently, we do not provide an opinion on internal control.

With respect to internal control related to performance measures reported in the Management Discussion and Analysis section, we obtained an understanding of the design of significant internal controls relating to the existence and completeness assertions, as required by OMB Bulletin No. 01-02. Our procedures were not designed to provide assurance on internal control over reported performance measures, and, accordingly, we do not provide an opinion on such controls.

### *Reportable Conditions*

Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be reportable conditions. Under standards issued by the American Institute of Certified Public Accountants, reportable conditions are matters coming to our attention relating to significant deficiencies in the design or operation of the internal control that, in our judgment, could adversely affect the Commission's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. Material weaknesses are reportable conditions in which the design or operation of one or more of the specific internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Because of inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected. However, we noted no matters involving the internal controls and its operation that we considered to be material weaknesses as defined above.

We noted certain other matters involving the internal control over financial reporting that we have reported to the Commission's management in a separate letter (Management Letter AR 04-057A).



### *Compliance with Laws and Regulations*

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed tests of the Commission's compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts and certain other laws and regulations specified in OMB Bulletin No. 01-02, including the requirements referred to in the Federal Financial Management Improvement Act (FFMIA) of 1996. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to the Commission. However, the objective of our audit of these financial statements, including our tests of compliance with selected provisions of applicable laws and regulations, was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

Material instances of noncompliance are failures to follow requirements, or violations of prohibitions contained in statutes and regulations, that cause us to conclude that the aggregation of the misstatements resulting from those failures or violations is material to the statement of financial position referred to above or that sensitivity warrants disclosure thereof.

The results of our test of compliance disclosed no instances of noncompliance with laws and regulations that are required to be reported under Government Auditing Standards or OMB Bulletin No. 01-02.

Under FFMIA, we are required to report whether the agency's financial management systems substantially comply with the Federal financial management systems requirements, Federal accounting standards, and the United States Government Standard General Ledger at the transaction level. To meet this requirement, we performed tests of compliance with FFMIA Section 803(a) requirements.

The results of our tests disclosed no instances in which the agency's financial management systems did not substantially comply with the three requirements discussed in the preceding paragraph.

With respect to items not tested, nothing came to our attention to cause us to believe the Commission had not complied, in all respects, with those provisions.

### *Responsibilities and Methodology*

Management has the responsibility for:

- preparing the financial statements in conformity with generally accepted accounting principles described in Note 1 to the financial statements;
- establishing and maintaining an effective internal control over financial reporting; and
- complying with applicable laws and regulations.

Our responsibility is to express an opinion on these financial statements based on our audit. Generally accepted auditing standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misrepresentation and presented fairly in accordance with the generally accepted accounting principles. We performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on these financial statements and not to provide an opinion on the internal control over financial reporting. We are also responsible for testing compliance with selected provisions of applicable laws and regulations that may materially affect the financial statements.

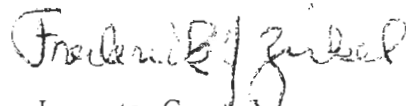
In order to fulfill these responsibilities, we

- obtained an understanding of the design of relevant internal controls and determined whether they had been placed in operation;
- assessed control risk;
- examined, on a test basis, evidence supporting the amounts and disclosures in the financial statements;
- assessed the accounting principles used and significant estimates made by management;
- evaluated the overall presentation of the financial statements;
- tested compliance with selected provisions of the laws and regulations that may materially affect the financial statements; and
- performed other procedures that we considered necessary in the circumstances.

Our audits were conducted in accordance with auditing standards generally accepted in the United States; *Government Auditing Standards*, as issued by the Comptroller General of the United States; and OMB Bulletin No. 01-02. We believe that our audits provide a reasonable basis for our opinion.

While this report is intended solely for the information and use of the Federal Trade Commission, the Office of Management and Budget and the Congress, it is also a matter of public record, and its distribution is, therefore, not restricted.

Washington, D.C.  
January 15, 2004

  
Inspector General  
Federal Trade Commission

## Limitations of the Financial Statements

Responsibility for the integrity and objectivity of the financial information presented in the financial statements rests with FTC management. The accompanying financial statements have been prepared in conformity with the hierarchy of accounting principles approved by the Federal Accounting Standards Advisory Board (FASAB) and the Office of Management and Budget (OMB) Bulletin 01-09, *Form and Content of Agency Financial Statements*. FTC is fully committed to the principles and objectives of both the Chief Financial Officers (CFOs) Act of 1990 and the Federal Financial Management Improvement Act of 1996. Comparative data for the prior fiscal year is presented. The statements should be read with the realization that they are for a component of the U.S. Government, i.e., a sovereign entity.

## Audit of FTC's 2003 Principal Statements

The Office of Inspector General of the Federal Trade Commission has examined the agency's financial statements. The Inspector General's report on the principal statements, internal controls, and compliance with certain laws and regulations accompanies the statements.

## Financial Resources and Results of Operations

The accompanying statements summarize the FTC's financial position, disclose the net cost of operations and changes in net position, provide information on budgetary resources and financing, and present the sources and disposition of custodial revenue for the years ended September 30, 2003 and 2002. Additional information for the year ended September 30, 2001 is also presented for financing sources on the next page. The FTC had total assets of \$399.9 million and \$237.4 million as of September 30, 2003 and 2002, respectively. Approximately \$304.6 million and \$155.9 million of the 2003 and 2002 assets, respectively, were funds collected or to be collected and distributed under the consumer redress program, under the agency's Consumer Protection mission. In addition, \$41.2 million in fiscal year 2003 and \$41.0 million in fiscal year 2002 is held in a divestiture fund and will be subsequently disbursed per the terms of the divestiture agreement under the agency's Maintaining Competition mission. Another \$1.6 million in fiscal year 2003 and \$1.7 million in fiscal year 2002 represent undisbursed Hart-Scott-Rodino (HSR) premerger fees to be transferred to the Department of Justice (DOJ) and the FTC in a future period. In addition, \$52.5 million in fiscal year 2003 and \$38.8 million in fiscal year 2002 in assets represent fund balances in appropriated accounts, account receivables, and net capital assets.

Revenue and financing sources received in fiscal years 2003 and 2002 totaled \$184.4 and \$160.9 million, respectively. Exchange revenue, classified as earned revenue on the financial statements, was received from three sources; the collection of premerger notification filing fees, Do-Not-Call (DNC) user fees, and reimbursements received for

services from other government agencies. Financing sources were received through direct appropriations, appropriation transfers and imputed for costs absorbed by others.

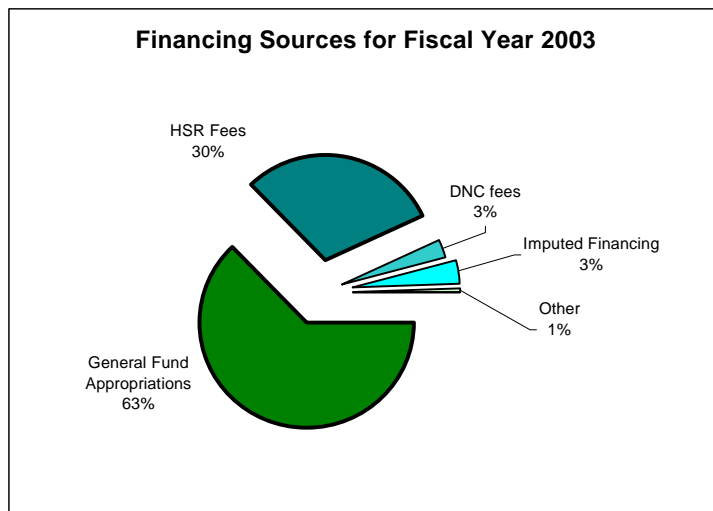
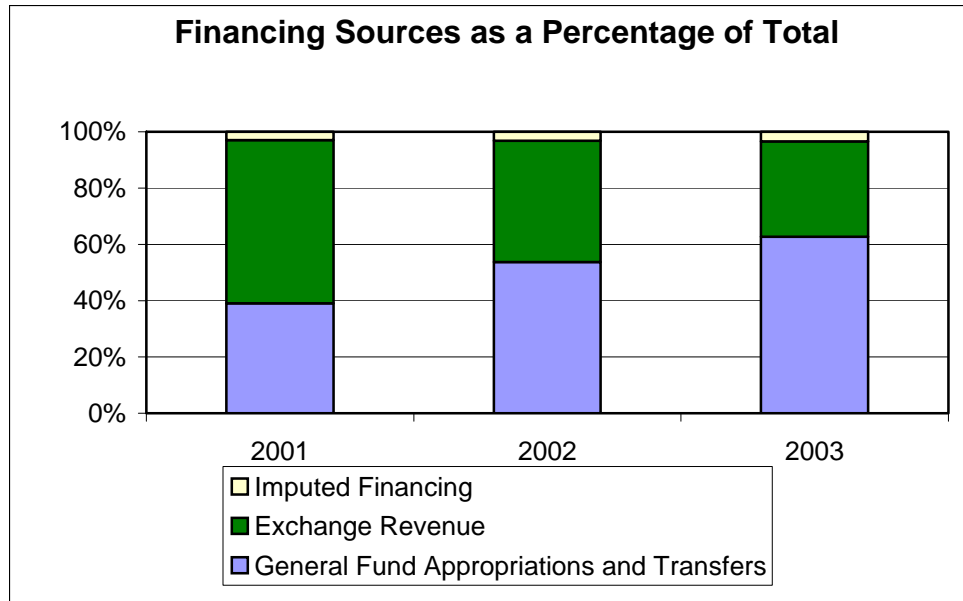
Exchange revenue was \$62.4 million and \$69.2 million for fiscal years 2003 and 2002, respectively. The primary source of exchange revenue collected, \$56.0 million in fiscal year 2003 and \$67.9 million in fiscal year 2002, was premerger filing fees. The FTC collects a filing fee from each business entity that files a *Notification and Report form* transaction, as required by the Hart-Scott-Rodino (HSR) Anti-Trust Improvement Act. Qualifying mergers with a transaction amount over \$50 million in total assets are charged a filing fee. The fee is based on a three-tiered structure: \$45,000, \$125,000, and \$280,000, depending upon the combined total of assets of the merger transaction. The fee is divided equally between the FTC and the Antitrust Division of the DOJ. The disposition of amounts collected for DOJ is reported on the Statements of Custodial Activity. Due to the combination of changing economic conditions and the restructure of the filing fee reporting threshold in fiscal year 2001, merger activity over the past 3 years has slowed. In fiscal year 2003, 968 reportable filings were received and processed, 174 less than in 2002. Earned revenue from HSR filing fees dropped \$11.9 million from fiscal year 2002. As a percentage of total financing sources, HSR fees dropped from 42.2 percent of total revenue in fiscal year 2002 to 30.4 percent in fiscal year in 2003.

The second source of exchange revenue was Do-Not-Call fees. In September 2003 the FTC began collecting fees associated with the implementation and enforcement of the national Do-Not-Call registry. This registry operates under Section 5 of the FTC Act, which enforces the Telemarketing Sales Rule (TSR). Telemarketers under FTC's jurisdiction are required to pay a user fee and download from the DNC database a list of consumer's telephone numbers who do not wish to receive calls. Fees are based on the number of area codes downloaded. The fees range from \$25 for one telephone call to \$7,375 for all telephone calls within the United States. \$5.2 million in fees were earned in fiscal year 2003, representing 2.9 percent of the total financing sources for the year.

The third source of exchange revenue was earned through reimbursable agreements with other federal agencies. Total earnings were \$1.2 million and \$1.3 million, representing 0.6 percent and 0.8 percent for fiscal years 2003 and 2002, respectively.

Financing sources were received from direct appropriations from the General Fund of the Treasury and transfers in the amount of \$115.6 million in fiscal year 2003 and \$86.6 million in fiscal year 2002. The budgetary authority appropriated from the General Fund was reduced by the amount of offsetting collections (HSR and DNC fees) received during the year to arrive at the final amount of resources appropriated from the General Fund. In fiscal years 2003, and 2002 the amount of direct appropriations and transfers that were recorded as a net financing source was 62.7 percent and 53.8 percent of total funding sources received.

Another financing source included an imputed revenue source to cover unfunded employee benefits in the amount of \$6.4 million for fiscal year 2003, and \$5.1 million in fiscal year 2002. This represented 3.4 percent and 3.2 percent of total financing sources for fiscal years 2003 and 2002, respectively. Financing sources not needed to fund the gross cost of operations are added to Cumulative Results of Operations and Net Position. The accompanying chart details the percentages of these various financing sources for the past three years and a detail of the funding sources for fiscal year 2003.



The gross cost of operations during the 2003 fiscal year was approximately \$174.7 million, an 8.8 percent increase over fiscal year 2002. During 2003, expenses for salaries and related benefits totaled \$114.3 million, or 65.4 percent of the gross cost of operations. Lease space rental amounted to \$16.8 million, or 9.6 percent, and the

remaining \$43.6 million, or 25.0 percent, included travel, facility maintenance and equipment rental, utilities, imputed benefit costs, depreciation, future funded expenses, and other items. This supported 1,051 staff-years which were employed in fulfilling the FTC's mission. In fiscal year 2003, the net cost of operations was \$112.3 million, compared to \$91.5 million for 2002.

## Systems and Control

The FTC maintains a system of internal controls to provide reasonable assurance that its assets are protected from fraud and abuse, transactions are properly executed and recorded, and operations are conducted in accordance with established policies and procedures. The FTC's accounting system conforms in all material respects with the principles, standards, and related requirements specified in the Federal Financial Management Improvement Act of 1996.

The FTC's accounting, personnel, payroll, and accounts payable processing is performed under contract by the Department of the Interior's National Business Center in Denver, Colorado. FTC has controls in place to ensure the integrity of both payment and payroll processing.

## Custodial Activity

Fighting consumer fraud is one of the FTC's highest priorities; consumers are bilked out of billions of dollars a year by perpetrators of traditional fraud and fraud on the Internet. In fraud cases, the FTC files actions in federal district court to bring an immediate halt to ongoing business activities and freeze defendants' assets. The FTC then pursues court orders that permanently ban the fraudulent activities and provide redress to consumers. In non-fraud cases, usually involving advertising claims, redress may be obtained for consumers in settlement of administrative complaints. In addition, when a company or individual violates an FTC Trade Regulation Rule, a statute enforced by the agency, or a prior agency order, the FTC seeks federal district court orders permanently barring future violations and requiring payment of civil penalties. These agency enforcement activities generate substantial amounts of non-exchange revenue; a Statement of Custodial Activity (SCA) forms part of the FTC's financial statement package.

The SCA is a required financial statement under *Statement of Federal Financial Accounting Concepts (SFFAC) No. 2* for those federal agencies that collect non-exchange revenues (e.g., taxes, duties, fines, and penalties) for the general fund of the Treasury, a trust fund, or other recipient entities.

In addition to the fines and penalties collected and transferred to the general fund of the Treasury, DOJ receives, as offsetting revenue, one-half of the Hart-Scott-Rodino premerger filing fees collected during the year.

## Audited Financial Statements

### FEDERAL TRADE COMMISSION BALANCE SHEETS As of September 30, 2003 and 2002 (Dollars in thousands)

	2003	2002
<b>Entity Assets:</b>		
Intragovernmental Assets:		
Fund Balance with Treasury (Note 2)	\$ 40,900	\$ 29,599
Accounts Receivable, Net (Note 4)	231	155
Total Intragovernmental Assets	41,131	29,754
Advances and Prepayments	9	7
Property, Plant, and Equipment, Net (Note 5)	9,138	7,208
Total Entity Assets	50,278	36,969
<b>Non-Entity Assets:</b>		
Intragovernmental Assets:		
Fund Balance with Treasury (Note 2)	6,355	3,329
Cash and Other Monetary Assets (Note 3)	101,391	102,250
Accounts Receivable, Net (Note 4)	241,895	94,830
Total Non-Entity Assets	349,641	200,409
<b>Total Assets</b>	<b>\$ 399,919</b>	<b>\$ 237,378</b>

*The accompanying notes are an integral part of these statements.*



**FEDERAL TRADE COMMISSION  
BALANCE SHEETS  
As of September 30, 2003 and 2002  
(Dollars in thousands)**

	<u>2003</u>	<u>2002</u>
<b>Liabilities:</b>		
Liabilities Covered by Budgetary Resources:		
Intragovernmental Liabilities:		
Accrued Benefits	\$ 463	\$ 437
Accounts Payable	1,605	2,467
Total Intragovernmental Liabilities	<u>2,068</u>	<u>2,904</u>
With the Public		
Accounts Payable	7,726	3,945
Accrued Salaries	2,727	2,112
Total Liabilities Covered by Budgetary Resources	<u>12,521</u>	<u>8,961</u>
Liabilities Not Covered by Budgetary Resources (Note 6):		
Intragovernmental Liabilities:		
Undisbursed Premerger Filing Fees	1,600	1,683
Other Liabilities	2,538	2,191
Total Intragovernmental Liabilities	<u>4,138</u>	<u>3,874</u>
Actuarial FECA Liabilities	2,089	2,329
Accrued Annual Leave	7,183	6,666
With the Public	345,936	196,917
Total Liabilities Not Covered by Budgetary Resources	<u>359,346</u>	<u>209,786</u>
Total Liabilities	<u>371,867</u>	<u>218,747</u>
<b>Net Position: (Note 7)</b>		
Balances:		
Unexpended Appropriations	142	350
Cumulative Results of Operations	27,910	18,281
Total Net Position	<u>28,052</u>	<u>18,631</u>
<b>Total Liabilities and Net Position</b>	<u>\$ 399,919</u>	<u>\$ 237,378</u>

*The accompanying notes are an integral part of these statements.*

**FEDERAL TRADE COMMISSION**  
**STATEMENTS OF NET COST**  
For the Years Ended September 30, 2003 and 2002  
(Dollars in thousands)

	<u>2003</u>	<u>2002</u>
<b>Program Costs</b>		
<u>Maintaining Competition Mission:</u>		
Intragovernmental gross costs	\$ 20,443	\$ 20,148
Less: Intragovernmental earned revenue	(1,159)	(1,259)
Intragovernmental net costs	<u>19,284</u>	<u>18,889</u>
Gross costs with the public	61,688	57,463
Less: Earned revenue with the public (Note 12)	(56,015)	(67,945)
Net costs with the public	<u>5,673</u>	<u>(10,482)</u>
Net Cost of Maintaining Competition Mission	<u>24,957</u>	<u>8,407</u>
<u>Consumer Protection Mission:</u>		
Intragovernmental costs	23,052	20,546
Gross costs with the public	69,563	62,501
Less: Earned revenue with the public (Note 12)	(5,239)	-
Net costs with the public	<u>64,324</u>	<u>62,501</u>
Net Cost of Consumer Protection Mission	<u>87,376</u>	<u>83,047</u>
<b>Net Cost of Operations</b>	<u>\$ 112,333</u>	<u>\$ 91,454</u>

*The accompanying notes are an integral part of these statements.*

FEDERAL TRADE COMMISSION  
 STATEMENTS OF CHANGES IN NET POSITION  
 For the Years Ended September 30, 2003 and 2002  
 (Dollars in thousands)

	2003		2002	
	Cumulative Results of Operations	Unexpended Appropriations	Cumulative Results of Operations	Unexpended Appropriations
<b>Beginning Balances</b>	\$ 18,281	\$ 350	\$ 18,422	\$ -
Budgetary Financing Sources:				
Appropriations Received	-	115,299	-	86,203
Appropriations Transferred-In/Out	-	110	-	350
Appropriations Used	115,617	(115,617)	86,203	(86,203)
Other Financing Sources:				
Imputed Financing (Note 9)	6,345	-	5,110	-
<b>Total Financing Sources</b>	<u>121,962</u>	<u>(208)</u>	<u>91,313</u>	<u>350</u>
<b>Net Cost of Operations</b>	<u>(112,333)</u>	<u>-</u>	<u>(91,454)</u>	<u>-</u>
<b>Ending Balances</b>	<u>\$ 27,910</u>	<u>\$ 142</u>	<u>\$ 18,281</u>	<u>\$ 350</u>

*The accompanying notes are an integral part of these statements.*

FEDERAL TRADE COMMISSION  
 STATEMENTS OF BUDGETARY RESOURCES  
 For the Years Ended September 30, 2003 and 2002  
 (Dollars in thousands)

	2003	2002
<b>Budgetary Resources:</b>		
Budget authority		
Appropriation	\$ 115,299	\$ 86,203
Net Transfers	110	350
Unobligated Balance:		
Beginning of Period	7,813	6,619
Spending Authority from Offsetting Collections		
Earned		
Collected	62,336	69,228
Receivable from Federal Sources	77	(24)
Change in Unfilled Customer Orders		
Without Advance from Federal Sources	(362)	238
Recoveries of Prior Year Obligation	624	2,231
	<u>\$ 185,897</u>	<u>\$ 164,845</u>
<b>Total Budgetary Resources</b>		
	<u>\$ 185,897</u>	<u>\$ 164,845</u>
<b>Status of Budgetary Resources:</b>		
Obligations incurred		
Direct	106,257	87,580
Reimbursable	70,998	69,452
Subtotal	<u>177,255</u>	<u>157,032</u>
Unobligated Balance		
Available	444	447
Not Available	<u>8,198</u>	<u>7,366</u>
	<u>\$ 185,897</u>	<u>\$ 164,845</u>
<b>Total Status of Budgetary Resources</b>		
	<u>\$ 185,897</u>	<u>\$ 164,845</u>
<b>Summary of Obligations and Outlays</b>		
Obligated balance net beginning of period	<u>21,786</u>	<u>29,152</u>
Obligated balance net end of period:		
Accounts receivable	(240)	(162)
Unfilled customer orders from federal sources	(15)	(377)
Undelivered orders	19,992	13,364
Accounts payable	<u>12,520</u>	<u>8,961</u>
Total obligated balance net end of period	<u>32,257</u>	<u>21,786</u>
Outlays:		
Disbursements	166,444	161,954
Collections	<u>(62,336)</u>	<u>(69,228)</u>
<b>Net Outlays</b>	<u>\$ 104,108</u>	<u>\$ 92,726</u>

*The accompanying notes are an integral part of these statements.*

FEDERAL TRADE COMMISSION  
STATEMENTS OF FINANCING  
For the Years Ended September 30, 2003 and 2002  
(Dollars in thousands)

	2003	2002
<b>Resources Used to Finance Activities:</b>		
Budgetary Resources Obligated		
Obligations incurred	\$ 177,255	\$ 157,032
Less: Spending authority from offsetting collections and recoveries	(62,675)	(71,673)
Obligations net of offsetting collections and recoveries	114,580	85,359
Other Resources		
Imputed financing from costs absorbed by others	6,345	5,110
<b>Total Resources Used to Finance Activities</b>	<b>120,925</b>	<b>90,469</b>
<b>Resources Used to Finance Items not Part of the Cost of Operations:</b>		
Change in budgetary resources obligated for goods and services ordered but not yet received or provided	(6,991)	4,547
Resources that finance the acquisition of assets	(4,217)	(5,199)
Total resources used to finance items not part of the net cost of operations	(11,208)	(652)
<b>Total Resources Used to Finance the Net Cost of Operations</b>	<b>109,717</b>	<b>89,817</b>
<b>Components of the Net Cost of Operations That Will Not Require or Generate Resources in the Current Period:</b>		
Increase in annual leave liability	516	427
(Decrease) increase in FECA liability	(189)	492
Total components of the net cost of operations that will not require or generate resources in the current period	327	919
Components not requiring or generating resources:		
Depreciation and amortization	1,421	718
Change in accounting estimates (Note 15)	758	-
Loss on disposition of asset	110	-
<b>Total Components of the Net Cost of Operations That Will Not Require or Generate Resources in the Current Period</b>	<b>2,616</b>	<b>1,637</b>
<b>Net Cost of Operations</b>	<b>\$ 112,333</b>	<b>\$ 91,454</b>

*The accompanying notes are an integral part of these statements.*

**FEDERAL TRADE COMMISSION**  
**STATEMENTS OF CUSTODIAL ACTIVITY**  
For the Years Ended September 30, 2003 and 2002  
(Dollars in thousands)

(Refer to Note 11)

	<u>MC Mission</u>	<u>CP Mission</u>	<u>2003 Total</u>	<u>2002 Total</u>
<b>Sources of Collections:</b>				
Cash Collections:				
Premerger Filing Fees (Net of Refunds) (a)	\$ 57,600	\$ -	\$ 57,600	\$ 67,945
Civil Penalties and Fines (b)	6,829	1,677	8,506	1,259
Redress (c)	-	101,768	101,768	42,713
Divestiture Fund (d)	216	-	216	382
Funeral Rule Violations	-	13	13	206
Net Collections	<u>64,645</u>	<u>103,458</u>	<u>168,103</u>	<u>112,505</u>
Accrual Adjustments (e)	-	147,065	147,065	58,974
Total Non-exchange Revenues	<u>\$ 64,645</u>	<u>\$ 250,523</u>	<u>\$ 315,168</u>	<u>\$ 171,479</u>
<b>Disposition of Revenue Collected:</b>				
Amounts Transferred to:				
Treasury General Fund	6,829	15,744	22,573	8,270
Department of Justice	57,683	-	57,683	72,183
Receivers (f)	-	112	112	163
Redress to Claimants (g)	-	69,566	69,566	17,293
Contractor Fees Net of Interest Earned (h)	-	4,932	4,932	1,528
Attorney Fees (h)	-	11,071	11,071	-
Net Disbursements	<u>64,512</u>	<u>101,425</u>	<u>165,937</u>	<u>99,437</u>
Change in Liability Accounts (i)	133	149,098	149,231	72,042
Total Disposition of Revenues Collected	<u>\$ 64,645</u>	<u>\$ 250,523</u>	<u>\$ 315,168</u>	<u>\$ 171,479</u>
<b>Net Custodial Collections</b>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

*The accompanying notes are an integral part of these statements*

**FEDERAL TRADE COMMISSION**  
**REQUIRED SUPPLEMENTARY INFORMATION**  
**As of September 30, 2003 and 2002**  
**(Dollars in thousands)**

Intragovernmental Assets:	Fund Balance with Treasury		Accounts Receivable	Total 2003	Total 2002
	Entity	Non-Entity			
<b>Trading Partner Agency:</b>					
Treasury	\$ 40,900	\$ 6,355	-	\$ 47,255	\$ 32,928
Agency for International Development	-	-	86	86	143
Other Government Agencies	-	-	145	145	12
<b>Total Intragovernmental Assets</b>	<b>\$ 40,900</b>	<b>\$ 6,355</b>	<b>\$ 231</b>	<b>\$ 47,486</b>	<b>\$ 33,083</b>

Intragovernmental Liabilities:	Accrued Benefits	Accounts Payable	NA	Total 2003	Total 2002
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Covered by Budgetary Resources:	Accrued Benefits	Accounts Payable	NA	Total 2003	Total 2002
Department of Commerce	\$ -	\$ 2	-	\$ 2	\$ -
Department of Agriculture	-	-	-	-	139
U. S. Postal Inspection Service	-	8	-	8	-
Department of Health and Human Services	-	-	-	-	132
Department of Justice	-	6	-	6	33
Government Printing Office	-	-	-	-	36
General Services Administration	-	1,411	-	1,411	2,119
Office of Personnel Management	343	-	-	343	443
National Archives and Records Administration	-	-	-	-	3
Department of Treasury	120	179	-	298	-
<b>Total Covered by Budgetary Resources</b>	<b>\$ 463</b>	<b>\$ 1,605</b>	<b>\$ -</b>	<b>\$ 2,068</b>	<b>\$ 2,905</b>

Not Covered by Budgetary Resources:	Accrued Benefits	Accounts Payable	NA	Total 2003	Total 2002
Department of Justice (1)	\$ -	\$ 1,600	-	\$ 1,600	\$ 1,683
Department of Labor	-	433	-	433	382
Department of Treasury	-	2,105	-	2,105	1,809
<b>Total Not Covered by Budgetary Resources</b>	<b>\$ -</b>	<b>\$ 4,138</b>	<b>\$ -</b>	<b>\$ 4,138</b>	<b>\$ 3,874</b>

(1) Figure includes amounts due to DOJ and FTC



**FEDERAL TRADE COMMISSION**  
**Required Supplementary Information**  
**For the Years Ended September 30, 2003 and 2002**  
**(Dollars in thousands)**

**Exchange Revenue from Reimbursable Agreements**

<u>Trading Partner:</u>	<u>2003</u>	<u>2002</u>
Department of Justice	\$ 503	\$ 577
U.S. Agency for International Development	563	600
Department of Commerce	3	-
Federal Mine Safety & Health Review Commission	52	-
Medicare Payment Advisory Commission/GSA	25	-
U.S. Environmental Protection Agency	1	-
U.S. Patent and Trademark Office	2	-
U.S. Postal Inspection Service	7	-
U.S. Trade and Development Agency	3	-
Consumer Product Safety Commission	-	2
Commodity Futures Trading Commission	-	1
Federal Deposit Insurance Corporation	-	1
National Credit Union Administration	-	1
Office of the Comptroller of the Currency	-	1
Office of Thrift Supervision	-	1
Securities Exchange Commission	-	1
Federal Reserve Board	-	1
New York State	-	11
University of Rochester	-	62
<b>Total Exchange Revenue from Reimbursable Agreements</b>	<u>\$ 1,159</u>	<u>\$ 1,259</u>

**Related Costs:**

<u>Budget Function Classification:</u>	<u>2003</u>	<u>2002</u>
Other Advancement of Commerce	<u>\$ 1,159</u>	<u>\$ 1,259</u>
<b>Total Related Costs</b>	<u>\$ 1,159</u>	<u>\$ 1,259</u>

**FEDERAL TRADE COMMISSION**  
**Required Supplementary Information**  
**For the Years Ended September 30, 2003 and 2002**  
**(Dollars in thousands)**

**Intragovernmental Expenses:**

**Trading Partner:**

	<u>2003</u>	<u>2002</u>
Office of Personnel Management	\$ 18,479	\$ 17,009
General Services Administration	17,121	16,443
Social Security Administration	4,858	4,560
Government Printing Office	853	230
Department of the Interior	770	752
Department of Transportation	755	552
United States Postal Service	294	246
Department of the Treasury	186	(8)
Department of Labor	183	193
Department of Justice	31	193
Department of State	28	73
Library of Congress	25	35
Department of Commerce	5	1
Veterans Administration	-	-
Department of Agriculture	-	139
Equal Employment Opportunity	-	1
Office of Government Ethics	-	-
National Archives and Records Administration	(6)	3
Department of Health and Human Services	(87)	272
<b>Total Intragovernmental Expenses</b>	<b><u>\$ 43,495</u></b>	<b><u>\$ 40,694</u></b>

**Mission:**

Maintaining Competition	\$ 20,443	\$ 20,148
Consumer Protection	23,052	20,546
<b>Total Intragovernmental Expenses</b>	<b><u>\$ 43,495</u></b>	<b><u>\$ 40,694</u></b>

## Notes to the Financial Statements For the Years Ended September 30, 2003 and 2002

### NOTE 1 -- SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### (a) Reporting Entity

The Federal Trade Commission (FTC) was created by the Federal Trade Commission Act of 1914. The FTC enforces a variety of federal antitrust and consumer protection laws. The FTC seeks to ensure that the nation's markets function competitively and are vigorous, efficient, and free of undue restrictions. The FTC also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general, FTC's efforts are directed toward stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the FTC undertakes economic analysis to support its law enforcement efforts and to contribute to the policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments when requested.

#### (b) Fund Accounting Structure

The FTC's financial activities are accounted for by federal account symbol. They include the accounts for appropriated funds and other fund groups described below for which the FTC maintains financial records, and consumer redress accounts for which the agency has management oversight.

General Funds These funds consist of salaries and expense appropriation accounts used to fund agency operations and capital expenditures.

Deposit Funds These funds consist of monies held temporarily by FTC as an agent for others.

Suspense Funds These funds are maintained to account for receipts awaiting proper classification, or held in escrow, until ownership is established and proper distributions can be made.

Miscellaneous Receipt Accounts The FTC collects civil penalties and other miscellaneous receipts which by law are not retained by the FTC. The U.S. Department of the Treasury automatically transfers all cash balances in these receipt accounts to the general fund of the Treasury at the end of each fiscal year.

#### (c) Basis of Accounting and Presentation

The financial statements present the financial position, net cost of operations, changes in net position, budgetary resources, financing and custodial activities of the FTC, in accordance with accounting principles generally accepted in the United States of

America and the form and content requirements of OMB Bulletin 01-09. They have been prepared from the books and records of the FTC and include the accounts of all funds under the control of the FTC. Accounting principles generally accepted in the United States of America encompass both accrual and budgetary transactions. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. Budgetary accounting facilitates compliance with legal constraints and controls over the use of federal funds. The accompanying financial statements are prepared on the accrual basis of accounting.

In addition, the accompanying statements include information on the activities of the agency's consumer redress program. Independent agents are contracted to administer the program under the oversight of FTC program offices, which maintain the financial records for consumer redress activity.

**(d) Budget Authority**

Congress annually passes appropriations that provide the FTC with authority to obligate funds for necessary expenses to carry out mandated program activities. These funds are available until expended. The funds appropriated are subject to OMB apportionment of funds in addition to Congressional restrictions on the expenditure of funds. Also, the FTC places internal restrictions to ensure the efficient and proper use of all funds. Appropriated funding is derived from various revenues and financing sources.

**(e) Fund Balances with the U.S. Treasury**

With the exception of cash held in consumer redress custodial accounts by FTC's contracted agents, the FTC does not maintain cash in commercial bank accounts. Cash receipts and disbursements are processed by the U.S. Treasury. Fund balances with Treasury consist of appropriated funds that are available to pay current liabilities and finance authorized purchase commitments, and restricted funds, which include deposit and suspense funds. The FTC's fund balances with Treasury are carried forward until such time as goods or services are received and payment is made, or until the funds are returned to the U.S. Treasury.

**(f) Advances and Prepayments**

Payments in advance of the receipt of goods and services are recorded as advances and recognized as expense when the related goods and services are received. Advances are principally advances to FTC employees for official travel.

**(g) Accounts Receivable**

Entity accounts receivable include amounts due from other federal entities and from current and former employees and vendors. Non-entity accounts receivable include civil monetary penalties imposed as a result of the FTC's enforcement activities and for uncollected redress judgments and amounts due from receivers. Since the FTC does

not retain these receipts, a corresponding liability is also recorded for non-entity accounts receivable.

Opening judgment receivable balances reflect the Federal Accounting Standards Advisory Board (FASAB) standard for the recognition of losses using the collection criterion of “more likely than not.” This criterion results in receivable balances that are more conservatively stated than those valued by the private sector under generally accepted accounting principles. The Board states that it is appropriate to recognize the nature of federal receivables which, unlike trade accounts of private firms or loans made by banks, are not created through credit screening procedures. Rather, these receivables arise because of the assessment of fines from regulatory violations. In these circumstances, historical experience and economic factors indicate that these types of claims are frequently not fully collectible.

The FTC recognizes an allowance for uncollectible non-entity accounts receivable by individual account analysis based on the debtor’s ability and willingness to pay, and the probable recovery of amounts from secondary sources, including liens, garnishments, and other applicable collection tools. Entity accounts receivables are considered fully collectible and therefore no allowance is recorded.

#### **(h) Property and Equipment**

Commercial vendors and the General Services Administration, which charges the FTC a Standard Level Users Charge (SLUC), that approximates the commercial rental rates for similar properties, provide the land and buildings in which FTC operates.

Property and equipment consists of equipment, leasehold improvements and software. All items with an acquisition value greater than \$100,000 and a useful life over two years are capitalized using the straight-line method. Service lives range from three to fifteen years.

Internal use software development and acquisition costs of \$100,000 are capitalized as software development in progress until the development stage has been completed and the software successfully tested. Upon completion and testing, software development-in-progress costs are reclassified as internal use software costs and amortized using the straight-line method over the estimated useful life of three years. Purchased commercial software which does not meet the capitalization criteria is expensed.

#### **(i) Liabilities**

Liabilities represent the amount of monies or other resources that are likely to be paid as the result of a transaction or event that has already occurred. Liabilities classified as not covered by budgetary resources are liabilities for which appropriations have not been enacted and liabilities resulting from the agency’s custodial activities. See *Note 11*. Also, the Government, acting in its sovereign capacity, can abrogate FTC liabilities (other than contracts).

**(j) Undisbursed Premerger Filing Fees**

A liability is recorded for the amount of fees collected under the Hart-Scott-Rodino Act which are to be distributed to either the FTC or the Department of Justice (DOJ) in a subsequent period.

**(k) Federal Employees' Compensation Act (FECA) Actuarial Liability and Accrued FECA Claims**

The FTC records an estimated liability for future workers' compensation claims based on data provided from the Department of Labor (DOL). The FTC also records a liability for actual claims paid on its behalf by the DOL.

**(l) Accrued Leave**

A liability for annual leave is accrued as leave is earned and paid when leave is taken. At year end, the balance in the accrued annual leave account is adjusted to reflect the liability at current pay rates and leave balances. Accrued annual leave is paid from future funding sources and, accordingly, is reflected as a liability not covered by budgetary resources. Sick and other leave is expensed as taken.

**(m) Employee Health Benefits and Life Insurance**

FTC employees are eligible to participate in the contributory Federal Employees Health Benefit Program (FEHBP) and the Federal Employees Group Life Insurance Program (FEGGLIP). The FTC matches the employee contributions to each program to pay for current benefits.

**(n) Post-Retirement Health Benefits and Life Insurance**

FTC employees eligible to participate in the FEHBP and the FEGGLIP may continue to participate in these programs after their retirement. OPM has provided the FTC with certain cost factors that estimate the true cost of providing the post-retirement benefit to current employees. The FTC recognizes a current cost for these and other retirement benefits (ORB) at the time the employee's services are rendered. The ORB expense is financed by OPM, and offset by the FTC through the recognition of an imputed financing source on the Statement of Financing. During fiscal years 2003 and 2002, the cost factors relating to FEHBP were \$3,766 and \$3,473, respectively, per employee enrolled. During fiscal years 2003 and 2002, the cost factor relating to FEGGLIP was 0.02 percent of basic pay per employee enrolled. See *Note 9, Imputed Financing*.

**(o) Employee Retirement Benefits**

FTC employees participate in either the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). Employees hired after December 31, 1983, are covered by FERS and Social Security, while employees hired prior to January

1, 1984, may elect to either join FERS or remain in the CSRS. Approximately 29 percent of FTC employees participate in the CSRS. For employees participating in CSRS, the FTC contributes 8.5 percent of the employee's gross earnings to the CSRS Retirement and Disability Fund. For employees participating in FERS, the FTC contributes 10.7 percent to the Federal Employees' Retirement Fund. Employees participating in FERS are covered under the Federal Insurance Contributions Act (FICA) for which the FTC contributes a matching amount to the Social Security Administration. FTC contributions are recognized as current operating expenses.

The Thrift Savings Plan (TSP) is a defined contribution retirement savings and investment plan for employees covered by either CSRS or FERS. CSRS participating employees may contribute up to 8 percent of earnings for 2003, 7 percent for 2002, to TSP, but do not receive a matching contribution from the FTC. FERS participating employees may contribute up to 13 percent and 12 percent of earnings for the years 2003 and 2002, respectively, to the TSP plan. For FERS employees, the FTC contributes 1 percent of the employee's gross pay to the TSP. The FTC also matches 100 percent of the first 3 percent contributed and 50 percent of the next 2 percent contributed. FTC contributions are recognized as current operating expenses. Although FTC contributes a portion for pension benefits and makes the necessary payroll withholdings, it is not responsible for contribution refunds, employee's retirement benefits, or the retirement plan assets. Therefore, the FTC financial statements do not report CSRS and FERS assets, accumulated plan benefits, or unfunded liabilities, if any, which may be applicable to employees. Such reporting is the responsibility of the Office of Personnel Management (OPM).

However, the FTC recognizes the full cost of providing future pension benefits to covered employees at the time the employee's services are rendered. OPM has provided the FTC with certain cost factors that estimate the true service cost of providing the pension benefits to covered employees. The cost factors used to arrive at the service cost are 25.0 percent of basic pay for CSRS covered employees and 12.0 percent of basic pay for FERS covered employees during fiscal years 2003 and 2002. The pension expense recognized in the financial statements equals this service cost to covered employees less amounts contributed by these employees. If the pension expense exceeds the amount contributed by the FTC as employer, the excess is recognized as an imputed financing cost. The excess total pension expense over the amount contributed by the agency must be financed by OPM and is recognized as an imputed financing source, non-exchange revenue.

#### **(p) Net Position**

The FTC's net position is composed of the following:

Unexpended appropriations include the amount of unobligated balances and undelivered orders. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation.



Cumulative results of operations represent the net results of operations since inception, the cumulative amount of prior period adjustments, the remaining book value of capitalized assets, and future funding requirements.

#### **(q) Exchange Revenues**

The Federal Accounting Standards Advisory Board defines exchange revenue as inflows of resources to a governmental entity that the entity has earned. They arise from exchange transactions that occur when each party to the transaction sacrifices value and receives value in return.

Exchange revenues are earned through the collection of fees under the Hart-Scott-Rodino (HSR) Antitrust Improvement Act of 1976. This Act, in part, requires the filing of premerger notifications with the FTC and the Antitrust Division of the Department of Justice (DOJ) and establishes a waiting period before certain acquisitions may be consummated. The FTC retains one-half of the HSR pre-merger filing fees collected. Revenue is recognized when earned; i.e., all required documentation under the HSR Act has been received by the agency. Fees not retained by the FTC are not reported as revenue and are maintained in a suspense fund until transferred to the DOJ. The filing fees are based on the transaction amount of the merger and follow a three-tiered structure: \$45,000, \$125,000, and \$280,000. Transaction amounts over \$50,000,000 require the acquiring party to pay a filing fee.

Exchange revenues are also earned through the collection of fees for the national Do-Not-Call registry. This registry operates under Section 5 of the FTC Act, which enforces the Telemarketing Sales Rule (TSR). The Do-Not-Call Implementation Act, P.L. 108-010, gives the FTC authority to establish fees for fiscal years 2003 through 2007 sufficient to offset the implementation and enforcement of the provisions relating to the Do-Not-Call registry. Fees collected over expenses are retained for use in other FTC missions. Authority to create the registry was ratified in Public Law 108-082. Consumers may register a preference not to receive telemarketing calls. Telemarketers who are under FTC's jurisdiction are required to pay user fees and download the list of consumer telephone numbers on the national registry. Fees collected are deposited and credited as offsetting collections to the agency's salaries and expense account and are available until expended. Transaction amounts range from \$25 to \$7,375.

Exchange revenue is also earned for services provided to other Government agencies through reimbursable agreements. The FTC recovers the full cost of services, primarily salaries and related expenses. Amounts are earned at the time the expenditures are incurred against the reimbursable order. Exchange revenues are deducted from the full cost of the FTC's programs to arrive at net program cost.

#### **(r) Appropriations Used**

In addition to exchange revenue, the FTC receives financing sources through direct

appropriation from the general fund of the Treasury to support its operations. A financing source, appropriations used, is recognized to the extent these appropriated funds have been consumed. In fiscal years 2003 and 2002, the FTC received a financing source in the form of a direct appropriation which represented approximately 63 percent and 54 percent of total revenues and financing sources realized and which funded approximately 66 percent and 54 percent of gross operating expenses, respectively.

**(s) Methodology for Assigning Cost**

Total costs were allocated to each mission based on two components: a) direct costs to each mission and b) indirect costs based on the percentage of direct FTE used by each mission.

**NOTE 2 -- FUND BALANCES WITH TREASURY**

Fund balances with Treasury consisted of the following at September 30, 2003 and 2002:

	Obligated	Unobligated Available	Unobligated Not available	2003 Total	2002 Total
General Funds	\$ 32,258	\$ 444	\$ 8,198	\$ 40,900	\$ 29,599
Suspense Funds:					
Undisbursed Pre-merger Filing Fees	-	-	-	1,600	1,683
Deposit Funds - Redress	-	-	-	4,755	1,646
<b>Total</b>	<b>\$ 32,258</b>	<b>\$ 444</b>	<b>\$ 8,198</b>	<b>\$ 47,255</b>	<b>\$ 32,928</b>

The obligated balance includes accounts payable and undelivered orders which have reduced unexpended appropriations but have not yet decreased the cash balance on hand.

Other Information Deposit and suspense funds stated above are not available to finance FTC activities and are classified as non-entity assets, and a corresponding liability is recorded.

**NOTE 3 -- CASH AND OTHER MONETARY ASSETS**

Cash and other monetary assets held as non-entity assets consist of deposits in transit for pre-merger filing fees, redress judgment amounts on deposit with FTC's distribution agents, and divestiture fund deposits. A corresponding liability is recorded for these assets.

Cash and other monetary assets consisted of the following as of September 30, 2003 and 2002:

	<u>2003</u>	<u>2002</u>
Non-entity:		
Redress contractors	60,199	61,275
Divestiture Fund (See Note 11(d))	41,192	40,975
Total Non-entity	<u>\$ 101,391</u>	<u>\$ 102,250</u>

#### **NOTE 4 -- ACCOUNTS RECEIVABLE**

Accounts receivable consisted of the following as of September 30, 2003 and 2002:

	<u>Currently Due</u>	<u>Allowance</u>	<u>2003 Net</u>	<u>2002 Net</u>
Entity Assets:				
Intragovernmental-				
Accounts Receivable	<u>\$ 231</u>	<u>\$ -</u>	<u>\$ 231</u>	<u>\$ 155</u>
Non-Entity Assets:				
Consumer Redress	\$ 395,894	\$ 156,216	\$ 239,678	\$ 90,851
Due from Receivers	112	-	112	2,170
Civil Penalties	<u>2,105</u>	<u>-</u>	<u>2,105</u>	<u>1,809</u>
Total Non-Entity Assets	<u>\$ 398,111</u>	<u>\$ 156,216</u>	<u>\$ 241,895</u>	<u>\$ 94,830</u>

For more detailed information on non-entity receivables see Exhibit A.

#### **NOTE 5 -- PROPERTY, PLANT, AND EQUIPMENT, NET**

Capitalized property and equipment, net of accumulated depreciation, consisted of the following as of September 30, 2003 and 2002:

<u>Asset Class</u>	<u>Service Life</u>	<u>Acquisition Value</u>	<u>Accumulated Depreciation</u>	<u>2003 Net Book Value</u>	<u>2002 Net Book Value</u>
Equipment & Furniture	5-10 Yrs	\$ 5,035	\$ 1,706	\$ 3,329	\$ 2,354
Leasehold Improvements	10-15 Yrs	3,534	418	3,116	2,720
Software	3 years	2,247	843	1,404	2,134
Software-in-Development		<u>1,289</u>	<u>-</u>	<u>1,289</u>	<u>-</u>
Total		<u>\$ 12,105</u>	<u>\$ 2,967</u>	<u>\$ 9,138</u>	<u>\$ 7,208</u>

Property and equipment are depreciated using the straight-line method. Depreciation expense was \$1,420,000 and \$718,000 for fiscal years ending September 30, 2003 and 2002, respectively. See *Note 15 – Change in Accounting Estimates* for additional information regarding reclassification of assets during the year.

## **NOTE 6 -- LIABILITIES NOT COVERED BY BUDGETARY RESOURCES**

Liabilities not covered by budgetary resources consisted of the following as of September 30, 2003 and 2002:

### **(a) Intragovernmental and With the Public**

	<u>2003</u>	<u>2002</u>
Intragovernmental		
Other Liabilities:		
Civil Penalty Collections Due	\$ 2,105	\$ 1,809
Accrued FECA Claims	433	382
	<u>2,538</u>	<u>2,191</u>
Total	<u>\$ 2,538</u>	<u>\$ 2,191</u>
With the Public		
Undisbursed Redress	\$ 64,954	\$ 62,921
Divestiture Fund Due	41,192	40,975
Redress Net Collections Due	239,678	90,851
Receiver Distributions Due	112	2,170
	<u>345,936</u>	<u>196,917</u>
Total	<u>\$ 345,936</u>	<u>\$ 196,917</u>

### **(b) Other Information**

Civil Penalty Collections Due represents the contra account for accounts receivable due for

civil monetary penalties, which will be transferred to the general fund of the Treasury upon receipt. Accrued FECA Claims consists of workers compensation claims payable to the Department of Labor (DOL) which will be funded in a future period.

Undisbursed Redress includes redress in FTC's Treasury deposit account, or with FTC redress contractors.

Divestiture Fund Due represents the contra account for the divestiture fund held by one of FTC's contractors until distribution of the funds are ordered per terms of the agreement.

Redress Net Collections Due represents the contra account for accounts receivable due from judgments obtained as a result of the agency's consumer redress litigation.

Receiver Distributions Due represents the liability not covered by budgetary resources for funds sent to receivers for distribution to consumers. A corresponding receivable, Due from Receivers, is recorded.

Other consists primarily of deposits in transit and undisbursed cash in the suspense liability account for 2003 and 2002.

## NOTE 7 -- NET POSITION

Net position consisted of the following as of September 30, 2003 and 2002:

	2003	2002
Unexpended Appropriations:		
Unobligated - Available	\$ 113	\$ 350
Undelivered Orders	29	-
Total Unexpended Appropriations	142	350
Cumulative Results of Operations:		
Invested Capital	9,138	7,208
Retained Fees:		
Unobligated	8,529	7,463
Undelivered Orders	19,948	12,986
Future Funding Requirements	(9,705)	(9,376)
Total Cumulative Results of Operations	27,910	18,281
Total Net Position	\$ 28,052	\$ 18,631

## NOTE 8 -- COMMITMENTS AND CONTINGENCIES

Commitments The FTC is committed under obligations for goods and services which have been ordered but not yet received (undelivered orders) at fiscal year end. Undelivered orders were \$19,977,000 and \$12,986,000 as of September 30, 2003 and 2002, respectively.

Contingencies The FTC is a party in various administrative proceedings, legal actions, and claims brought by or against it. In the opinion of FTC management and legal counsel, the ultimate resolution of these proceedings, actions and claims, will not materially affect the financial position or the results of operation of the FTC.

On November 14, 2002, the Court of Federal Claims granted the plaintiffs' motion for a summary judgment in a case brought by Department of Justice (DOJ) trial attorneys seeking overtime pay. The ruling indicated the attorneys were entitled to additional overtime pay, but did not establish either an amount of damages or methodology for calculating such an amount. On January 17, 2003, the court granted the DOJ's motion to stay the proceedings and allow an interlocutory appeal under 28

U.S.C. Sec. 1292 to the United States Court of appeals for the Federal Circuit. According to the agency's General Counsel, the circumstances underlying the DOJ case vary significantly from the circumstances for attorneys and other FLSA-exempt employees at the FTC, and that the FTC's ultimate potential exposure in such a case would be limited and in any event would turn on individual, not class action, claims.

Leases The FTC rents approximately 567,481 square feet of space in both commercial and government-owned properties for use as offices, storage and parking. Space leases for government-owned property are made with the General Services Administration (GSA).

Leases of commercial property are made through and managed by GSA. The Commission has leases on 11 government-owned properties and 9 commercial properties. The FTC's current leases expire at various dates through 2012. Two leases provide for tenant improvement allowances totaling \$7,100,000, and provide that these costs be amortized over the length of the leases. Under the terms of the leases, the FTC agrees to reimburse the landlord for the principal balance of the unamortized portion of the tenant improvement allowance in the event the agency vacates the space before lease expiration. The leases expire in 2005 and 2012.

Rent expenditures for the years ended September 30, 2003 and 2002 were approximately \$16,800,000 and \$13,900,000, respectively. This amount is net of a GSA credit of approximately \$1,900,000 for each of the fiscal years 2003 and 2002, relating to the main headquarters building.

Future minimum lease payments due under leases of government-owned property as of September 30, 2003 are as follows:

Fiscal Year	
2004	\$ 5,604
2005	14
Total future minimum lease payments	<u>\$ 5,618</u>

Future minimum lease payments under leases of commercial property due as of September 30, 2003 are as follows:

Fiscal Year	
2004	\$ 11,130
2005	11,062
2006	10,778
2007	10,958
2008	11,304
Thereafter	11,507
Total future minimum lease payments	<u>\$ 66,739</u>

## NOTE 9 -- IMPUTED FINANCING

Imputed financing recognizes actual costs of future benefits which include the FEHB, FEGLI and pension benefits that are paid by other federal entities. Imputed financing was composed of the following:

	<u>2003</u>	<u>2002</u>
FEHBP	\$ 3,439	\$ 3,063
FEGLI	13	12
Pension benefits	2,893	2,035
Total imputed costs	<u>\$ 6,345</u>	<u>\$ 5,110</u>

## NOTE 10 -- PENSION EXPENSE

Pension expenses in 2003 and 2002 consisted of the following:

	<u>Employer Contributions</u>	<u>Accumulated Imputed Costs</u>	<u>2003 Total Pension Expense</u>	<u>2002 Total Pension Expense</u>
Civil Service Retirement System	\$ 1,941	\$ 2,756	\$ 4,697	\$ 4,441
Federal Employee's Retirement System	6,634	137	6,771	5,874
Thrift Savings Plan	2,761	-	2,761	2,647
Total	<u>\$ 11,336</u>	<u>\$ 2,893</u>	<u>\$ 14,229</u>	<u>\$ 12,962</u>

## NOTE 11 -- CUSTODIAL ACTIVITIES

The FTC functions in a custodial capacity with respect to revenue transferred or transferable to recipient government entities or the public. These amounts are not reported as revenue to the FTC. The major components of the FTC's custodial activities are discussed below.

### (a) Premerger Filing Fees

All Hart-Scott-Rodino (HSR) premerger filing fees are collected by the FTC pursuant to section 605 of P.L. 101-162, as amended, and are divided evenly between the FTC and the

DOJ. The collected amounts are then credited to the appropriations accounts of the two agencies (FTC's "Salaries and Expenses" and DOJ's "Salaries and Expenses, Antitrust Division"). During fiscal years 2003 and 2002, respectively, FTC collected \$113,428,000 and \$135,890,000 in HSR fees. Total collections in the amount of \$57,600,000 were retained for distribution, of which \$56,000,000 was transferred to DOJ in 2003 and \$67,945,000 in 2002. As of September 30, 2003 the undistributed collections remaining



in the amount of \$1,600,000 represent amounts to be transferred to DOJ and FTC in a future period.

**(b) Civil Penalties and Fines**

Civil penalties collected in connection with the settlement or litigation of the FTC's administrative or federal court cases are collected by either the FTC or DOJ as provided for by law. DOJ assesses a fee equivalent to three percent of amounts collected before remitting them to the agency. The agency then deposits these collections into the U.S. Treasury. Civil penalties collected also include amounts collected for undecided civil penalty cases held in suspense until final disposition of the case.

**(c) Redress**

The Commission obtains consumer redress in connection with the settlement or litigation of both its administrative and its federal court cases. The Commission attempts to distribute funds thus obtained to consumers whenever possible. If consumer redress is not practical, the funds are paid (disgorged) to the U. S. Treasury, or on occasion, other alternatives, such as consumer education, are explored. Major components of the program include eligibility determination, disbursing redress to claimants, and accounting for the disposition of these funds. Collections made against court-ordered judgments totaled \$101,768,000 and \$42,713,000 during fiscal years 2003 and 2002, respectively.

The sources of these collections are as follows:

<u>Source</u>	<u>2003</u>	<u>2002</u>
Contractors	\$ 71,428	\$ 35,839
Receivers	6,291	1,115
FTC	<u>24,049</u>	<u>5,759</u>
Total	<u>\$ 101,768</u>	<u>\$ 42,713</u>

**(d) Divestiture Fund**

One judgment obtained by the agency on behalf of its maintaining competition mission stipulates the divestiture of assets by the defendants into an interest bearing account to be monitored by the agency. The balance of the account represents principal and related interest held at one of FTC's contractor accounts as stipulated in the judgment. A corresponding liability is recorded.

#### **(e) Accrual Adjustments**

These adjustments represent the difference between the agency's opening and closing accounts receivable balances. Accounts receivable are the funds owed to the agency (as a custodian) and ultimately to consumers or other entities. See Exhibit A for computation of accrual adjustments to the Statement of Custodial Activity.

#### **(f) Receivers**

This amount represents the funds forwarded to receivers during the year for distribution to consumers. The agency recorded an asset, Due from Receivers, and a corresponding liability, Receivers Distributions Due for the amount of funds forwarded. These balances are reduced as the distributions to consumers are confirmed.

#### **(g) Redress to Claimants**

Redress to claimants consists of amounts distributed to consumers by FTC, one of its contracted agents, the court appointed receiver, or by the defendant. In fiscal year 2003 a total of \$69,566,000 was distributed to consumers: \$63,275,000 was paid by FTC and its contracted agents, and \$6,291,000 was paid by receivers. In fiscal year 2002, a total of \$17,293,000 was distributed to consumers: \$167,178,000 was paid by the FTC and its contracted agents, and \$1,115,000 was distributed by receivers.

#### **(h) Contractor Fees Net of Interest Earned**

Collections against monetary judgments are often deposited with one of the agency's two redress contractors until distributions to consumers occur. Funds are deposited in interest bearing accounts, and the interest earnings are used to fund administrative expenses. Contractor expenses for the administration of redress activities and funds management amounted to \$5,286,000 and \$2,281,000 during the years ended September 30, 2003 and 2002, respectively. Interest earned was \$354,000 and \$753,000 during fiscal years 2003 and 2002, respectively, with the difference of \$4,932,000 and \$1,528,000 representing net expense.

Attorney fees were \$11,071,000, related to one class action case, and zero during fiscal years 2003 and 2002, respectively.

#### **(i) Change in Liability Accounts**

Liability accounts contain funds that are in the custody of the agency or its agents, and are owed to others (consumers, receivers for fees, and/or the Department of Justice). See Exhibit B for the computation of liability account changes.

#### **(j) Current Year Judgments**

A judgment is a formal decision handed down by a court. Redress judgments include amounts that defendants have agreed, or are ordered, to pay, for the purpose of making

restitution to consumers deemed to have been harmed by the actions of the defendant(s) in the case. For purposes of presentation in Exhibit A, redress judgments include cases in which the FTC, or one of its agents, is directly involved in the collection or distribution of consumer redress. In fiscal years 2003 and 2002, the agency obtained and reported in Exhibit A monetary redress judgments against defendants totaling \$379,000,000 and \$155,000,000, respectively.

The FTC does not include in the presentation of Exhibit A current redress judgment cases in which the FTC, or one of its agents, is not directly involved with the collection or distribution of consumer redress. These are cases in which the defendant, or other third party, has been ordered to pay redress directly to the consumers. There were three such cases in fiscal year 2003 in which the FTC obtained a judgment. In most of these cases, the judgment has ordered redress in the form of refunds or credits. In addition there was one case in which the defendants were ordered to forgive an estimated amount of \$500,000,000 of outstanding consumer charges and to return all un-cashed checks to consumers.

The agency also obtained civil penalty judgments of \$9,300,000 and \$1,700,000 in fiscal years 2003 and 2002, respectively.

#### **(k) Treasury Referrals and Prior Year Recoveries**

Monetary judgments six months or more past due are referred to the Department of Treasury for follow up collection efforts in keeping with the Debt Collection Improvement Act of 1996 (DCIA). Treasury's Debt Management Services (DMS) administers the program, and deducts 18 percent from amounts ultimately collected for its fee. Collections, net of fees, are returned to the FTC for distribution to either consumers, in the form of redress, or to the general fund of the Treasury as disgorged amounts. In fiscal years 2003 and 2002, \$88,000 and \$10,000 (net of fees) were collected based on FTC referrals and are reported as collections on the Statements of Custodial Activity. The FTC refers to DMS only those cases as defined in DCIA. This excludes cases that are in receivership, in bankruptcy or foreign debt. During 2003 and 2002, \$5,857,000 and \$32,990,000 were referred to the DMS for collection.

Prior year recoveries include amounts collected on cases which were written off in a previous year. In fiscal years 2003 and 2002, \$10,232,000 and \$1,057,000 were collected.

#### **(l) Adjustments to the Allowance**

Adjustments to the allowance for redress, totaling \$141,530,000, represent amounts formally written off during the year in the amount of \$30,272,000 and adjustments to the provision for uncollectible amounts of \$111,258,000.

## NOTE 12 -- EARNED REVENUES

Earned revenue with the public consisted of the following:

	<u>2003</u>	<u>2002</u>
HSR Premerger filing fees	\$ 56,015	\$ 67,945
Do-Not-Call registry fees	<u>5,239</u>	<u>-</u>
Total	<u>\$ 61,254</u>	<u>\$ 67,945</u>

HSR premerger filing fees earned represent one-half of fees collected under the provisions of the Hart-Scott-Rodino Antitrust Improvements Act. See *Note 1 (p), Exchange Revenues*. Revenue is recognized when earned; i.e., all required documentation under the HSR Act has been received by the agency.

Do-Not-Call registry fees represent collections of fees for the national Do-Not-Call Registry. The Do-Not-Call Implementation Act, P. L. 108-010, authorizes the FTC to collect fees for the implementation and enforcement of the Do-Not-Call- registry. Telemarketers who are under the FTC's jurisdiction are required to pay a user fee and download from the do-not-call database a list of consumer's telephone numbers who do not wish to receive calls. Fees are based on the number of area codes downloaded. The minimum charge is \$25 for downloading one area code. The maximum charge is \$7,375 for all area codes within the United States. The Do-Not-Call registry was implemented during fiscal year 2003 and began operations in September 2003.

## NOTE 13 -- STATEMENTS OF NET COST

The Statements of Net Cost are consolidated for the FTC using a Budget Functional Classification (BFC) code. BFC codes are used to classify budget resources presented in the Budget of the United States Government per OMB. FTC is categorized under BFC code 376 – Other Advancement of Commerce. Gross cost and earned revenue for the FTC fall under this code, regardless of whether the fees are intragovernmental or with the public.

Gross Cost and Earned Revenue:

	<u>BFC Code</u>	<u>Gross Cost</u>	<u>Earned Revenue</u>	<u>Net Cost</u>
FY 2003	376	\$ 174,746	\$ (62,413)	\$ 112,333
FY 2002	376	\$ 160,658	\$ (69,204)	\$ 91,454

Intragovernmental Gross Cost and Earned Revenue:

	<u>BFC Code</u>	<u>Gross Cost</u>	<u>Earned Revenue</u>	<u>Net Cost</u>
FY 2003	376	\$ 43,495	\$ (1,159)	\$ 42,336
FY 2002	376	\$ 40,694	\$ (1,259)	\$ 39,435

**NOTE 14 -- STATUS OF BUDGETARY RESOURCES**

**(a) Apportionment Categories of Obligations Incurred**

Obligations incurred reported on the Statement of Budgetary Resources in 2003 and 2002 consisted of the following:

	<u>2003</u>	<u>2002</u>
Direct Obligations:		
Category A	<u>\$ 106,257</u>	<u>\$ 87,580</u>
Reimbursable Obligations:		
Category A	70,201	67,955
Category B	<u>797</u>	<u>1,497</u>
Total reimbursable obligations	<u>70,998</u>	<u>69,452</u>
Total	<u><u>\$ 177,255</u></u>	<u><u>\$ 157,032</u></u>

**(b) Explanation of Differences Between the Statement of Budgetary Resources and the Budget of the United States Government**

The Budget of the United States Government with actual amounts for the year ended September 30, 2003 has not been published as of the issue date of these financial statements. This document will be available in February 2004.

## **NOTE 15 -- CHANGE IN ACCOUNTING ESTIMATES**

In fiscal year 2003, the FTC changed the percentages estimated for development costs for software expenditures. Accounting standards require that the effects of a change in estimate should be reported in the period of change and subsequent periods. The net effect of this change in estimate for fiscal year 2003 is a \$758,000 charge to expense. This is the result of the reclassification from capitalized software to software maintenance expense. The depreciation expense recognized had this change in estimate not been recorded would have been \$253,000 in each of fiscal years 2003, 2004 and 2005. See *Note 5 - Property and Equipment, Net*.

FEDERAL TRADE COMMISSION  
Notes to the Statements of Custodial Activity  
Accrual Adjustments  
September 30, 2003 and 2002

(Dollars in Thousands)

Part 1	MC Mission	CP Mission		2003	2002
	Civil Penalty	Redress	Subtotal CP		
Judgments Receivable - Net Beginning	\$ -	\$ 1,809	\$ 93,021	\$ 94,830	\$ 35,856
Add:					
Current Year Judgments (Note 11j)	7,040	2,344	379,835	389,219	157,233
Due From Receivers (Note 11f)	-	-	-	-	163
Prior Year Recoveries (Note 11k)	-	-	10,232	10,232	1,057
Less:					
Collections by FTC/Contractors Receivers	(6,829)	(1,678)	(101,768)	(110,275)	(44,439)
Collections by DOJ for Litigation Fees/Other	(211)	(51)	-	(262)	(34)
Less:					
Adjustments to Allowance (Note 11 l)	-	(319)	(141,530)	(141,849)	(55,006)
<b>Judgments Receivable - Net, Ending</b>	<u>\$ -</u>	<u>\$ 2,105</u>	<u>\$ 239,790</u>	<u>\$ 241,895</u>	<u>\$ 94,830</u>
Part 2					
Judgments Receivable - Net Ending	\$ -	\$ 2,105	\$ 239,790	\$ 241,895	\$ 94,830
Judgments Receivable - Net Beginning	-	1,809	93,021	94,830	35,856
<b>Accrual Adjustment</b>	<u>\$ -</u>	<u>\$ 296</u>	<u>\$ 146,769</u>	<u>\$ 147,065</u>	<u>\$ 58,974</u>

FEDERAL TRADE COMMISSION  
 Notes to the Statements of Custodial Activity  
 Change in Liability Accounts  
 September 30, 2003 and 2002

(Dollars in Thousands)

	MC Mission			CP Mission			Total
	Pre-Merger	Divestiture	Civil Penalty	Subtotal MC	Civil Penalty	Redress	
Liabilities @ 09/30/03	\$ 1,600	\$ 41,191	\$ -	\$ 42,791	\$ 2,105	\$ 304,744	\$ 306,849
Liabilities @ 09/30/02	\$ 1,683	\$ 40,975	\$ -	\$ 42,658	\$ 1,809	\$ 155,942	\$ 157,751
Change in Liability Accounts	\$ (83)	\$ 216	\$ -	\$ 133	\$ 296	\$ 148,802	\$ 149,098

	MC Mission			CP Mission			Total
	Pre-Merger	Divestiture	Civil Penalty	Subtotal MC	Civil Penalty	Redress	
Liabilities @ 09/30/02	\$ 1,683	\$ 40,975	\$ -	\$ 42,658	\$ 1,809	\$ 155,942	\$ 157,751
Liabilities @ 09/30/01	5,921	40,593	-	46,514	2,326	79,527	81,853
Change in Liability Accounts	\$ (4,238)	\$ 382	\$ -	\$ (3,856)	\$ (517)	\$ 76,415	\$ 75,898