

Annual Performance Plan Objectives by Program FTE

Consumer Protection Mission

	Fiscal Year 2001				Fiscal Year 2002			
	CP Obj. 1	CP Obj. 2	CP Obj. 3	Prgm. Total	CP Obj. 1	CP Obj. 2	CP Obj. 3	Prgm. Total
Advertising Practices	7	54	2	63	7	55	2	64
Marketing Practices	12	127	5	144	13	129	5	147
Financial Practices	6	44	2	52	6	47	2	55
Enforcement	3	49	2	54	3	50	2	55
Planning & Information	49	6	5	60	52	6	5	63
Consumer & Business Education	0	0	12	12	0	0	12	12
Economic & Consumer Policy Analysis	0	5	1	6	0	5	1	6
Program Management	7	18	2	27	7	18	2	27
CP Mission Support	28	101	10	139	29	102	10	141
Total Mission	112	404	41	557	117	412	41	570

Maintaining Competition Mission

	Fiscal Year 2001				Fiscal Year 2002			
	MC Obj. 1	MC Obj. 2	MC Obj. 3	Prgm. Total	MC Obj. 1	MC Obj. 2	MC Obj. 3	Prgm. Total
Premerger Notification	19	0	12	31	17	0	11	28
Merger & Joint Venture Enforcement	11	182	11	204	11	190	11	212
Merger & Joint Venture Compliance	1	13	1	15	1	14	1	16
Nonmerger Enforcement	4	85	4	93	5	86	5	96
Nonmerger Compliance	0	5	0	5	0	6	0	6
Antitrust Policy Analysis	2	2	2	6	2	3	2	7
Other Direct Mission Resources	4	7	4	15	4	7	4	15
MC Mission Support	14	98	11	123	13	100	11	124
Total Mission	55	392	45	492	53	406	45	504

Performance Measures

	FY 2000 Actual	FY 2001 Target	FY 2002 Target
Consumer Protection Mission			
Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.			
<i>Objective 1.1-Identify fraud, deception, and unfair practices that cause the greatest consumer injury:</i>			
Measure 1.1.1: Cumulative number of consumer complaints and inquiries entered into database. ¹	833,659	--	--
Measure 1.1.1: Annual number of consumer complaints and inquiries entered into database. ²	--	350,000	400,000
<i>Objective 1.2-Stop fraud, deception and unfair practices through law enforcement:</i>			
Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud.	\$265 million	\$400 million	\$400 million
Measure 1.2.2: (FY 1999-2000) Percentage of targeted industry brought into compliance through law enforcement and self regulation. ¹	83%	--	--
Measure 1.2.3: (FY 2001-2002) Total expenditures of deceptive or unfair advertising campaigns stopped. ²	--	\$300 million	\$300 million
<i>Objective 1.3-Prevent consumer injury through education:</i>			
Measure 1.3.1: Number of education publications distributed to or accessed electronically by consumers.	11.0 million	10.0 million	10.5 million
Maintaining Competition Mission			
Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.			
<i>Objective 2.1-Identify anticompetitive mergers and practices that cause the greatest consumer injury:</i>			
Measure 2.1.1: (FY 1999-2000) Average number of days for review of HSR-reported transactions. ¹	18	--	--
Measure 2.1.2: Number of nonmerger investigations opened per year.	25	45-70	45-70
Measure 2.1.3: (FY 2001-2002) Percent of HSR second requests resulting in enforcement action. ²	--	50%	50%
<i>Objective 2.2-Stop anticompetitive mergers and practices through law enforcement:</i>			
Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.	95%	80%	80%

	FY 2000 Actual	FY 2001 Target	FY 2002 Target
Measure 2.2.2: Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.	\$2.98 billion	\$800 million	\$800 million
Measure 2.2.3: (FY 1999-2000) Average time, in months, from proposed consent orders to divestitures. ¹	4	--	--
Measure 2.2.4: Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity. ²	--	\$200 million	\$200 million
<i>Objective 2.3-Prevent consumer injury through education:</i>			
Measure 2.3.1: (FY 1999-2000) Identify and survey FTC "customers" in the marketplace. ¹	incorporate input	--	--
Measure 2.3.2: (FY 1999-2000) Average number of days to issue advisory opinions in health care area: ¹	84	--	--
Measure 2.3.3: (FY 2001-2002) Quantify number of education and outreach efforts. ²	--	establish baselines	establish baselines
Measure 2.3.4: (FY 2001-2002) Quantify number of hits on antitrust information on FTC Web site. ²	--	establish baselines	establish baselines

1. Measure was deleted in the Strategic Plan for FYs 2000-2005.
2. Measure was added in the Strategic Plan for FYs 2000-2005.

Consumer Protection Mission

Goal 1: To prevent fraud, deception, and unfair business practices in the marketplace.

Objective 1.1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury.

FY 2001 Budgeted Resources: 112 FTE \$15,708,000

The FTC Consumer Response Center (CRC) answers a growing volume of consumer complaints and inquiries received by telephone, mail, and e-mail. Before implementation of the toll-free number, the CRC was responding to over 14,000 consumers calls and 15,000 consumer letters, internet complaints, and brochure requests each month. Call volume on the new toll free number -- 1-877-FTC-HELP -- has more than doubled the number of incoming calls per month. The fraud data are accessed via *Consumer Sentinel* -- the largest consumer fraud secure Web site in North America and the only one accessible to law enforcement partners across the U.S., Canada, and Australia. In FY 2001, our aim is: (a) the expansion of the CRC to handle the increasing number of consumer complaints and inquiries, (b) continuous data analysis of complaints to identify targets for law enforcement and consumer education programs, and (c) the transformation of *Consumer Sentinel* into a worldwide consumer complaint database.

To make *Consumer Sentinel* even more valuable in the increasingly global marketplace, we will be increasing our collection of information from consumer agencies in other countries. Building on our experience with Canadian members of *Consumer Sentinel*, we will work toward data sharing arrangements, for example, with the members of the International Marketing Supervision Network.

The Commission is systematically collecting consumer complaints about identity theft, as required by the recently enacted Identity Theft and Assumption Deterrence Act. The database of these complaints is expected to grow significantly, as the new toll-free number -- 1-877-ID-THEFT -- is more widely publicized. The Commission not only will receive and

record complaints from consumers, it will refer individual cases to appropriate agencies, undertake consumer education about the identity theft problem, and regularly analyze the complaint data to identify trends.

1. GPRA Five-Year Strategies

- Expand the FTC's comprehensive information system (consumer complaint databases) to keep pace with the global marketplace.
- Strengthen capabilities to analyze the increasing volume of complaint data.
- Continuously upgrade *Consumer Sentinel's* services to assist law enforcement partners. *Consumer Sentinel* is a secure Web site containing consumer complaint data that can be accessed by law enforcement agencies.
- Ensure the privacy and security of database information.
- Search for better methods of collecting information to keep abreast of new consumer protection problems in traditional markets and emerging markets such as the Internet.

2. FY 2001 Implementation Plan

- Recruit new partners in the United States and abroad to contribute complaint data to *Consumer Sentinel*.
- Improve the capacity to receive and integrate complaints from international sources.
- Add to the group of state, local, federal, and international law enforcement agencies accessing information in *Consumer Sentinel*; train new partners in how to take full advantage of its features.
- Facilitate the exchange of data with law enforcement officials in other countries through *Consumer Sentinel* or other means.
- Monitor the marketplace to identify illegal practices that may not be fully captured by the database, for example through the Internet Lab and Web surfs.
- Increase the number of Identity Theft complaints in the database and refer trend data and complaints to public and private sector partners such as credit bureaus and law enforcement partners.

- Identify new consumer protection issues emerging as a result of changes in the marketplace (for example, growth in e-commerce, deregulation of industries, emergence of new products and services, globalization) and explore these issues through public workshops, hearings, and studies.

3. FY 2001 Performance Measures

In FY 2001, the agency will:

- Increase the number of consumer complaints and inquiries in the FTC's comprehensive information system by at least 350,000.

The FTC continues to focus law enforcement resources on the most serious consumer protection problems identified from its consumer complaint database. Our data enable us to rapidly detect and respond to fraud, deception, and other illegal practices, and to prevent consumer injury in a timely fashion. Further, by broadly sharing our fraud complaints with external partners, we are able to enhance the effectiveness of law enforcement agencies across the United States and Canada.

4. Program Evaluations

- Assess whether the FTC's law enforcement and education efforts are addressing the leading problem areas identified by the complaint database.
- Determine the extent to which *Consumer Sentinel* services are used by law enforcement partners.
- Assess privacy and security protections for the database by reviewing complaints, if any, and evaluating the policies in place.

Objective 1.2: Stop fraud, deception, and unfair practices through law enforcement.

FY 2001 Budgeted Resources: 404 FTE \$56,357,000

The Internet

The Internet has the potential to deliver traditional goods and services, often more conveniently, faster, and at lower prices than traditional media. Moreover, at an ever increasing rate, it is stimulating the development of innovative products and services that were barely conceivable just a few years ago and enabling consumers to tap into rich sources of information that they can use to make better-informed purchasing decisions. E-commerce is growing exponentially and already has had a profound impact on the marketplace. Annual consumer sales on the Internet were \$48 billion in 2000 and are expected to skyrocket to \$269 billion in 2005. The next revolution in technology is likely to be information devices that enable consumers -- any time and anywhere -- to surf the Web, schedule appointments, program home appliances, compute, e-mail, telephone, take notes, etc. The convergence of technologies will lead to vast changes in the way consumers shop and what they spend their money on. They'll be spending less on things and more on services to get things done. Subscriptions, contracts, and license fees will be the vehicles for purchasing information and software applications.

These developments obviously promise enormous benefits to consumers and the economy. There is real danger, however, that these benefits may not be realized if consumers identify the Internet with fraudulent operators. Fraud on the Internet is an enormous concern for the Commission. The FTC has responded with a comprehensive law enforcement campaign. We have monitored the Internet and identified problems through over 25 surf days conducted with over 250 state, federal, international and private sector partners. We have brought over 165 Internet-related cases against over 560 individuals and companies.

The online globalization of the marketplace poses new and difficult challenges for consumer protection law enforcement. Proceeds of Internet fraud may be moved off-shore quickly, and fraudulent online operators may be beyond the reach of the Commission and U.S. courts, practically if not legally. There is little recognition of civil judgments from country to country. Even if the Commission were to bring an action and obtain a judgment against a foreign firm that has defrauded U.S. consumers, the judgment might be challenged in the firm's home country. The ability to collect any consumer redress might be frustrated. In light of this possibility, consumer protection law enforcement must look for more effective remedies available under U.S. law and must work more cooperatively with law enforcement officials in other countries.

As this new marketplace continues to grow explosively, the FTC will continue to expand its online presence. To meet this challenge, we will use our Rapid Response team to tackle high-tech frauds that are getting bigger and more complicated, and appearing at a faster pace. As the Internet market becomes more mainstream, we will assure compliance with all our consumer protection laws, including the many credit statutes we enforce. We will focus more resources on traditional advertising issues, and develop appropriate standards for

online compliance, taking into account unique characteristics of the electronic environment. We will work with industry and encourage self-regulatory approaches. We will continue our role in promoting online privacy, which remains an area of deep concern for consumers. The Commission will monitor compliance with the recently enacted Children's Online Privacy Protection Act and continue to encourage self-regulatory initiatives. In addition, we will also, encourage our international consumer protection partners to undertake online consumer protection.

To support the exponential growth of e-commerce in the 21st century, the Commission cannot continue to protect consumers with 20th century tools. The Commission will need to continue to make innovative use of technology and add to its Internet Lab the latest Internet-related technologies, as well as the new information devices that consumers will be using to telephone, e-mail, compute, access the Web, etc.

Telecommunications

The Commission has also moved assertively to address emerging consumer protection problems in the sale of telecommunications services. Telephone-based purchases -- pay-per-call and telephone billed transactions -- will continue to be a significant area for fraud. Scam artists have taken advantage of new telephone technologies, the deregulation of telephone services, and the ease of operating globally. In FY 1999 alone the Commission secured over \$50 million in relief for consumers improperly charged for telephone-billed purchases - "cramming". To address these problems, in FY 1999 the Commission proposed amendments to its pay-per-call rule. In FY 2001, it will be implementing a law enforcement program to assure compliance with the amended rule.

The FTC has worked closely with the Federal Communications Commission on another consumer protection problem that has emerged in the increasingly competitive market for "dial-around" and other long distance telephone services. Numerous long-distance carriers, both large and small, heavily promote, through national television, print, and direct mail advertising campaigns, the use of their own long-distance telecommunications services, including dial-around services. Nearly all of this advertising focuses on price claims, and much of it is deceptive. Both the FTC and the FCC have received increased number of complaints by consumers regarding how dial-around and other long-distance services are marketed. Since consumers of dial-around services must rely on the information contained in the advertisements as the basis for determining whether to choose a particular dial-around service, it is critical that such advertising claims be truthful and not misleading.

Subprime Lending and "Fringe" Banking

The Commission will continue law enforcement efforts to stop abusive lending practices in the subprime mortgage industry, which lends to higher-risk consumers. These practices can strip consumers (often lower-income, minority or elderly) of substantial sums of money, and ultimately of their homes. In addition, the Commission will investigate practices surrounding loans to low income consumers by a variety of nonbank financial institutions, such as pay day lenders, title loan companies, and others. We will target those practices that

violate existing consumer protection statutes, and propose law reform if there are regulatory gaps.

A. Stopping Fraud

1. GPRA Five-Year Strategies

- Lead and coordinate the nationwide attack on telemarketing fraud.
- Target high-tech frauds such as those that have moved to the Internet and those that exploit other new technologies.
- Develop additional international law enforcement arrangements to tackle the growing problem of cross-border fraud.
- Increase the capacity to respond rapidly, with enforcement and other approaches, to fast-moving technology-based scams.

2. FY 2001 Implementation Plan

- Target for federal-state “sweeps” or other law enforcement initiatives the most significant areas of telemarketing fraud and other types of fraud, for example, direct mail scams, predatory lending, and unauthorized telephone billing (“cramming”).
- Stop the most pernicious Internet-related scams as they are identified in *Consumer Sentinel* or through other monitoring, for example, comprehensive Internet surfs by U.S. and global partners.
- Recruit new local, state, federal, and international law enforcement partners for anti-fraud initiatives.
- Train staff and equip the FTC’s Internet Lab to keep pace with technology and support rapid response law enforcement capability.

3. FY 2001 Performance Measures

In FY 2001, the agency will:

- Save consumers approximately \$400 million by stopping Internet and other fraud.

Preventing economic injury to consumers is the ultimate goal of our anti-fraud efforts. We save consumers money each time a fraudulent operator is stopped by successful litigation or settlement with the agency. We increase these consumer savings by leading joint law enforcement initiatives with federal, state, and international partners. The amount of consumer savings will vary each year based on the number and types of fraud we stop.

Consumer savings are calculated by adding together the estimated annual fraudulent sales of defendants in the 12 months prior to filing a complaint. The calculation may actually underestimate the agency's impact because it assumes that the fraud would have continued for only one more year; however, it provides a uniform method for calculating savings and minimizes speculation about the likely duration of the fraud.

4. Program Evaluations

- Assess the overall trends revealed by the database to determine whether the amount of resources dedicated to the fraud program should be altered or the program's priorities modified.
- Assess the litigation success rate for obtaining preliminary relief in fraud cases.
- Determine the success of leveraging resources through coordinated joint law enforcement initiatives.

B. Ensuring Broad-Based Protections for Consumers

1. GPRA 5-Year Strategies

- Ensure that basic consumer protection principles are applied in new markets such as the Internet and in newly deregulated markets.
- Monitor national advertising in print, television, radio, and online to identify illegal practices that may not be fully captured by the database.
- Focus law enforcement on violations that create the greatest risks to consumer health, safety, and economic well-being.
- Develop policies to address newly emerging consumer protection issues resulting from changes in the marketplace.
- Encourage self-regulation and private initiatives, where appropriate, in lieu of regulation or law enforcement.

2. FY 2001 Implementation Plan

- Target law enforcement efforts at advertising and marketing practices that are most injurious to consumers; identify targets based on complaint data and other forms of monitoring.
- Identify industries where a high percentage of companies are not in compliance with provisions of consumer protection laws or regulations and bring those companies into compliance through law enforcement and business guidance or by encouraging self-regulatory programs.
- Monitor the online market to ensure broad compliance with consumer protection laws, rules, and guides; target law enforcement to the most serious violations.
- Implement new congressionally mandated regulations governing financial privacy and online children's privacy, and recently updated regulations governing franchising, telemarketing sales, and telephone billing services.
- Address cutting-edge consumer protection issues in emerging areas – e-commerce, globalization, and the marketing of new digital products and services and newly deregulated services.

3. FY 2001 Performance Measures

In FY 2001, the agency will:

- Reduce consumer injury by obtaining orders stopping deceptive or unfair major national advertising campaigns with combined media expenditures totaling \$300 million.

The FTC's broad consumer protection jurisdiction covers the \$100 billion national advertising industry, the direct marketing industry with sales of \$600 billion, and financial transactions affecting virtually every consumer in this country. With the growth of e-commerce (consumer sales expected to reach \$269 billion by 2005), newly deregulated markets, and globalization, the FTC's jurisdiction is growing even broader. The FTC achieves a far-reaching impact in the nonfraud area by (1) stopping major misleading ad campaigns and deterring others and (2) preventing consumers nationwide from being injured by purchasing products or services promoted by deceptive or unfair national advertising campaigns.

4. Program Evaluations

- Assess whether the mix of resources allocated to fraud and non-fraud programs is appropriate in light of changes in the marketplace.
- Evaluate the success of self-regulatory programs.
- Determine whether there are new industries or areas of marketing that require law enforcement or that may be appropriate for self-regulation.

Objective 1.3: Prevent consumer injury through education.

FY 2001 Budgeted Resources: 41 FTE \$5,725,000

The fast pace and magnitude of change in the marketplace – new forms of fraud, new methods of marketing, and the changing nature of the business/consumer relationship – make a compelling case for a more active and creative outreach program. As the tools of technology become more affordable and accessible and attract more consumers to the online marketplace, the importance of reaching consumers, businesspeople and law enforcement officials with information expands. Although the FTC distributes millions of print publications a year, and is logging more and more visitors to our Web sites every month, the situation demands that we do more -- that is, that we reach more people and that we reach them faster. We will use available information technology to be more efficient and effective at reaching consumers, businesses, law enforcement officials, and the media.

To expand our outreach, we will need to increase our partner base of consumer organizations, professional and trade associations, media, local and state consumer agencies and corporations. These organizations will help us disseminate our consumer and business education messages to their constituencies. This enhanced partner base and e-communication will help us maintain and expand our dialogue with stakeholders. We will be able to better hear the consumer and business education challenges our partners face and may, in turn, be better able to work with the partners to develop strategies to address those challenges. Electronic communication will be supported with “old-fashioned” networking and an expanded program of community outreach using conferences, meetings, traveling exhibits and town hall-type events to present our products and messages.

Increasing the visibility of the FTC as the nation’s consumer protection champion will not only educate consumers so they can better protect themselves, but also encourage consumers to provide the FTC with more and better complaint data. That, in turn, will make our law enforcement efforts more effective.

1. GPRRA Five-Year Strategies

- Focus consumer and business education efforts on areas where fraud, deception, unfair practices, and information gaps cause the greatest injury.
- Creatively use technology, including new interactive media, to extend the reach of consumer and business education.
- Increase public awareness of FTC’s online education materials, and the availability of its toll-free helpline and online complaint form to provide one-on-one information and increase data collection to support law enforcement.
- Encourage private and public partners to participate in education initiatives.

2. FY 2001 Implementation Plan

- Deliver information to more consumers, industry members, and law enforcement partners faster and more efficiently.
- Focus education on high-profile and emerging issues where consumer information gaps are greatest, for example, globalization, Internet scams, online privacy, and identity theft.
- Increase education efforts about frauds that cause consumers the greatest financial injury.
- Through greater outreach, lead more consumers to the FTC's Web site (www.ftc.gov) and the "one-stop" government Web site for consumer information (www.consumer.gov).
- Expand coverage of FTC messages, including the toll-free helpline, through marketing, new products, technology, a speakers bureau, etc.
- Continue efforts to identify and reach under-served audiences, businesses, and law enforcement offices.

3. FY 2001 Performance Measures

In FY 2001, the agency will:

- Provide education messages online and in print to 10 million recipients.

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, we make maximum use of the national media, the FTC's **ftc.gov** Web site, and the inter-agency **consumer.gov** Web site. Our messages also reach the public through the Consumer Response Center, and hundreds of partners who distribute our materials, link to our Web site, or post our messages on their Web sites.

4. Program Evaluations

- Determine the number of publications distributed or accessed online.
- Assess whether the appropriate mix of media is being used to communicate consumer education messages and whether the FTC is making the best use

of the available media and technology.

- Assess the number and range of public and private organizations that partner with FTC to do outreach.
- Determine whether the FTC needs to reach new audiences, in light of any changes in demographics, advertising, and marketing practices.
- Review the focus of FTC education efforts and adjust them based on changing consumer and business needs.
- Assess the educational needs of the Spanish-speaking population.

Maintaining Competition Mission

Goal 2: To prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

Objective 2.1: Identify anticompetitive mergers and practices that cause the greatest consumer injury.

FY 2001 Budgeted Resources: 55 FTE \$7,775,000

During the 1990s, record-setting totals of proposed merger transactions were submitted to the FTC in compliance with the notification and filing requirements of the *Hart-Scott-Rodino (HSR) Act*. The dollar value and complexity of reported transactions continues to rise steadily. Premerger review for large transactions is typically much more complex and time-consuming than for smaller transactions, as the number of markets and amount of commerce affected is typically greater. Processing this increasing workload, which we have kept up with through increased productivity and streamlining efforts, requires the use of all FTE allocated to this objective.

1. GPRA Five-Year Strategies

- Administer the HSR premerger notification program, under which parties to certain

mergers and acquisitions must report in advance on the planned transactions to the FTC and Department of Justice to allow for antitrust review. Track and maintain the timeliness of merger review under the HSR Program.

- Use trade press articles, consumer and competitor complaints and other means to identify (1) mergers that were not required to be reported under HSR, (2) mergers that were not reported, in violation of HSR, and (3) potentially anticompetitive nonmerger business practices.
- Continue to make efficient use of the initial 30-day period after HSR filings (or 15 days for a cash tender offer) to determine whether a merger is likely to harm competition, including prompt inter-agency clearance and timely review of filings to avoid unnecessary extended investigations.
- Through hearings, Bureau of Economics studies, and other means, identify emerging trends and focus on potentially anticompetitive business practices or other issues that need to be addressed because of changes in the economy, technology, and the marketplace.
- Refine the investigative and decisional tools used in both merger and nonmerger investigations through continuous learning.
- Maintain and improve the timeliness, efficiency, and effectiveness of nonmerger investigations by returning resources to the nonmerger program to the extent the level of merger activity permits.

2. FY 2001 Implementation Plan

A. All Programs

- Ensure timeliness of review. Monitor the time and resources needed to conduct preliminary investigations. Review the progress of all ongoing investigations on at least a monthly basis. For mergers filed under the HSR program, maintain statistics for the average time for clearing transactions that do not require further review and the average time for completing all HSR investigations. Review the statistics on a semi-annual basis. If the average time to complete HSR investigations during the preceding 12 months exceeds 20 days, review the efficiency of merger reviews during the initial 30-day period under HSR and make any necessary adjustments.
- Monitor resource needs and consumption of merger and nonmerger programs, and make adjustments as appropriate.
- Identify anticompetitive practices by using speeches, electronic media, and other publications to inform potential aggrieved parties that they can lodge complaints with the FTC.

- Analyze competition issues. Evaluate the need for in-depth study of a major competition issue, such as the 1996 study of competition in the global economy and the 1997 study of joint ventures and other collaborative arrangements.
- Conduct training programs in investigative skills and antitrust analysis, including a competition overview program given twice yearly for new attorneys, summer interns, and paralegals, and supplemental programs offered periodically on various skills such as witness interviewing, taking and defending depositions, motions practice, trial advocacy, and legal writing. Conduct monthly luncheon programs featuring speakers from within and outside the agency on substantive or procedural topics. In addition, provide career enhancement training for support staff in subjects such as paralegal skills and effective writing, and computer training for all staff. Ensure that lead attorneys and managers collect any important lessons learned at the close of each significant investigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.

B. Mergers Filed Under HSR

- In the initial review of HSR filings, determine compliance with reporting requirements; prepare a summary of the transaction and a recommendation regarding further review; transmit summary information and recommendation to Bureau of Competition management, merger litigation divisions, and the Bureau of Economics.
- Based on the transaction summary and recommendation resulting from initial review, an examination of the filing if necessary, and other available information, promptly determine whether further review is needed by a litigation division to determine whether the transaction may be anticompetitive. If further review is deemed unnecessary, recommend early termination of the statutory waiting period. If further review is deemed necessary, seek investigational clearance through the inter-agency liaison process with the Department of Justice. If clearance is received, continue the review during the remainder of the initial 30-day period after filing (15 days for a cash tender offer), as necessary, employing appropriate investigative techniques and sources of information, to determine whether the proposed merger raises sufficiently serious concerns of potential competitive and consumer injury to require further investigation with the issuance of investigative requests for additional information ("second requests"). If appropriate, prior to the expiration of the initial 30- or 15-day waiting period, prepare a recommendation to the Merger Screening Committee, comprised of senior officials of the Bureaus of Competition and Economics, for the opening of a full phase investigation, the issuance of second requests by the Chairman of the agency, and approval of compulsory process authority by the Commission.

C. HSR Compliance Enforcement

- Monitor compliance with the requirements of the *HSR Act* by merging entities. As necessary, investigate apparent violations and prepare a recommendation on whether to seek civil penalties if merging entities failed to fulfill their obligations under HSR.
- If an investigation establishes reasons to believe that a merging party has failed to comply with requirements of the *HSR Act* and that an enforcement action would be in the public interest, seek to negotiate a consent order for an appropriate amount of civil penalties.
- If an appropriate consent order cannot be negotiated, prepare a recommendation that the Department of Justice file an action for civil penalties under the *HSR Act*; if filed, litigate such action as authorized by the Attorney General.

D. Mergers Not Subject to HSR

- In light of the statutory increase in the HRS filing threshold effective early in FY 2001, increase efforts to identify mergers that are not subject to HSR requirements but that are potentially anticompetitive, using techniques such as (1) monitoring the trade press; (2) responding to and following up on case leads by Congressional offices, other Federal agencies, state and local government; and (3) following up on complaints from consumers, businesses, the bar, and the general public. After identification, seek investigational clearance through the inter-agency liaison process. If initial review indicates a need for further investigation, prepare a recommendation to the Merger Screening Committee for the opening of an initial phase investigation or, if appropriate, a full phase investigation with a request that the Commission authorize the use of compulsory process. If appropriate, seek an agreement from the merging entities to postpone the merger (if not already completed) or to hold competing businesses separate pending further review.
- During the initial phase investigation, employ appropriate investigative techniques to obtain other relevant information, including documents, declarations or testimony, from the merging parties and third parties. If the evidence indicates a potential for competitive harm, prepare a recommendation to the Merger Screening Committee for the opening of a full phase investigation with a request that the Commission authorize the use of compulsory process.

E. Nonmerger Practices

- Identify potentially anticompetitive nonmerger business practices through several means, including (1) monitoring the trade press; (2) responding to and following up on case leads by Congressional offices, other Executive branch agencies, state and local government; (3) following up on complaints from consumers, businesses, the bar and the general public; and (4) pursuing investigative leads developed by staff in other investigations. Seek investigative clearance through the inter-agency liaison process. If granted, conduct preliminary inquiries and assess the likelihood of a violation.

- If warranted, initiate a formal initial phase investigation and collect information through voluntary processes. If the initial phase investigation produces evidence supporting a plausible theory of competitive harm, prepare a recommendation to the Evaluation Committee, comprised of senior officials of the Bureaus of Competition and Economics, for a full phase investigation and, if appropriate, a request to seek Commission authorization to use compulsory process.

3. FY 2001 Performance Measures

In FY 2001, the agency will:

- Continue effective screening of HSR premerger notification filings to identify those that most likely present antitrust concerns, so that at least 50% of HSR requests for additional information result in enforcement action.
- Maintain the number of new nonmerger investigations opened during each of the FYs 1991-1999 (from 45 to 70 new investigations per year), if that number of nonmerger investigations continues to be appropriate in light of marketplace conduct and the need to deter anticompetitive business practices.

4. Program Evaluations

- Review and refine data-monitoring systems relevant to (1) the timeliness of the HSR review process and (2) the degree to which appropriate resources are being devoted to initial review of each matter prior to issuance of an investigative “second request.”
- Review significant deviations from the statistical benchmarks for timely and efficient review of merger transactions and take corrective action where necessary.
- Conduct further review of effectiveness of the “model second request” implemented in FY 1995, making further modifications as appropriate and tailoring particular specifications for specialized industries.
- Conduct periodic meetings between the Director of the Bureau of Competition and heads of litigation divisions to ensure that substantive standards are applied consistently and uniformly.
- From time to time, hold discussions among attorneys in the regional offices, the Office of Policy and Evaluation, and the nonmerger divisions on how to improve techniques for monitoring business practices and for identifying anticompetitive practices.
- Assess the significance (quantitatively in dollar savings to consumers and

qualitatively in deterrence value and precedential significance) of the top 20% (measured in terms of hours spent) of matters in the investigational stage each year.

Objective 2.2: Stop anticompetitive mergers and practices through law enforcement.

FY 2001 Budgeted Resources: 392 FTE \$55,297,000

Maintaining competitive markets through effective antitrust law enforcement is integral to a healthy U.S. economy. The FTC plays a vital role in this effort by bringing cases to enjoin anticompetitive mergers and to halt anticompetitive business practices.

To keep up with increasingly large and complex merger transactions, the Maintaining Competition Mission has been shifting its available resources from nonmerger activities to the merger arena. Dollar values of reported mergers have increased eighteen-fold in nominal terms, from \$169 billion in 1991 to nearly \$3 trillion in 2000. Nonmerger business practices that need antitrust scrutiny continue to require additional resources for law enforcement as well.

The sophistication and complexity of merger and nonmerger investigations continues to increase, stretching our resources even more than just the volume of cases. For example, many of the transactions and practices that raise anticompetitive issues involve highly technological industries, such as defense and aerospace, cable television, and information technology, as well as the growing field of health care services, including hospitals, nursing homes, health maintenance organizations and pharmaceutical companies. The increasing data and econometric emphasis in antitrust investigations and litigation requires that we spend more resources understanding the issues raised. Our accounting and economic resources, which must counteract those of opposing merging parties, are challenged heavily as merging firms rely on complex accounting, econometric and other data intensive economic studies regarding competitive effects, entry issues, and efficiency and failing company defenses. More significantly, merger challenges that are litigated through preliminary injunction actions in federal court or through administrative trials absorb major commitments in resources -- both in personnel and program dollars.

The FTC must also spend resources to maintain an effective compliance program so that consumers receive the benefits of competition obtained through the FTC's investigation and litigation efforts. This objective focuses on structuring and reviewing compliance orders in individual matters, as well as on conducting general and historical analyses, and on the effectiveness of various kinds of merger and nonmerger orders, such as divestiture orders. As the number and complexity of competition cases rise, so do the resource needs of the compliance program associated with those cases. We continue to absorb some of this ever-increasing workload through more efficient use of resources.

1. GPRA Five-Year Strategies

- Continue to save consumers millions of dollars a year by challenging anticompetitive mergers by negotiating consent orders and winning litigated orders.
- Continue to save consumers millions of dollars a year by challenging other (non-merger) anticompetitive conduct, negotiating consent orders, and winning litigated orders.
- Negotiate merger and nonmerger consent orders and win litigated orders that have significant remedial, precedential, and deterrent effects.
- Improve negotiation, litigation, and economic skills through continuous learning.
- Continue to ensure that divestiture remedies in Commission orders are achieved in a timely fashion.
- Ensure that administrative litigation and adjudication reach a timely resolution.

2. FY 2001 Implementation Plan

A. All Programs

- Review the progress of all ongoing investigations on at least a monthly basis. Monitor time and resource expenditures. Review substantive issues and assess results of the investigation and the likelihood of serious competitive and consumer injury from the practice under investigation.
- Continue and improve training for attorneys in such areas as taking and defending depositions, trial advocacy, negotiation skills, and competition analysis. Ensure that lead attorneys, economists and managers collect any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.
- Monitor the timeliness of administrative adjudication, including by issuing to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.

B. Merger Enforcement

- For those merger transactions found during the initial HSR review period to raise potentially significant competitive concerns, employ HSR “second requests” and other appropriate investigative techniques during the extended HSR waiting period to obtain additional information relevant to determining the legality of the transaction, including documents, declarations or testimony, from the merging

parties and third parties. Prior to the expiration of the extended waiting period (30 days from the parties' substantial compliance with the second requests, or 10 days for cash tender offers and assets in bankruptcy), complete the analysis of likely competitive effects of the transaction and prepare recommendations to Bureau management and the Commission on whether enforcement action is warranted.

- In non-HSR investigations, employ appropriate investigative techniques to obtain relevant information, including documents, declarations or testimony, from the merging parties and third parties. Upon completion of the investigation, prepare recommendations to Bureau management and the Commission on whether enforcement action is warranted.
- If an investigation establishes reason to believe that a merger is anticompetitive, seek to negotiate consent orders that effectively cure the competitive problem and protect consumers, while permitting nonproblematic parts of a merger to proceed.
- If an effective consent order cannot be negotiated and the merger has not yet been completed, recommend, in appropriate cases, that the Commission authorize the filing of an action in federal district court for a preliminary injunction against the merger. If authorized, litigate preliminary injunction actions and appellate review proceedings. Employ outside experts as necessary to address economic or technical issues.
- In appropriate cases, recommend that the Commission issue an administrative complaint against the merger, as when a preliminary injunction is not sought because the merger has already occurred, or when the grant of a preliminary injunction does not result in abandonment of the merger. If a preliminary injunction has been denied by a court, assess the public interest in proceeding with a full trial on the merits. If an administrative complaint is issued, litigate the merger before an administrative law judge and pursue or defend appeals as appropriate. Employ outside experts as necessary to address economic or technical issues.
- For management review, collect data regarding (1) the amount of time required to complete the HSR review process, (2) the number of HSR matters requiring issuance of an investigative second request, and (3) the number of such matters resolved through "quick look" investigation (that is, one not requiring the parties to produce all of the documents and information called for by the "second request").

C. Merger Compliance

- Track the time between acceptance by the Commission of proposed merger consent orders and the implementation of divestitures, licenses, or other affirmative relief. Seek civil penalties where appropriate if the respondent fails to fulfill its obligations under the order in a timely fashion.
- Track the time between the date the Commission's litigated merger orders become

final and the implementation of divestitures, licenses, or other affirmative relief. Seek civil penalties and other relief where appropriate if the respondent fails to fulfill its obligations under the order in a timely fashion.

- Monitor other aspects of compliance with the Commission's merger consent orders and litigated orders. Seek civil penalties where appropriate if the respondent fails to fulfill its obligations under the order.
- C Monitor the effectiveness of the Commission's merger consent orders and litigated orders and make adjustments to future orders where appropriate.
- C Modify orders when warranted by changed conditions of fact or law or when otherwise required in the public interest.

D. Nonmerger Enforcement

- During full phase investigations, employ appropriate investigative techniques, including compulsory process if authorized, to conduct a detailed inquiry into the practice and assess whether there is sufficient evidence to establish reason to believe that the law has been violated. If appropriate, prepare a recommendation to the Evaluation Committee for authorization to engage in consent negotiations or to submit a complaint recommendation to the Commission.
- If an investigation establishes reason to believe that a business practice is anticompetitive, seek to negotiate a consent order that effectively cures the competitive problem and protects consumers.
- If an effective consent order cannot be negotiated, recommend that the Commission issue an administrative complaint. If an administrative complaint is issued, litigate the complaint before an administrative law judge and pursue or defend appeals as appropriate. Employ outside experts as necessary to address economic or technical issues.
- In appropriate cases, recommend that the Commission authorize the filing of an action in federal district court for a preliminary injunction to enjoin the challenged practice and prevent further competitive and consumer injury pending a full administrative trial on the merits. If authorized, litigate the preliminary injunction action and any ensuing appellate review proceedings. Employ outside experts as necessary to address economic or technical issues.
- In appropriate cases, recommend that the Commission consider authorizing the filing of an action in federal district court for consumer redress or restitution. If authorized, litigate such an action and any ensuing appellate review proceeding. Employ outside experts as necessary to address economic or technical issues.
- Evaluate techniques for estimating the savings to consumers from stopping

anticompetitive nonmerger business practices.

E. Nonmerger Compliance

- Monitor compliance with the Commission's nonmerger consent orders and litigated orders. Seek civil penalties and other relief where appropriate if the respondent fails to fulfill its obligations under the order.
- Modify orders when warranted by changed conditions of fact or law or when otherwise required in the public interest.

3. FY 2001 Performance Measures

In FY 2001, the agency will:

- Maintain pace to save consumers at least \$4 billion over the period of FYs 2000 to 2005 by taking action against anticompetitive mergers that would otherwise increase prices. While the agency expects to average at least \$800 million in consumer savings per year during the five-year period, external factors, such as level of merger activity, may affect this measure in any given year.

Estimates of consumer savings from the Maintaining Competition Mission take into account three principal factors: (1) the volume of commerce in the markets affected by a merger or other anticompetitive practice, (2) the percentage increase in price that likely would have resulted from the merger or other anticompetitive practice absent enforcement action, and (3) the likely duration of the anticompetitive price increase. This information generally will be available in merger investigations and some, but not all, nonmerger investigations, depending on the nature of the analysis required for the violation.¹ In some cases, detailed pricing data or other information will enable the calculation of a relatively precise estimate of the likely price increase. In other cases, an estimate can be derived from the analytical method used to identify the relevant market.² Under that methodology, prices of products in the relevant market generally could be increased by at least 5% before a significant number of consumers would turn to potential substitute products that are outside that market. In these cases, the agency will conservatively estimate that at least a 1% anticompetitive price increase would occur absent enforcement action.

¹ In addition to the mode of analysis, the ability to calculate consumer savings can be affected by the nature of the harm. In some cases the harm that would result from a merger or other practice is not necessarily an immediate price increase but some other restriction on competition, such as the blocking of innovation that promises new or better products in the future. It is much more difficult to calculate a dollar estimate of consumer savings in such cases, and the agency generally will not attempt to do so.

² This methodology is explained in the analytical guidelines used by the FTC and the Department of Justice to determine when to challenge a horizontal merger. See U.S. Dept. of Justice and Federal Trade Commission, Horizontal Merger Guidelines §§ 1.1, 1.2.

The duration of the anticompetitive price increase generally will be assumed to be two years. This also is based on the analytical guidelines used by the FTC and the Department of Justice for the analysis of horizontal mergers. Under the Horizontal

Merger Guidelines, an enforcement action is not likely if the entry of significant new competitors would occur within two years.³ Therefore, we can safely assume that the benefits of merger enforcement persist for at least two years. In some cases, the facts may indicate that anticompetitive prices could be maintained for more than two years.⁴

Case-specific estimates of consumer savings, if available, will be used to validate the reasonableness of the 1%, two-year default parameters. These default parameters may significantly underestimate the likely consumer savings in some cases. For example, in the *Staples/Office Depot* merger case, agency staff estimated, based on company data, that the merger would result in consumer losses totaling approximately \$1.1 billion over a five-year period. The conservative default estimate would have been \$24.75 million over two years.

- Maintain pace to save consumers at least \$1 billion over the period of FYs 2000 to 2005 by taking action to stop anticompetitive nonmerger activity. While the agency expects to average at least \$200 million in consumer savings per year during the five-year period, external factors, such as the level of resources available for nonmerger enforcement, may affect this measure in any given year.

As with merger investigations, estimates of consumer savings depend on: (1) the volume of commerce in the markets affected by a merger or other anticompetitive practice, (2) the percentage increase in price that likely would have resulted from the merger or other anticompetitive practice absent enforcement action, and (3) the likely duration of the anticompetitive price increase. Case-specific estimates of consumer

³ See *id.* § 3.0. This is because the prospect of rapid entry is likely to deter anticompetitive pricing.

⁴ The legal standards for challenging nonmerger practices often do not require the definition of markets and the analysis of entry conditions to the extent necessary for merger analysis. Therefore, the evidence normally developed during the course of a nonmerger investigation may not be sufficient to make reliable calculations of consumer savings from the enforcement action. The agency will assess the costs and benefits of collecting the information needed to estimate on a more consistent basis the consumer benefit from nonmerger enforcement. It should be noted, however, that much of the value of nonmerger enforcement lies in its deterrent effect. Thus, an enforcement action involving a relatively small market may be valuable in deterring a similar practice involving a much larger market. This deterrent effect is inherently difficult to quantify, however.

savings are often, but not always, available in nonmerger matters. Where specific figures are not available, the agency will conservatively estimate that consumer savings resulting from antitrust enforcement action amount to at least 1% of the amount of commerce in the market(s) affected by the anticompetitive conduct.

- For cases in which the Commission finds reason to believe the law has been violated, achieve a positive result (including consent orders, litigation victories, and, for mergers, transactions abandoned after recommendation of a complaint) in at least 80% of those cases.

4. Program Evaluations

- Assess the estimated consumer savings from mergers that were successfully challenged. Determine whether the agency is on track to save consumers \$1 billion over a five-year period. Determine how the savings compares to the resources spent on the mission.
- Assess the deterrence value and precedential significance of the enforcement actions brought during the year.
- Evaluate techniques for estimating the savings to consumers from stopping anti-competitive mergers.
- Assess investigative and enforcement activity to ensure (1) that enforcement actions are brought only when anticompetitive effects from the challenged practices or mergers are likely and (2) that anticompetitive practices or mergers are not overlooked.
- Review significant deviations from the statistical benchmarks for timely and efficient review of merger transactions, including (1) the amount of time required to complete the HSR review process, (2) the number of HSR matters requiring issuance of an investigative second request, and (3) the number of such matters resolved through “quick look” investigation (that is, one not requiring the parties to produce all of the documents and information called for by the “second request”), and take corrective action where necessary.
- Evaluate the timeliness and effectiveness of merger consent orders and make adjustments to future orders where appropriate.

Objective 2.3: Prevent consumer injury through education.

FY 2001 Budgeted Resources: 45 FTE \$6,292,000

The Commission increases awareness of antitrust law through guidance to the business community; outreach efforts to Federal, state and local agencies, business groups and consumers; development and publication of antitrust guidelines and policy statements; and speeches and publications.

1. GPRA Five-Year Strategies

- Continue to educate businesses and consumers about antitrust issues through traditional means—guidelines, advisory opinions, speeches—and develop newer avenues of communication, such as the FTC Web site.
- Continue to provide advice to other governmental bodies upon request.

2. FY 2001 Implementation Plan

- Continue to evaluate the need for and, as appropriate, develop and issue guidelines to help businesses understand and comply with the application of the antitrust laws in certain areas, such as horizontal mergers, international operations, intellectual property, health care, and collaboration among competitors.
- Continue to provide Commission and staff advisory opinions on competition issues; continue to provide guidance in informal telephone requests, particularly concerning HSR matters.
- File advocacy comments to inform other governmental entities about competition issues, upon their request.
- File amicus briefs in appropriate competition matters.
- Monitor the content of complaints, press releases, and analyses to aid public comment to ensure they are “transparent,” that is, that they explain in sufficient detail and with sufficient clarity the evidence and theory of a case, within the constraints of confidentiality.
- Make available prepared texts of speeches; as appropriate, develop other materials that explain Commission policies and procedures; circulate economic papers on competition issues.
- Continue to have Commissioners and staff speak at and participate in seminars, panel

discussions and conferences to explain how the Commission analyzes mergers and business practices.

- Continue to support outreach efforts to international bodies to explain U.S. competition perspectives; continue to aid the development of antitrust laws and programs in developing nations by participating in technical missions.
- Respond to inquiries and other communications from consumers, businesses and others regarding potentially anticompetitive practices.
- Make available on the FTC's Web site the guidelines issued by the agency, advisory opinions, advocacy comments, written releases, texts of speeches, Bureau of Economics Reports, and other materials that explain the Commission's policies and procedures.
- Assess whether education and outreach efforts target the right audiences and address the issues that have the most impact on the marketplace. Seek input from consumer groups, business groups, bar groups and other FTC "customers" and "stakeholders" on the effectiveness of FTC educational efforts. Assess methods of measuring success of educational efforts on a consistent, reliable basis.

3. FY 2001 Performance Measures

In FY 2001, the agency will:

- Quantify and compare with previous years the number of education and outreach efforts, including the number of speeches and public speaking opportunities/participations by Commission personnel on competition issues, the number of advisory opinions issued, the number of advocacy comments filed, the number of amicus briefs filed, and the number of international outreach efforts.
- Quantify and compare with previous years the number of "hits" on important antitrust related content on the FTC's Web site.

4. Program Evaluations

- Assess whether education and outreach efforts target the right audiences and address the issues that have the most impact on the marketplace.
- Seek input from consumer groups, business groups, bar groups and other FTC "customers" on the effectiveness of FTC educational efforts.

Consumer Protection Mission

Goal 1: To prevent fraud, deception, and unfair business practices in the marketplace.

Objective 1.1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury.

FY 2002 Budgeted Resources: 117 FTE \$17,061,000

To identify consumer protection problems and trends in the fast-changing, increasingly global marketplace, the FTC is making creative use of new technologies and building on its broad base of private and public sector partners. It is expanding dramatically its capacity to collect consumer complaints through its toll-free helpline and online consumer complaint form. It has created a comprehensive information system with a segmented database for consumer fraud complaints and identity theft complaints. The fraud module, *Consumer Sentinel*, is accessible online to over 250 law enforcement partners in the United States, Canada, and Australia.

Through its database and other data collection efforts, such as Web surveys (“Surf Days”) and systematic analysis of data, the FTC and its law enforcement partners are able to identify and target the most serious cases of fraud and deception, coordinate their efforts, and respond quickly to emerging problems.

1. GPRA Five-Year Strategies

- Expand the FTC's comprehensive information system (consumer complaint database) to keep pace with the global marketplace.
- Strengthen capabilities to analyze the increasing volume of complaint data.
- Continuously upgrade *Consumer Sentinel's* services to assist law enforcement partners. *Consumer Sentinel* is a secure Web site containing consumer complaint data that can be accessed by law enforcement agencies.
- Ensure the privacy and security of database information.
- Search for better methods of collecting information to keep abreast of new consumer protection problems in traditional markets and emerging markets such as the Internet.

2. FY 2002 Implementation Plan

- Recruit new partners in the United States and abroad to contribute complaint data to *Consumer Sentinel*.
- Improve the capacity to receive and integrate complaints from international sources.
- Add to the group of state, local, federal, and international law enforcement agencies accessing information in *Consumer Sentinel*; train new partners in how to take full advantage of its features.
- Facilitate the exchange of data with law enforcement officials in other countries through *Consumer Sentinel* or other means.
- Monitor the marketplace to identify illegal practices that may not be fully captured by the database, for example through the Internet Lab and Web surfs.
- Increase the number of Identity Theft complaints in the database and refer trend data and complaints to public and private sector partners such as credit bureaus and law enforcement partners.
- Identify new consumer protection issues emerging as a result of changes in the marketplace (for example, growth in e-commerce, deregulation of industries, emergence of new products and services, globalization) and explore these issues through public workshops, hearings, and studies.

3. FY 2002 Performance Measures

In FY 2002, the agency will:

- Increase the number of consumer complaints and inquiries in the FTC's comprehensive information system by at least 400,000.

The FTC continues to focus law enforcement resources on the most serious consumer protection problems identified from its consumer complaint database. Our data enables us to rapidly detect and respond to fraud, deception, and other illegal practices, and to prevent consumer injury in a timely fashion. Further, by broadly sharing our fraud complaints with external partners, we are able to enhance the effectiveness of law enforcement agencies across the United States and Canada.

4. Program Evaluations

- Assess whether the FTC's law enforcement and education efforts are addressing the leading problem areas identified by the complaint database.

- Determine the extent to which *Consumer Sentinel* services are used by law enforcement partners.
- Assess privacy and security protections for the database by reviewing complaints, if any, and evaluating the policies in place.

Objective 1.2: Stop fraud, deception, and unfair practices through law enforcement.

FY 2002 Budgeted Resources: 412 FTE \$59,748,000

E-commerce

As e-commerce grows, so too do online frauds and deception. Law enforcement resources will be used to address: new forms of complex and fast moving high-tech frauds; expected growth in deceptive online health claims (increasingly outside FDA's jurisdiction); online privacy practices that violate Section 5 of the FTC Act and the Children's Online Privacy Protection Act; and the need to train law enforcement partners to keep pace with technology-based scams.

The FTC aims to be at the forefront in educating its law enforcement colleagues nationwide and internationally on the newest technologies and how to bring cases involving those technologies (using *Consumer Sentinel*). As the Internet grows, so too does the need for coordinated law enforcement to meet the consumer protection challenges. The underpinning of that effort is a highly educated cadre of law enforcement partners.

Globalization

As the marketplace becomes more global, challenges for consumer protection grow apace. The FTC's role in leading international law enforcement initiatives and developing global consumer protection policies will continue to expand. We will: build new international partnerships to tackle cross border fraud through information sharing and coordinated law enforcement; and participate in international efforts to craft policies and self-regulatory programs to protect consumers in the global marketplace.

New Statutory Changes

Under the Financial Modernization Act, (Gramm-Leach-Bliley), the FTC is responsible for enforcing the Act's privacy provisions with respect to hundreds of thousands of financial institutions. To implement the Act, the FTC will provide extensive business guidance to institutions covered by the new G-L-B rule, and begin to enforce the rule (effective July 1, 2001). In addition, the FTC will continue to implement other new statutory responsibilities under the Identity Theft and Assumption Deterrence Act of 1998 and the Children's Online Privacy Protection Act.

A. Stopping Fraud

1. GPRA Five-Year Strategies

- Lead and coordinate the nationwide attack on telemarketing fraud.
- Target high-tech frauds such as those that have moved to the Internet and those that exploit other new technologies.
- Develop additional international law enforcement arrangements to tackle the growing problem of cross-border fraud.
- Increase the capacity to respond rapidly, with enforcement and other approaches, to fast-moving technology-based scams.

2. FY 2002 Implementation Plan

- Target for federal-state “sweeps” or other law enforcement initiatives the most significant areas of telemarketing fraud and other types of fraud, for example, direct mail scams, predatory lending, and unauthorized telephone billing (“cramming”).
- Stop the most pernicious Internet-related scams as they are identified in the *Consumer Sentinel* database or through comprehensive Internet surfs by U.S. and global partners.
- Recruit new local, state, federal, and international law enforcement partners for anti-fraud initiatives.
- Play a leading role in training law enforcement colleagues nationwide and internationally on how to bring anti-fraud cases involving the newest technologies.
- Equip the FTC’s Internet Lab to keep pace with technology and support rapid response law enforcement capability.

3. FY 2002 Performance Measures

In FY 2002, the agency will:

- Save consumers approximately \$400 million by stopping Internet and other fraud.

Preventing economic injury to consumers is the ultimate goal of our anti-fraud efforts. We save consumers money each time a fraudulent operator is stopped by successful litigation or settlement with the agency. We increase these consumer

savings by leading joint law enforcement initiatives with federal, state, and international partners. The amount of consumer savings will vary each year based on the number and types of fraud we stop.

Consumer savings are calculated by adding together the estimated annual fraudulent sales of defendants in the 12 months prior to filing a complaint. The calculation may actually underestimate the agency's impact because it assumes that the fraud would have continued for only one more year; however, it provides a uniform method for calculating savings and minimizes speculation about the likely duration of the fraud.

4. Program Evaluations

- Assess the overall trends revealed by the database to determine whether the amount of resources dedicated to the fraud program should be altered or the program's priorities modified.
- Assess the litigation success rate for obtaining preliminary relief in fraud cases.
- Determine the success of leveraging resources through coordinated joint law enforcement initiatives.

B. Ensuring Broad-Based Protections for Consumers

1. GPRA 5-Year Strategies

- Ensure that basic consumer protection principles are applied in new markets such as the Internet and in newly deregulated markets.
- Monitor national advertising in print, television, radio, and online to identify illegal practices that may not be fully captured by the database.
- Focus law enforcement on violations that create the greatest risks to consumer health, safety, and economic well-being.
- Develop policies to address newly emerging consumer protection issues resulting from changes in the marketplace.
- Encourage self-regulation and private initiatives, where appropriate, in lieu of regulation or law enforcement.

2. FY 2002 Implementation Plan

- Target law enforcement efforts at advertising and marketing practices that are most injurious to consumers; identify targets based on complaint data and other forms of monitoring.
- Identify industries where a high percentage of companies are not in compliance with provisions of consumer protection laws or regulations and bring those companies into compliance through law enforcement and business guidance or by encouraging self-regulatory programs.

- Monitor the online market to ensure broad compliance with consumer protection laws, rules, and guides; target law enforcement to the most serious violations.
- Implement new congressionally mandated regulations governing financial privacy and online children's privacy, and recently updated regulations governing franchising, telemarketing sales, and telephone billing services.
- Address cutting-edge consumer protection issues in emerging areas – e-commerce, globalization, and the marketing of new digital products and services and newly deregulated services.

3. FY 2002 Performance Measures

In FY 2002, the agency will:

- Reduce consumer injury by obtaining orders stopping deceptive or unfair major national advertising campaigns with combined media expenditures totaling \$300 million.

The FTC's broad consumer protection jurisdiction covers the \$100 billion national advertising industry, the direct marketing industry with sales of \$600 billion, and financial transactions affecting virtually every consumer in this country. With the growth of e-commerce (consumer sales expected to reach \$269 billion by 2005), newly deregulated markets and globalization, the FTC's jurisdiction is growing even broader. The FTC achieves a far-reaching impact in the nonfraud area by (1) stopping major misleading ad campaigns and deterring others, and (2) preventing consumers nationwide from being injured by purchasing products or services promoted by deceptive or unfair national advertising campaigns.

4. Program Evaluations

- Assess whether the mix of resources allocated to fraud and non-fraud programs is appropriate in light of changes in the marketplace.
- Evaluate the success of self-regulatory programs.
- Determine whether there are new industries or areas of marketing that require law

enforcement or that may be appropriate for self-regulation.

Objective 1.3: Prevent consumer injury through education.

FY 2002 Budgeted Resources: 41 FTE \$5,963,000

Information gaps are greatest in areas of the marketplace that are changing rapidly. Thus, our education efforts will focus on consumer problems resulting from the growth of e-commerce, new types of e-commerce, new types of technology-based products and services, deregulation, and globalization. The FTC will make creative use of new technologies and private and public sector partners to reach new audiences, including underserved consumer audiences, businesses, and law enforcement offices. We will increase public awareness of our programs and how to contact the FTC to obtain information or file a complaint.

1. GPRA Five-Year Strategies

- Focus consumer and business education efforts on areas where fraud, deception, unfair practices, and information gaps cause the greatest injury.
- Creatively use technology, including new interactive media, to extend the reach of consumer and business education.
- Increase public awareness of FTC's online education materials, and the availability of its toll-free helpline, and online complaint form to provide one-on-one information and increase data collection to support law enforcement.
- Encourage private and public partners to participate in education initiatives.

2. FY 2002 Implementation Plan

- Deliver information to more consumers, industry members, and law enforcement partners faster and more efficiently.
- Focus education on high-profile and emerging issues where consumer information gaps are greatest, for example, globalization, Internet scams, online privacy, and identity theft.
- Increase education efforts about frauds that cause consumers the greatest financial injury.

- Through greater outreach, lead more consumers to the FTC's Web site (www.ftc.gov) and the "one-stop" government Web site for consumer information (www.consumer.gov).
- Expand coverage of FTC messages, including the toll-free helpline, through marketing, new products, technology, a speakers bureau, etc.
- Continue efforts to identify and reach under-served audiences, businesses, and law enforcement offices.

3. FY 2002 Performance Measures

In FY 2002, the agency will:

- Provide education messages online and in print to 10.5 million recipients.

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, we make maximum use of the national media, the FTC's **ftc.gov** Web site, and the inter-agency **consumer.gov** Web site. Our messages also reach the public through the Consumer Response Center, and hundreds of partners who distribute our materials, link to our Web site, or post our messages on their Web sites.

4. Program Evaluations

- Determine the number of publications distributed or accessed online.
- Assess whether the appropriate mix of media is being used to communicate consumer education messages and whether the FTC is making the best use of the available media and technology.
- Assess the number and range of public and private organizations that partner with FTC to do outreach.
- Determine whether the FTC needs to reach new audiences, in light of any changes in demographics, advertising, and marketing practices.
- Review the focus of FTC education efforts and adjust them based on changing consumer and business needs.

- Assess the educational needs of the Spanish-speaking population.

Maintaining Competition Mission

Goal 2: To prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

Objective 2.1: Identify anticompetitive mergers and practices that cause the greatest consumer injury.

FY 2002 Budgeted Resources: *53 FTE* *\$7,712,000*

During the 1990s, record-setting totals of proposed merger transactions were submitted to the FTC in compliance with the notification and filing requirements of the *HSR Act*. The dollar value and complexity of reported transactions continues to rise steadily. Premerger review for large transactions is typically much more complex and time-consuming than for smaller transactions, as the number of markets and amount of commerce affected is typically greater. Processing this increasing workload, which we have kept up with through increased productivity and streamlining efforts, requires the use of all FTE allocated to this objective.

1. GPRA Five-Year Strategies

- Administer the Hart-Scott-Rodino (HSR) premerger notification program, under which parties to certain mergers and acquisitions must report in advance on the planned transactions to the FTC and Department of Justice to allow for antitrust review. Track and maintain the timeliness of merger review under the HSR Program.
- Use trade press articles, consumer and competitor complaints and other means to identify (1) mergers that were not required to be reported under HSR, (2) mergers that were not reported, in violation of HSR, and (3) potentially anticompetitive nonmerger business practices.
- Continue to make efficient use of the initial 30-day period after HSR filings (or 15 days for a cash tender offer) to determine whether a merger is likely to harm competition, including prompt inter-agency clearance and timely review of filings to avoid unnecessary extended investigations.
- Through hearings, Bureau of Economics studies, and other means, identify emerging trends and focus on potentially anticompetitive business practices or other issues that need to be addressed because of changes in the economy, technology, and the marketplace.
- Refine the investigative and decisional tools used in both merger and nonmerger investigations through continuous learning.
- Maintain and improve the timeliness, efficiency, and effectiveness of nonmerger investigations by returning resources to the nonmerger program to the extent the level of merger activity permits.

2. FY 2002 Implementation Plan

A. All Programs

- Ensure timeliness of review. Monitor the time and resources needed to conduct preliminary investigations. Review the progress of all ongoing investigations on at least a monthly basis. For mergers filed under the HSR program, maintain statistics for the average time for clearing transactions that do not require further review and the average time for completing all HSR investigations. Review the statistics on a semi-annual basis. If the average time to complete HSR investigations during the preceding 12 months exceeds 20 days, review the efficiency of merger reviews during

the initial 30-day period under HSR and make any necessary adjustments.

- Monitor resource needs and consumption of merger and nonmerger programs, and make adjustments as appropriate.
- Identify anticompetitive practices by using speeches, electronic media, and other publications to inform potential aggrieved parties that they can lodge complaints with the FTC.
- Analyze competition issues. Continue ongoing studies relating to areas of current activity. Evaluate the need for in-depth study of one or more competition issues, such as the 1996 study of competition in the global economy, the 1997 study of joint ventures, and the 2000-2001 studies of business-to-business electronic marketplaces and electric power restructuring and deregulation.
- Conduct training programs in investigative skills and antitrust analysis, including a competition overview program given twice yearly for new attorneys, summer interns, and paralegals, and supplemental programs offered periodically on various skills such as witness interviewing, taking and defending depositions, motions practice, trial advocacy, and legal writing. Conduct monthly luncheon programs featuring speakers from within and outside the agency on substantive or procedural topics. In addition, provide career enhancement training for support staff in subjects such as paralegal skills and effective writing, and computer training for all staff. Ensure that lead attorneys and managers collect any important lessons learned at the close of each significant investigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.

B. Mergers Filed Under HSR

- In the initial review of HSR filings, determine compliance with reporting requirements; prepare a summary of the transaction and a recommendation regarding further review; transmit summary information and recommendation to Bureau of Competition management, merger litigation divisions, and the Bureau of Economics.
- Based on the transaction summary and recommendation resulting from initial review, an examination of the filing if necessary, and other available information, promptly determine whether further review is needed by a litigation division to determine whether the transaction may be anticompetitive. If further review is deemed unnecessary, recommend early termination of the statutory waiting period. If further review is deemed necessary, seek investigational clearance through the

inter-agency liaison process with the Department of Justice. If clearance is received, continue the review during the remainder of the initial 30-day period after filing (15 days for a cash tender offer), as necessary, employing appropriate investigative techniques and sources of information, to determine whether the proposed merger raises sufficiently serious concerns of potential competitive and consumer injury to require further investigation with the issuance of investigative requests for additional information (“second requests”). If appropriate, prior to the expiration of the initial 30- or 15-day waiting period, prepare a recommendation to the Merger Screening Committee, comprised of senior officials of the Bureaus of Competition and Economics, for the opening of a full phase investigation, the issuance of second requests by the Chairman of the agency, and approval of compulsory process authority by the Commission.

C. *HSR Compliance Enforcement*

- Monitor compliance with the requirements of the *HSR Act* by merging entities. As necessary, investigate apparent violations and prepare a recommendation on whether to seek civil penalties if merging entities failed to fulfill their obligations under HSR.
- If an investigation establishes reasons to believe that a merging party has failed to comply with requirements of the *HSR Act* and that an enforcement action would be in the public interest, seek to negotiate a consent order for an appropriate amount of civil penalties.
- If an appropriate consent order cannot be negotiated, prepare a recommendation that the Department of Justice file an action for civil penalties under the *HSR Act*; if filed, litigate such action as authorized by the Attorney General.

D. *Mergers Not Subject to HSR*

- In light of the statutory increase in HRS filing thresholds effective early in FY 2001, increase efforts to identify mergers that are not subject to HSR requirements but that are potentially anticompetitive, using techniques such as (1) monitoring the trade press; (2) responding to and following up on case leads by Congressional offices, other Executive branch agencies, state and local government; and (3) following up on complaints from consumers, businesses, the bar and the general public. After identification, seek investigational clearance through the inter-agency liaison process. If initial review indicates a need for further investigation, prepare a recommendation to the Merger Screening Committee for the opening of an initial phase investigation or, if appropriate, a full phase investigation with a request that the Commission authorize the use of compulsory process. If appropriate, seek an

agreement from the merging entities to postpone the merger (if not already completed) or to hold competing businesses separate pending further review.

- During the initial phase investigation, employ appropriate investigative techniques to obtain other relevant information, including documents, declarations or testimony, from the merging parties and third parties. If the evidence indicates a potential for competitive harm, prepare a recommendation to the Merger Screening Committee for the opening of a full phase investigation with a request that the Commission authorize the use of compulsory process.

E. Nonmerger Practices

- Identify potentially anticompetitive non-merger business practices through several means, including (1) monitoring the trade press; (2) responding to and following up on case leads by Congressional offices, other Executive branch agencies, state and local government; (3) following up on complaints from consumers, businesses, the bar and the general public; and (4) pursuing investigative leads developed by staff in other investigations. Seek investigative clearance through the inter-agency liaison process. If granted, conduct preliminary inquiries and assess the likelihood of a violation.
- If warranted, initiate a formal initial phase investigation and collect information through voluntary processes. If the initial phase investigation produces evidence supporting a plausible theory of competitive harm, prepare a recommendation to the Evaluation Committee, comprised of senior officials of the Bureaus of Competition and Economics, for a full phase investigation and, if appropriate, a request to seek Commission authorization to use compulsory process.

3. FY 2002 Performance Measures

In FY 2002, the agency will:

- Continue effective screening of HSR premerger notification filings to identify those that most likely present antitrust concerns, so that at least 50% of HSR requests for additional information result in enforcement action.
- Maintain the number of new nonmerger investigations opened during each of the FYs 1991-1999 (from 45 to 70 new investigations per year), if that number of nonmerger investigations continues to be appropriate in light of marketplace conduct and the need to deter anticompetitive business practices.

4. Program Evaluations

- Review and refine data-monitoring systems relevant to (1) the timeliness of the HSR review process and (2) the degree to which appropriate resources are being devoted to initial review of each matter prior to issuance of an investigative “second request.”
- Review significant deviations from the statistical benchmarks for timely and efficient review of merger transactions and take corrective action where necessary.
- Conduct further review of effectiveness of the “model second request” implemented in FY 1995, making further modifications as appropriate and tailoring particular specifications for specialized industries.
- Conduct periodic meetings between the Director of the Bureau of Competition and heads of litigation divisions to ensure that substantive standards are applied consistently and uniformly.
- From time to time, hold discussions among attorneys in the regional offices, the Office of Policy and Evaluation and the nonmerger divisions on how to improve techniques for monitoring business practices and for identifying anticompetitive practices.
- Assess the significance (quantitatively in dollar savings to consumers and qualitatively in deterrence value and precedential significance) of the top 20% (measured in terms of hours spent) of matters in the investigational stage each year.

Objective 2.2: Stop anticompetitive mergers and practices through law enforcement.

FY 2002 Budgeted Resources: 406 FTE \$59,242,000

Maintaining competitive markets through effective antitrust law enforcement is integral to a healthy U.S. economy. The FTC plays a vital role in this effort by bringing cases to enjoin anticompetitive mergers and to halt anticompetitive business practices.

To keep up with increasingly large and complex merger transactions, the Maintaining Competition Mission has been shifting its available resources from nonmerger activities to the merger arena. Dollar values of reported mergers have increased eighteen-fold in nominal terms, from \$169 billion in 1991 to nearly \$3 trillion in 2000. Nonmerger business practices that need antitrust scrutiny continue to require additional resources for law enforcement as well.

The sophistication and complexity of merger and nonmerger investigations continues to increase, stretching our resources even more than just the volume of cases. For example, many of the transactions and practices that raise anticompetitive issues involve highly technological industries, such as defense and aerospace, cable television, and information technology, as well as the growing field of health care services, including hospitals, nursing homes, health maintenance organizations and pharmaceutical companies. The increasing data and econometric emphasis in antitrust investigations and litigation requires that we spend more resources understanding the issues raised. Our accounting and economic resources, which must counteract those of opposing merging parties, are challenged heavily as merging firms rely on complex accounting, econometric and other data intensive economic studies regarding competitive effects, entry issues, and efficiency and failing company defenses. More significantly, merger challenges that are litigated through preliminary injunction actions in federal court or through administrative trials absorb major commitments in resources -- both in personnel and program dollars.

The FTC must also spend resources to maintain an effective compliance program so that consumers receive the benefits of competition obtained through the FTC's investigation and litigation efforts. This objective focuses on structuring and reviewing compliance orders in individual matters, as well as on conducting general and historical analyses, and on the effectiveness of various kinds of merger and nonmerger orders, such as divestiture orders. As the number and complexity of competition cases rise, so do the resource needs of the compliance program associated with those cases. We continue to absorb some of this ever-increasing workload through more efficient use of resources.

1. GPRA Five-Year Strategies

- Continue to save consumers millions of dollars a year by challenging anticompetitive mergers by negotiating consent orders and winning litigated orders.
- Continue to save consumers millions of dollars a year by challenging other (non-merger) anticompetitive conduct, negotiating consent orders, and winning litigated orders.
- Negotiate merger and nonmerger consent orders and win litigated orders that have significant remedial, precedential, and deterrent effects.
- Improve negotiation, litigation and economic skills through continuous learning.
- Continue to ensure that divestiture remedies in Commission orders are achieved in a timely fashion.
- Ensure that administrative litigation and adjudication reach a timely resolution.

2. FY 2002 Implementation Plan

A. All Programs

- Review the progress of all ongoing investigations on at least a monthly basis. Monitor time and resource expenditures. Review substantive issues and assess results of the investigation and the likelihood of serious competitive and consumer injury from the practice under investigation.
- Continue and improve training for attorneys in such areas as taking and defending depositions, trial advocacy, negotiation skills and competition analysis. Ensure that lead attorneys, economists and managers collect any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.
- Monitor the timeliness of administrative adjudication, including by issuing to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.

B. Merger Enforcement

- For those merger transactions found during the initial HSR review period to raise

potentially significant competitive concerns, employ HSR “second requests” and other appropriate investigative techniques during the extended HSR waiting period to obtain additional information relevant to determining the legality of the transaction, including documents, declarations or testimony, from the merging parties and third parties. Prior to the expiration of the extended waiting period (30 days from the parties’ substantial compliance with the second requests, or 10 days for cash tender offers and assets in bankruptcy), complete the analysis of likely competitive effects of the transaction and prepare recommendations to Bureau management and the Commission on whether enforcement action is warranted.

- In non-HSR investigations, employ appropriate investigative techniques to obtain other relevant information, including documents, declarations or testimony, from the merging parties and third parties. Upon completion of the investigation, prepare recommendations to Bureau management and the Commission on whether enforcement action is warranted.
- If an investigation establishes reason to believe that a merger is anticompetitive, seek to negotiate consent orders that effectively cure the competitive problem and protect consumers, while permitting nonproblematic parts of a merger to proceed.
- If an effective consent order cannot be negotiated and the merger has not yet been completed, recommend, in appropriate cases, that the Commission authorize the filing of an action in federal district court for a preliminary injunction against the merger. If authorized, litigate preliminary injunction actions and appellate review proceedings. Employ outside experts as necessary to address economic or technical issues.
- In appropriate cases, recommend that the Commission issue an administrative complaint against the merger, as when a preliminary injunction is not sought because the merger has already occurred, or when the grant of a preliminary injunction does not result in abandonment of the merger. If a preliminary injunction has been denied by a court, assess the public interest in proceeding with a full trial on the merits. If an administrative complaint is issued, litigate the merger before an administrative law judge and pursue or defend appeals as appropriate. Employ outside experts as necessary to address economic or technical issues.
- For management review, collect data regarding (1) the amount of time required to complete the HSR review process, (2) the number of HSR matters requiring issuance of an investigative second request, and (3) the number of such matters resolved through “quick look” investigation (that is, one not requiring the parties to produce all of the documents and information called for by the “second request”).

C. Merger Compliance

- Track the time between acceptance by the Commission of proposed merger consent orders and the implementation of divestitures, licenses, or other affirmative relief. Seek civil penalties where appropriate if the respondent fails to fulfill its obligations under the order in a timely fashion.
 - Track the time between the date the Commission's litigated merger orders become final and the implementation of divestitures, licenses, or other affirmative relief. Seek civil penalties and other relief where appropriate if the respondent fails to fulfill its obligations under the order in a timely fashion.
 - Monitor other aspects of compliance with the Commission's merger consent orders and litigated orders. Seek civil penalties where appropriate if the respondent fails to fulfill its obligations under the order.
- C Monitor the effectiveness of the Commission's merger consent orders and litigated orders and make adjustments to future orders where appropriate.
- C Modify orders when warranted by changed conditions of fact or law or when otherwise required in the public interest.

D. Nonmerger Enforcement

- During full phase investigations, employ appropriate investigative techniques, including compulsory process if authorized, to conduct a detailed inquiry into the practice and assess whether there is sufficient evidence to establish reason to believe that the law has been violated. If appropriate, prepare a recommendation to the Evaluation Committee for authorization to engage in consent negotiations or to submit a complaint recommendation to the Commission.
- If an investigation establishes reason to believe that a business practice is anticompetitive, seek to negotiate a consent order that effectively cures the competitive problem and protects consumers.
- If an effective consent order cannot be negotiated, recommend that the Commission issue an administrative complaint. If an administrative complaint is issued, litigate the complaint before an administrative law judge and pursue or defend appeals as

appropriate. Employ outside experts as necessary to address economic or technical issues.

- In appropriate cases, recommend that the Commission authorize the filing of an action in federal district court for a preliminary injunction to enjoin the challenged practice and prevent further competitive and consumer injury pending a full administrative trial on the merits. If authorized, litigate the preliminary injunction action and any ensuing appellate review proceedings. Employ outside experts as necessary to address economic or technical issues.
- In appropriate cases, recommend that the Commission consider authorizing the filing of an action in federal district court for consumer redress or restitution. If authorized, litigate such an action and any ensuing appellate review proceeding. Employ outside experts as necessary to address economic or technical issues.
- Evaluate techniques for estimating the savings to consumers from stopping anticompetitive nonmerger business practices.

E. Nonmerger Compliance

- Monitor compliance with the Commission's nonmerger consent orders and litigated orders. Seek civil penalties and other relief where appropriate if the respondent fails to fulfill its obligations under the order.
- Modify orders when warranted by changed conditions of fact or law or when otherwise required in the public interest.

3. FY 2002 Performance Measures

In FY 2002, the agency will:

- Maintain pace to save consumers at least \$4 billion over the period of FYs 2000 to 2005 by taking action against anticompetitive mergers that would otherwise increase prices. While the agency expects to average at least \$800 million in consumer savings per year during the five-year period, external factors, such as level of merger activity, may affect this measure in any given year.

Estimates of consumer savings from the Maintaining Competition Mission take into account three principal factors: (1) the volume of commerce in the markets affected by a merger or other anticompetitive practice, (2) the percentage increase in price that likely would have resulted from the merger or other anticompetitive practice absent

enforcement action, and (3) the likely duration of the anticompetitive price increase. This information generally will be available in merger investigations and some, but not all, nonmerger investigations, depending on the nature of the analysis required for the violation.⁵ In some cases, detailed pricing data or other information will enable the calculation of a relatively precise estimate of the likely price increase. In other cases, an estimate can be derived from the analytical method used to identify the relevant market.⁶ Under that methodology, prices of products in the relevant market generally could be increased by at least 5% before a significant number of consumers would turn to potential substitute products that are outside that market. In these cases, the agency will conservatively estimate that at least a 1% anticompetitive price increase would occur absent enforcement action.

The duration of the anticompetitive price increase generally will be assumed to be two years. This also is based on the analytical guidelines used by the FTC and the Department of Justice for the analysis of horizontal mergers. Under the Horizontal Merger Guidelines, an enforcement action is not likely if the entry of significant new competitors would occur within two years.⁷ Therefore, we can safely assume that the benefits of merger enforcement persist for at least two years. In some cases, the facts may indicate that anticompetitive prices could be maintained for more than two years.⁸

Case-specific estimates of consumer savings, if available, will be used to validate the reasonableness of the 1%, two-year default parameters. These default parameters may significantly underestimate the likely consumer savings in some cases. For

⁵ In addition to the mode of analysis, the ability to calculate consumer savings can be affected by the nature of the harm. In some cases the harm that would result from a merger or other practice is not necessarily an immediate price increase but some other restriction on competition, such as the blocking of innovation that promises new or better products in the future. It is much more difficult to calculate a dollar estimate of consumer savings in such cases, and the agency generally will not attempt to do so.

⁶ This methodology is explained in the analytical guidelines used by the FTC and the Department of Justice to determine when to challenge a horizontal merger. See U.S. Dept. of Justice and Federal Trade Commission, Horizontal Merger Guidelines §§ 1.1, 1.2.

⁷ See id. § 3.0. This is because the prospect of rapid entry is likely to deter anticompetitive pricing.

⁸ The legal standards for challenging nonmerger practices often do not require the definition of markets and the analysis of entry conditions to the extent necessary for merger analysis. Therefore, the evidence normally developed during the course of a nonmerger investigation may not be sufficient to make reliable calculations of consumer savings from the enforcement action. The agency will assess the costs and benefits of collecting the information needed to estimate on a more consistent basis the consumer benefit from nonmerger enforcement. It should be noted, however, that much of the value of nonmerger enforcement lies in its deterrent effect. Thus, an enforcement action involving a relatively small market may be valuable in deterring a similar practice involving a much larger market. This deterrent effect is inherently difficult to quantify, however.

example, in the *Staples/Office Depot* merger case, agency staff estimated, based on company data, that the merger would result in consumer losses totaling approximately \$1.1 billion over a five-year period. The conservative default estimate would have been \$24.75 million over two years.

- Maintain pace to save consumers at least \$1 billion over the period of FYs 2000 to 2005 taking action to stop anticompetitive nonmerger activity. While the agency expects to average at least \$200 million in consumer savings per year during the five-year period, external factors, such as the level of resources available for nonmerger enforcement, may affect this measure in any given year.

As with merger investigations, estimates of consumer savings depend on: (1) the volume of commerce in the markets affected by a merger or other anticompetitive practice, (2) the percentage increase in price that likely would have resulted from the merger or other anticompetitive practice absent enforcement action, and (3) the likely duration of the anticompetitive price increase. Case-specific estimates of consumer savings are often, but not always, available in nonmerger matters. Where specific figures are not available, the agency will conservatively estimate that consumer savings resulting from antitrust enforcement action amount to at least 1% of the amount of commerce in the market(s) affected by the anticompetitive conduct.

- For cases in which the Commission finds reason to believe the law has been violated, achieve a positive result (including consent orders, litigation victories, and, for mergers, transactions abandoned after recommendation of a complaint) in at least 80% of those cases.

4. Program Evaluations

- Assess the estimated consumer savings from mergers that were successfully challenged. Determine whether the agency is on track to save consumers \$1 billion over a five-year period. Determine how the savings compares to the resources spent on the mission.
- Assess the deterrence value and precedential significance of the enforcement actions brought during the year.
- Evaluate techniques for estimating the savings to consumers from stopping anticompetitive mergers.
- Assess investigative and enforcement activity to ensure (1) that enforcement actions are brought only when anticompetitive effects from the challenged practices or

mergers are likely and (2) that anticompetitive practices or mergers are not overlooked.

- Review significant deviations from the statistical benchmarks for timely and efficient review of merger transactions, including (1) the amount of time required to complete the HSR review process, (2) the number of HSR matters requiring issuance of an investigative second request, and (3) the number of such matters resolved through “quick look” investigation (that is, one not requiring the parties to produce all of the documents and information called for by the “second request”), and take corrective action where necessary.
- Evaluate the timeliness and effectiveness of merger consent orders and make adjustments to future orders where appropriate.

Objective 2.3: Prevent consumer injury through education.

FY 2002 Budgeted Resources: 45 FTE \$6,544,000

The Commission increases awareness of antitrust law through guidance to the business community; outreach efforts to Federal, state and local agencies, business groups and consumers; development and publication of antitrust guidelines and policy statements; and speeches and publications.

1. GPRA Five-Year Strategies

- Continue to educate businesses and consumers about antitrust issues through traditional means—guidelines, advisory opinions, speeches—and develop newer avenues of communication, such as the FTC Web site.
- Continue to provide advice to other governmental bodies upon request.

2. FY 2002 Implementation Plan

- Continue to evaluate the need for and, as appropriate, develop and issue guidelines to help businesses understand and comply with the application of the antitrust laws in certain areas, such as horizontal mergers, international operations, intellectual property, health care, and collaboration among competitors.
- Continue to provide Commission and staff advisory opinions on competition issues; continue to provide guidance in informal telephone requests, particularly concerning HSR matters.
- File advocacy comments, upon request, to inform other governmental entities about how proposed regulatory and legislative actions may affect competition and consumers.
- File amicus briefs in appropriate competition matters.
- Monitor the content of complaints, press releases, and analyses to aid public comment to ensure they are “transparent,” that is, that they explain in sufficient detail and with sufficient clarity the evidence and theory of a case, within the constraints of confidentiality.

- Make available prepared texts of speeches; as appropriate, develop other materials that explain Commission policies and procedures; circulate economic papers on competition issues.
- Continue to have Commissioners and staff speak at and participate in seminars, panel discussions and conferences to explain how the Commission analyzes mergers and business practices.
- Continue to support outreach efforts to international bodies to explain U.S. competition perspectives; continue to aid the development of antitrust laws and programs in developing nations by participating in technical missions.
- Respond to inquiries and other communications from consumers, businesses and others regarding potentially anticompetitive practices.
- Make available on the FTC's Web site the guidelines issued by the agency, advisory opinions, advocacy comments, written releases, texts of speeches, Bureau of Economics Reports, and other materials that explain the Commission's policies and procedures.
- Assess whether education and outreach efforts target the right audiences and address the issues that have the most impact on the marketplace. Seek input from consumer groups, business groups, bar groups and other FTC "customers" and "stakeholders" on the effectiveness of FTC educational efforts. Assess methods of measuring success of educational efforts on a consistent, reliable basis.

3. FY 2002 Performance Measures

In FY 2002, the agency will:

- Quantify and compare with previous years the number of education and outreach efforts, including the number of speeches and public speaking opportunities/participations by Commission personnel on competition issues, the number of advisory opinions issued, the number of advocacy comments filed, the number of amicus briefs filed, and the number of international outreach efforts.
- Quantify and compare with previous years the number of "hits" on important antitrust related content on the FTC's Web site.

4. Program Evaluations

- Assess whether education and outreach efforts target the right audiences and address the issues that have the most impact on the marketplace.
- Seek input from consumer groups, business groups, bar groups and other FTC “customers” on the effectiveness of FTC educational efforts.