

FEDERAL TRADE COMMISSION



Performance Plan

Fiscal Year 2002 Through Fiscal 2003
&
President's Management Agenda

Annual Performance Plan Objectives by Program FTE

Consumer Protection Mission

	Fiscal Year 2002				Fiscal Year 2003			
	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	56	2	65	7	56	2	65
Marketing Practices	13	128	5	146	13	128	5	146
Financial Practices	6	46	2	54	6	46	2	54
Enforcement	3	50	2	55	3	50	2	55
Planning & Information	49	6	5	60	49	6	5	60
Consumer & Business Education	0	0	15	15	0	0	15	15
Economic & Consumer Policy Analysis	0	4	2	6	0	4	2	6
Program Management	6	18	3	27	6	18	3	27
CP Mission Support	28	101	12	141	28	101	12	141
Total Mission	112	409	48	569	112	409	48	569

Maintaining Competition Mission

	Fiscal Year 2002				Fiscal Year 2003			
	MC Obj. 1	MC Obj. 2	MC Obj. 3	Prgm. Total	MC Obj. 1	MC Obj. 2	MC Obj. 3	Prgm. Total
Premerger Notification	17	0	11	28	17	0	11	28
Merger & Joint Venture Enforcement	11	186	11	208	11	186	11	208
Merger & Joint Venture Compliance	1	9	1	11	1	9	1	11
Nonmerger Enforcement	6	92	5	103	6	92	5	103
Nonmerger Compliance	0	7	0	7	0	7	0	7
Antitrust Policy Analysis	2	3	2	7	2	3	2	7
Other Direct Mission Resources	4	9	3	16	4	9	3	16
MC Mission Support	14	100	11	125	14	100	11	125
Total Mission	55	406	44	505	55	406	44	505

**Fiscal Years 1999 - 2003
Annual Performance Measures**

	FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Target	FY 2003 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: Annual number of consumer complaints and inquiries entered into database.	----	----	430,000	400,000	450,000
<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.	\$454 million	\$265 million	\$487 million	\$400 million	\$400 million
Measure 1.2.2: Total expenditures of deceptive or unfair advertising campaigns stopped.	----	----	\$86 million	\$100 million	\$100 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.	8.6 million	11.0 million	15.0 million	10.5 million	11.0 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: Percent of HSR second requests resulting in enforcement action.	----	----	68%	50%	50%
Measure 2.1.2: Number of nonmerger investigations opened per year.	45	25	56	45-70	45-70
<i>Objective 2.2—Stop anticompetitive mergers and practices through law enforcement:</i>					
Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.	80%	97%	94%	80%	80%
Measure 2.2.2: Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.	\$1,200 million	\$2,980 million	\$2,780 million	\$800 million	\$800 million
Measure 2.2.3: Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.	----	----	\$164 million	\$200 million	\$200 million

Performance Plan

	FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Target	FY 2003 Target
<i>Objective 2.3—Prevent consumer injury through education:</i>					
Measure 2.3.1: Quantify number of education and outreach efforts.	----	----	141	determine baseline	determine baseline
Measure 2.3.2: Quantify number of hits on antitrust information on FTC Web site.	----	----	2.6 million	determine baseline	determine baseline

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: 112 FTE \$17,895,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

Data Collection and Sharing

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. The FTC receives over 10,000 consumer complaints about fraudulent and deceptive business practices each week through its toll-free telephone number and Web site and plans to enhance this system to track and analyze privacy-related complaints more effectively. It is expanding dramatically its capacity to collect consumer complaints through a 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 FTC shares fraud-related complaint data through *Consumer Sentinel*, a secure online database of fraud and identity theft complaints, with more than 400 law enforcement organizations in the United States, Canada, and Australia. *Consumer Sentinel* is a unique and effective enforcement tool that enables law enforcers to access data right at their desks. Although the FTC is not empowered to act on behalf of individual consumers, consumer complaint data obtained through *Consumer Sentinel* enables the FTC and its other law enforcement partners to coordinate their enforcement efforts, and to identify and target the most serious consumer problems.

Privacy Issues

One of the highest priorities of the Consumer Protection mission in FY 2002 will be its privacy agenda. The FTC will continue to explore the privacy implications of new and emerging technologies through reports, workshops, and other public meetings. The FTC held a public workshop on privacy notices required by the 1999 Gramm-Leach-Bliley Act on December 4, 2001, and will explore holding a workshop on security issues. As part of its privacy program, the FTC will continue to devote resources to three important areas – identity theft, credit reporting, and the Children's Online Privacy Protection Act.

Identity Theft. Identity theft can ruin a consumer's credit record and make it difficult, if not impossible, for the victim to get a loan, rent an apartment or even get a job. Since 1998, when Congress identified the FTC as the nation's central repository for identity theft complaints, the agency has heard from more than 100,000 consumers who complained about identity theft and asked for information on how to deal with it. The FTC will use the data it collects from consumers to spot patterns that can help criminal law enforcement agencies prosecute

perpetrators and help businesses avoid the financial consequences of identity theft. To further help consumers deal with the crime, the FTC released a universal *ID Theft Affidavit* that victims of identity theft can submit wherever a fraudulent account has been opened in their name.

Credit Reporting. The consumer credit reporting system provides enormous benefits for consumers, giving them quick and convenient access to credit and other financial services. But consumers can be wrongly denied credit, insurance, or employment if the information in a credit report is inaccurate. The FTC will step up its efforts to ensure that consumers are notified when information in a credit report is the reason for a denial of credit, insurance or employment, and to ensure that all participants in the consumer credit reporting system meet their obligations regarding the accuracy of a consumer's credit information.

Children's Online Privacy Protection Act (COPPA). Enforcement of COPPA is a major initiative of the FTC's privacy agenda. In FY 2002, staff conducted a survey of COPPA compliance by Web sites that are directed toward children or collect personal information from children. The results of this survey will be published in a staff report for public distribution later in the fiscal year.

In FY 2002, the FTC will explore creating a new performance measure that will help the agency evaluate its results in the privacy arena. The agency would like to establish this new performance measure for FY 2003.

Media Violence and Child Protection

In December 2001, the FTC released a second follow-up report to its September 2000 Report on the Marketing of Violent Entertainment to Children. The follow-up report was prepared in response to a request from members of the Senate Commerce Committee to examine whether the entertainment media industries continue to advertise violent R-rated movies, explicit-content-labeled music, and M-rated electronic games in popular teen media and whether they are including rating information in their advertising. The report indicates that the movie and electronic game industries have demonstrated commendable progress, and that the music industry, while not changing target marketing practices has made improvements in other areas. The results of a "mystery shopper survey" are contained in the December 2001 follow-up report.

In FY 2002, the FTC will conduct focus group and survey research involving parents, retailers, and others involved in children's entertainment activities to determine how to deliver messages to parents effectively and efficiently. It will enter into a contract for a video monitoring, news clipping, and movie trailer service to record television shows, family hour programming, and movies, and to clip magazines and newspapers to check for inappropriate advertising placements and disclosure of rating information. The FTC also will purchase actual products to ensure that rating, label, and lyric information is properly and adequately disclosed. The results of the FTC's analysis will be contained in a follow-up report to be issued in the summer of 2002.

Identifying and Targeting Efforts

Through its complaint database and other data collection efforts, such as Web surveys (“Surf Days”), an unsolicited e-mail (SPAM) database, workshops, 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.

In FY 2002, the FTC will be monitoring online gambling sites to determine if these sites are being marketed to children and if proper procedures are in place to prevent participation in gambling activities by persons too young to gamble. The FTC is developing materials to educate parents about online gambling and its availability to children.

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.
- 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 of *Consumer Sentinel* 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 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 use of FTC's Internet Lab and Web surfs.
- Develop the system's capacity to collect privacy-related complaints in order to better monitor privacy problems and spot enforcement targets.
- Increase the number of identity theft complaints in the database by continuing outreach and promotion efforts as well as initiating new public-private sector joint projects to raise consumers' awareness of the FTC ID Theft Hotline. Refer trend data and complaints to public and private sector partners such as law enforcement organizations and credit reporting agencies.
- Recruit new business endorsers of the universal *ID Theft Affidavit* that victims of identity theft can submit wherever a fraudulent account has been opened in their name.
- 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. The data enables the FTC 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 its fraud complaints with external partners, the agency is able to enhance the effectiveness of law enforcement agencies in 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: 409 FTE \$57,349,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

Privacy

The FTC plays a vital role in protecting consumers' privacy and has developed a comprehensive privacy agenda. The FTC's privacy agenda emphasizes both enforcement and education, and focuses on telemarketing, unsolicited e-mail (SPAM), identity theft, and pretexting, as well as enforcement of the Children's Online Privacy Protection Act, the Gramm-Leach Bliley Act, and the Telemarketing Sales Rule. One suggested major initiative of this agenda is a proposal to amend the Telemarketing Sales Rule to implement a centralized national "do-not-call" database where consumers could register, with one simple call, their preference not to receive telemarketing calls. Telemarketers would be prohibited from calling any consumer who had placed his or her telephone number in the database.

Another proposed amendment to the Telemarketing Sales Rule would address the use of "pre-acquired account information." Consumers and law enforcers are concerned that, unbeknownst to the consumer, a telemarketer frequently already has the consumer's billing information in hand before the telemarketer even initiates a sales call to the consumer. Account information "pre-acquired" from sources other than the consumer can be misused, with the result that the consumer incurs unauthorized charges on his or her account. The FTC will increase its efforts to ensure that this information is not used to bill consumers for goods or services they don't want.

The FTC has encouraged Web sites to post privacy notices and honor the promises in them. Most Web sites now post their privacy policies. The FTC already has brought a number of cases under Section 5 of the FTC Act to enforce the promises in privacy statements. New efforts will focus on cases involving sensitive information. The FTC also will investigate claims touting the privacy and security features of products and services.

The FTC will also increase its enforcement activities against fraudulent and deceptive spam (unsolicited e-mail) promoting chain letters, pyramid schemes, or other kinds of "get-rich-quick" schemes that can cause substantial economic injury to consumers.

E-commerce

As e-commerce grows, so do online fraud and deception. Law enforcement resources will be used to address new forms of complex and fast-moving high-tech fraud, an expected growth in deceptive online health claims, 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 (for example, by using *Consumer Sentinel* data). As the Internet grows, the need for coordinated law enforcement increases to meet most consumer protection challenges.

A highly educated cadre of law enforcement partners can meet those challenges. Since FY 2000, staff has offered 27 “hands-on” training programs to more than 1,750 law enforcement personnel representing 20 countries, 38 states, 23 U.S. federal agencies and 19 Canadian agencies.

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. The FTC will build new international partnerships to tackle cross-border fraud through information sharing and coordinated law enforcement, and will participate in international efforts to craft policies and self-regulatory programs to protect consumers in the global marketplace. These international partnerships include the FTC’s participation in the International Marketing Supervision Network, an international consumer protection group that identifies worldwide enforcement issues and facilitates informal sharing of information; cooperation agreements with Australian, Canadian and British law enforcement groups; and regional Canadian-U.S. task forces that file suits simultaneously in both countries (similar to the sweeps that the FTC conducts with state and local law enforcement agencies).

Recent Statutory Changes

The Gramm-Leach-Bliley Act, signed into law in 1999, requires financial institutions to provide privacy notices to consumers and allows consumers, with certain exceptions, to choose whether their financial institutions may share their information with third parties. The FTC will undertake enforcement efforts to ensure that financial institutions comply with the law and will implement an outreach program to increase consumer awareness of the notices.

Prohibited by the Gramm-Leach-Bliley Act, “pretexting” is the practice of fraudulently obtaining personal financial information, such as account numbers and balances, often by calling banks under the pretext of being a customer. The FTC will continue its aggressive enforcement efforts against this abusive practice that infringes on the security of consumers’ personal financial information.

The FTC also will continue its enforcement efforts under the Children’s Online Privacy Protection Act of 1998, which prevents the collection of personally identifiable information from children without their parent’s consent.

In addition, the FTC will continue to implement other recent statutory responsibilities under the Identity Theft and Assumption Deterrence Act of 1998.

A. Stopping Fraud

1. GPRA Five-Year Strategies

- Lead and coordinate a nationwide attack on telemarketing fraud by continuing to lead federal and state law enforcement sweeps, by using Consumer Sentinel data to identify targets and by coordinating with other federal and state agencies to prosecute actions against these targets.
- Target high-tech frauds that have moved to the Internet and 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 the most significant areas of telemarketing and other types of fraud, such as direct mail scams, predatory lending, and unauthorized billing (“cramming”) for suitable federal-state sweeps or other law enforcement initiatives.
- 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.
- Consider a proposal to amend the Telemarketing Sales Rule to ensure that sellers who have “pre-acquired account information” do not deceive or defraud consumers.
- Increase enforcement activities against fraudulent and deceptive spam promoting chain letters, pyramid schemes or other kinds of “get-rich-quick” schemes.
- 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 the FTC's anti-fraud efforts. The FTC saves consumers money each time a fraudulent operator is stopped through successful litigation or settlement with the agency. The FTC increases 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 stopped.

Consumer savings are calculated by adding together the estimated annual fraudulent sales of defendants in the 12 months prior to the FTC's 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 and it ignores any deterrent effect of FTC enforcement. It provides, however, 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 review of 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.
- Consider proposal to amend the Telemarketing Sales Rule to create a national do-not-call list that would be binding on all telemarketers.
- Continue enforcement efforts against the abusive practice of pretexting that causes consumers to worry about the security of their personal financial information.
- Pursue privacy-related cases involving sensitive information and claims touting the privacy and security features of products and services.
- 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.
- Address cutting-edge consumer protection issues in emerging areas: e-commerce, globalization, privacy of personal information, and the marketing of new digital products, new service, 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 \$100 million.

The FTC's broad consumer protection jurisdiction covers the \$100 billion national advertising industry, the \$600 billion direct marketing industry, and financial transactions affecting virtually every consumer in this country. With the growth of e-commerce (consumer sales expected to reach \$150 billion by 2005), newly deregulated markets and globalization, the FTC's jurisdiction is growing even broader. One of FTC's most important challenges is to protect consumers in the electronic marketplace, so they will have the same confidence in this market as they do in the traditional marketplace. 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.

The nonfraud measure is a new measure that was first implemented in FY 2001 and based on data from the previous year. This measure was based on the assumption that advertisers seek to increase sales by at least as much as they spend on advertising; thus, this measure is intended to help evaluate the impact of stopping deceptive advertisements. The base year, FY 2000, included orders halting several large national advertising campaigns. In FY 2001, the FTC achieved only 29% of its goal (it halted unfair advertising campaigns of \$86 million, and the goal was \$300 million).

The agency has now studied those results and the industry in general and has reset its target to \$100 million in FYs 2002 and 2003 for the following reasons. First, since this measure was established, the FTC has increased its emphasis on taking action against deceptive Internet advertising claims. Internet advertising is very broadly disseminated, but is considerably less expensive than traditional advertising. Second, a number of traditional advertisers are now using public relations campaigns as an alternative to traditional advertising campaigns and it is difficult, if not impossible, for the agency to measure the value of the publicity that results from these public relations efforts. Finally, better monitoring has increased the FTC's effectiveness at stopping some large advertising campaigns early on. For these reasons, the previously set GPRA goal of \$300 million has proved unrealistic. The target has been reset to \$100 million for FYs 2002 and 2003 to better reflect new advertising realities.

4. Program Evaluations

- Assess whether the mix of resources allocated to fraud and nonfraud 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: 48 FTE \$7,341,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

Information gaps are greatest in areas of the marketplace that are changing rapidly. Thus, the FTC's 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, privacy of personal information, deregulation, and globalization. The FTC will make creative use of new technologies and private and public sector partners to reach new audiences, including under-served consumer audiences, businesses, and law enforcement offices. The FTC will increase public awareness of its programs and ways to contact the agency 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, privacy, and identity theft.
- Establish an outreach program to increase consumer awareness of and business compliance with the privacy information required by the Gramm-Leach-Bliley Act.
- Increase education efforts about frauds that cause consumers the greatest financial injury.
- Through greater outreach, lead more consumers to the FTC's Web site (*ftc.gov*) and the "one-stop" government Web site for consumer information (*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, the FTC makes maximum use of the national media, the FTC's *ftc.gov* Web site, and the interagency *consumer.gov* Web site. The FTC's messages also reach the public through the Consumer Response Center and hundreds of partners who distribute FTC materials, link to the FTC Web site, or post FTC messages on their Web sites.

4. Program Evaluations

- Determine the number of publications distributed or accessed online to evaluate outreach efforts and identify topics of particular consumer interest.
- 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; the more private and public partners the FTC has, and the larger those partners are, the greater its potential to reach different types of audiences, both business and consumer.
- 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 consumer education needs of the Spanish-speaking population. Census data shows that the United States has a large and growing Spanish-speaking population. Because these consumers may not speak English or are non-native speakers of the language, they may be more susceptible to the nuances and complexities of disclosures, advertisements, or other aspects of consumer transactions. In order to meet the needs of this vulnerable group, the FTC will assess

what areas of consumer education would be most beneficial to them, and identify topics where Spanish language materials are not already provided by other government agencies.

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 2003 Budgeted Resources: FTE 112 \$20,621,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

Data Collection and Sharing

The FTC has created the largest database of consumer complaints in the world. Complaints are collected by the FTC's Consumer Response Center, which responds to calls to its toll-free numbers and to postal and online complaints. The FTC also receives complaint data from a broad array of public and private organizations in the United States and Canada. More than 1.4 million complaints are now in the FTC's database.

The FTC shares complaint data through *Consumer Sentinel*, a secure online database of fraud and identity theft complaints, with more than 400 law enforcement organizations in the United States, Canada, and Australia. *Consumer Sentinel* is a unique and effective enforcement tool that enables law enforcers to access data right at their desks. Although the FTC is not empowered to act on behalf of individual consumers, consumer complaint data obtained through *Consumer Sentinel* enables the FTC and its other law enforcement partners to coordinate their enforcement efforts, and to identify and target the most serious consumer problems. Moreover, with its recent launch of *econsumer.gov*, in conjunction with 13 international partners, the FTC is taking the *Consumer Sentinel* model to the global marketplace.

The FTC will continue to expand these databases and increase their use by recruiting and training additional law enforcement partners. The FTC also will make better use of its rich store of data to provide greater consumer protection, by mining the data to identify repeat offenders and sharing this information with other law enforcers. Further, the FTC will increase its capacity to analyze data quickly in order to respond to frauds and identity theft in their incipient stages and prevent consumer injury. The data will be used to provide more information to the public – by giving consumers information to protect themselves from scams and identity theft, and informing public policy discussions about consumer protection issues in the marketplace. The FTC also will continue to collect data on consumers' experiences and general inquiries through focus groups, surveys, research, readability studies, and other methods of monitoring the marketplace in order to better target enforcement and education resources. Finally, the FTC will continue to enhance its system to track and analyze privacy-related complaints more effectively.

Privacy Issues

In FY 2003, the privacy agenda will continue to be one of the Consumer Protection mission's highest priorities. The FTC will continue to explore the privacy implications of new and emerging technologies. The FTC will devote resources to three important privacy initiatives – identity theft, credit reporting, and the Children's Online Privacy Protection Act. The FTC will continue to use its data mining and analytical skills to develop custom investigative reports that will enable criminal law enforcement agencies to identify and prosecute appropriate id theft cases. The FTC will keep working with the credit reporting industry to ensure the accuracy of consumer's credit information. Finally, the FTC will use survey results that it has gathered, industry results, and traditional surveillance methods to identify Web sites directed to children or collecting personal information from children that have deficient privacy policies. Through education and law enforcement, the FTC will seek to educate and bring these entities into compliance with COPPA.

In FY 2002, the FTC will have explored creating a new performance measure that will help the agency evaluate its results in the privacy arena. The agency would like to establish this new performance measure for FY 2003.

Unsolicited Commercial E-mails (Spam)

The FTC receives thousands of unsolicited commercial e-mails or spam messages a day, forwarded by groups and individuals worldwide. Resources will be used to enhance the spam database that stores these messages. Developing the capability to manipulate and analyze the data will help the FTC put it to use for case generation, evidentiary support in litigation, trend analysis, and legislative recommendations.

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.
- 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 2003 Implementation Plan

- Recruit new partners in the United States and abroad to contribute complaint data to *Consumer Sentinel*.
- 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; expand the use of *econsumer.gov* by recruiting additional partners, providing more information on the site, and increasing complaint collection and sharing.
- Enhance the system's capacity to collect privacy-related complaints in the database; enhance analysis of data to make it more useful to private and public sector partners.
- Monitor the marketplace to identify illegal practices that may not be fully captured by the database, for example, using technology to monitor the Internet and conducting surveys.
- Increase the number of identity theft complaints in the database; increase analysis of data to make it more useful to private and public sector partners, such as credit bureaus and law enforcers.
- Collect privacy-related complaints in order to better monitor privacy problems and spot enforcement targets.
- Collect data on consumers' experiences and general inquiries through focus groups, surveys, research, readability studies, and other methods of monitoring the marketplace in order to better target enforcement and education resources.
- Identify consumer protection issues emerging as a result of changes in the marketplace, for example, the increasing use of new technologies, such as digital television and Internet telephony, the use of new payment systems, changes in demographics (the aging population, immigration, etc.), and globalization; explore them through public workshops, hearings, surveys, etc.

3. FY 2003 Performance Measures

In FY 2003, the agency will:

- Increase the number of consumer complaints and inquiries in the FTC's comprehensive information system by at least 450,000.

The FTC continues to focus law enforcement resources on the most serious consumer protection problems identified from its consumer complaint database. The data enables the FTC to rapidly detect and respond to fraud, deception, and other illegal

practices, and to prevent consumer injury in a timely fashion. Furthermore, by broadly sharing its fraud complaints with external partners, the FTC is 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 2003 Budgeted Resources: 409 FTE \$65,762,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

Privacy

The FTC plays a vital role in protecting consumers' privacy and will continue to implement its comprehensive privacy agenda outlined in FY 2002. The FTC's privacy agenda emphasizes both enforcement and education, and focuses on telemarketing, unsolicited e-mail (SPAM), identity theft, and pretexting, as well as enforcement of the Children's Online Privacy Protection Act, the Gramm-Leach-Bliley Act, and the Telemarketing Sales Rule. If the Telemarketing Sales Rule is amended as proposed in the FY 2002 agenda, one of the suggested initiatives will be to implement a centralized national "do-not-call" database where consumers could register, with one simple call, their preference not to receive telemarketing calls. Telemarketers would be prohibited from calling any consumer who had placed his or her telephone number in the database.

Another proposed amendment to the Telemarketing Sales Rule would address the use of "pre-acquired account information." Consumers and law enforcers are concerned that, unbeknownst to the consumer, a telemarketer frequently already has the consumer's billing information in hand before the telemarketer even initiates a sales call to the consumer. Account information "pre-acquired" from sources other than the consumer can be misused, with the result that the consumer incurs unauthorized charges on his or her account.

Enforcement efforts will continue to focus on cases involving sensitive information, and claims touting the privacy and security features of products and services.

E-commerce

The electronic marketplace continues to be a fertile ground for frauds and deception – both traditional frauds and new forms of technological trickery. The FTC will pursue new consumer protection issues that are emerging with the convergence of technologies and new payment systems.

Internet fraud and deception remain a law enforcement priority for the FTC. As in other areas, the FTC will continue to lead efforts to coordinate law enforcement with officials throughout the United States and abroad. Two key elements of its global enforcement efforts using the Internet are: (1) sharing complaint data through *Consumer Sentinel* and the newly created international Web site, *econsumer.gov*, and (2) training enforcement officials here and abroad on the newest technologies and how to bring cases involving those technologies. Since FY 2000, staff has offered 27 "hands-on" training programs to more than 1,750 law enforcement personnel representing 20 countries, 38 states, 23 federal agencies and 19 Canadian agencies.

Globalization

As the marketplace becomes more global, the FTC is involved on two fronts: law enforcement and policy development. With respect to law enforcement, cases increasingly involve an international component; that is, defendants, their operations, or their assets are located offshore, making it difficult to locate and stop scams or to provide redress. The FTC is meeting these challenges by building international partnerships to assist in identifying and pursuing these cases. On the policy side, the FTC is promoting international development of market-oriented consumer protection policies. Among the areas the FTC is promoting are alternative dispute resolution (mediation, arbitration, or other alternatives to traditional litigation), self-regulation, information sharing, and payment system protections.

Health Care Products and Services

The FTC is giving priority to a growing problem area: the deceptive marketing of products that may affect consumer health and safety. The FTC is focusing on dietary supplements and other health products promoted on the Internet. In all of these areas, consumer demand for the products is increasing, and fraudulent or deceptive claims about the products can pose risks to consumers' well-being.

A. Stopping Fraud

1. GPRA Five-Year Strategies

- Lead and coordinate a nationwide attack on telemarketing fraud by continuing to lead federal and state law enforcement sweeps, and by using Consumer Sentinel data to (1) identify targets and (2) coordinate with other federal and state agencies to prosecute actions against these targets.
- Target high-tech frauds that have moved to the Internet and 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 2003 Implementation Plan

- Target for suitable federal-state sweeps or other law enforcement initiatives, the most significant areas of telemarketing and other types of fraud, such as direct mail scams, predatory lending, and unauthorized billing ("cramming").
- Stop the most pernicious Internet-related scams, such as unauthorized charges on consumers' phone bills through dialer programs, the misuse of pre-acquired customer

account information, and deceptive spam, as they are identified in the *Consumer Sentinel* database, through Internet surfs, and other monitoring.

- Enforce the Telemarketing Sales Rule, if amended, to ensure that sellers who have “pre-acquired account information” do not deceive or defraud consumers.
- Continue enforcement activities against fraudulent and deceptive spam promoting chain letters, pyramid schemes or other kinds of “get-rich-quick” schemes.
- Recruit new local, state, federal, and international law enforcement partners for anti-fraud initiatives.
- Continue training law enforcement colleagues nationwide on how to bring anti-fraud cases involving the newest technologies, and take this program abroad to educate colleagues around the world.
- Equip the FTC’s Internet Lab to keep pace with technology and support rapid response law enforcement capability.

3. FY 2003 Performance Measures

In FY 2003, the agency will:

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

Preventing economic injury to consumers is the ultimate goal of the FTC’s anti-fraud efforts. The FTC saves consumers money each time a fraudulent operator is stopped by successful litigation or settlement with the agency. The FTC increases 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 stopped.

Consumer savings are calculated by adding together the estimated annual fraudulent sales of defendants in the 12 months prior to the FTC’s 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 and it ignores any deterrent effect of FTC enforcement. It provides, however, 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 review of 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 2003 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.
- Implement any new Telemarketing Sales Rule requirements or amendments creating a national do-not-call list that would be binding on all telemarketers.
- Increase enforcement of any privacy-related amendments to the Telemarketing Sales Rule, such as any provisions addressing harassing calls and the hours during which calls are allowed.
- Continue enforcement efforts against the abusive practice of pretexting that causes consumers concern about the security of their personal financial information.

- Bring privacy-related cases involving sensitive information and claims touting the privacy and security features of products and services.
- Ensure that there is broad compliance with consumer protection laws, rules, and guides in the electronic marketplace; target law enforcement to the most serious violations.
- Implement any updated regulations governing franchising, telemarketing sales, and telephone billing services.
- Address cutting-edge consumer protection issues in emerging areas – e-commerce, globalization, privacy of personal information, and the marketing of new products and services and newly deregulated services.

3. FY 2003 Performance Measures

In FY 2003, the agency will:

- Reduce consumer injury by obtaining orders stopping deceptive or unfair major national advertising campaigns with combined media expenditures totaling \$100 million.

The FTC's broad consumer protection jurisdiction covers the \$100 billion national advertising industry, the \$600 billion direct marketing industry, and financial transactions affecting virtually every consumer in this country. With the growth of e-commerce (consumer sales expected to reach \$150 billion by 2005), newly deregulated markets and globalization, the FTC's jurisdiction is growing even broader. One of FTC's most important challenges is to protect consumers in the electronic marketplace, so they will have the same confidence in this market as they do in the traditional marketplace. 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 nonfraud 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 2003 Budgeted Resources: 48 FTE \$8,089,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

The FTC's education efforts target identified areas of fraud and deception, and areas where information gaps are greatest because of rapid changes in the marketplace, such as new technology-based products and services, privacy of personal information, new types of payment systems, and global transactions. The agency makes creative use of new technologies and private and public partners to reach new and under-served audiences. The FTC will expand its consumer education program to reach these new audiences, build new partnerships to help distribute its messages, and continue to create and support education Web sites, including FTC's new international site, *econsumer.gov*. The FTC will continue to publicize its consumer complaint and identity theft toll-free numbers and seek to hold constituent service conferences with congressional offices as part of its effort to increase public awareness of its programs and inform the public of the ways 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 2003 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.
- Plan a consumer awareness campaign to let consumers know that they should report their privacy-related complaints to the FTC.

- Continue an outreach program to increase consumer awareness of the privacy information required by the Gramm-Leach-Bliley Act.
- Increase education efforts about frauds that cause consumers the greatest financial injury.
- Through greater outreach, lead more consumers to the FTC's Web site (*ftc.gov*) and the "one-stop" government Web site for consumer information (*consumer.gov*).
- Expand coverage of FTC messages, including the toll-free helplines, through marketing, new products, technology, and a speakers bureau.
- Continue efforts to identify and reach under-served audiences, businesses, and law enforcement offices.

3. FY 2003 Performance Measures

In FY 2003, the agency will:

- Provide education messages online and in print to 11 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, the FTC makes maximum use of the national media, the agency's *ftc.gov* Web site, and the interagency *consumer.gov* Web site. The FTC's messages also reach the public through the Consumer Response Center and hundreds of partners who distribute FTC materials, link to the FTC Web site, or post FTC messages on their Web sites.

4. Program Evaluations

- Determine the number of publications distributed or accessed online to evaluate outreach efforts and identify topics of particular consumer interest.
- 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; the more private and public partners the FTC has, and the larger those partners are, the greater its potential to reach different types of audiences, both business and consumer.
- 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 consumer education needs of the Spanish-speaking population. Census data shows that the United States has a large and growing Spanish-speaking population. Because these consumers may not speak English or are non-native speakers of the language, they may be more susceptible to the nuances and complexities of disclosures, advertisements, or other aspects of consumer transactions. In order to meet the needs of this vulnerable group, the FTC will assess what areas of consumer education would be most beneficial to them, and identify topics where Spanish language materials are not already provided by other government agencies.

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: 55 FTE \$7,906,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

After a decade of rapid growth, overall merger activity abated somewhat during FY 2001, but the FTC's merger review workload remains very high. Revisions to the Hart-Scott-Rodino Act (HSR) reporting thresholds that became effective in 2001 significantly reduced the number of transactions subject to the notification requirement, but not the standard of legality. Thus, the FTC now devotes more resources to identification of non-reportable mergers that may harm competition. At the same time, the trend toward larger and more complex transactions continues. Antitrust review of large, multifaceted transactions is generally much more resource-intensive, as these transactions almost always involve many more separate antitrust markets, each of which requires a separate analysis. Finally, the easing of the pace of merger activity has enabled the FTC to increase the resources devoted to nonmerger investigations and cases, making the balance between merger and nonmerger activities more consistent with historic allocations.

1. GPRA Five-Year Strategies

- Administer the Hart-Scott-Rodino (HSR) premerger notification program, under which parties to certain mergers and acquisitions must report on the planned transactions in advance to the FTC and Department of Justice to allow for antitrust review. Track and maintain the timeliness of merger review under the HSR Program.
- In light of the higher HSR premerger reporting thresholds effective in early 2001, increase use of trade press articles, consumer and competitor complaints, and other means to identify possibly illegal mergers that are not subject to the HSR reporting requirement. Encourage the legal and business communities to bring such matters to the FTC's attention.
- 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 interagency 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.

- Through the use of task forces and other means, examine the scope of exemptions to the antitrust laws to identify possible categories of harmful conduct that, while ostensibly protected from antitrust challenge, are in fact not exempt from the antitrust laws.
- Refine the investigative and decisional tools used in both merger and nonmerger investigations through continuous learning.
- Continue to strengthen the timeliness, efficiency, and effectiveness of nonmerger investigations through the restoration of resources to the nonmerger program, to the extent permitted by the level of merger activity.

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 regular basis.
- Monitor merger and nonmerger resource needs and utilization, and make adjustments as appropriate.
- Identify anticompetitive practices by using speeches, electronic and print media, and other means to inform potentially aggrieved parties that they can lodge complaints with the FTC.
- Analyze competition issues. Continue ongoing studies relating to areas of current activity. Continue in-depth studies of important competition issues, such as the 2000-2001 studies of business-to-business (B2B) electronic marketplaces and grocery slotting allowances.
- Continue training programs in investigative skills and antitrust analysis, and hold seminars featuring distinguished scholars speaking on substantive research and analysis of important antitrust law and policy issues. Participate in planning, developing, and conducting agency-wide basic and advanced legal skills training, focusing on taking and defending depositions, using other forms of discovery, motions practice, trial advocacy, negotiation, and legal writing. Ensure that lead attorneys and managers identify any important lessons learned at the close of each significant investigation and transmit them to appropriate personnel for incorporation into training programs and model pleadings.

B. Mergers Filed Under HSR

- In the initial review of each HSR filing, determine compliance with reporting requirements; prepare a summary of the transaction and a recommendation regarding further review; transmit summary information and recommendations to Bureau of Competition management, merger litigation divisions, and the Bureau of Economics.
- Based on the transaction summary and recommendations resulting from initial review, an examination of the filing if necessary, and other available information, promptly determine whether further review is needed to determine whether the transaction may be anticompetitive. If further review is deemed unnecessary, recommend early termination of the statutory waiting period. If additional review is required, seek investigational clearance from the Department of Justice through the interagency liaison process.
- Continue the review during the remainder of the initial 30-day period after filing (15 days for a cash tender offer) by employing appropriate investigative techniques and various sources of information. Render a sound and well-informed determination of 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, comprising 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

- To promote voluntary compliance with HSR premerger notification requirements, vigorously pursue violations. Monitor compliance of merging entities and fully investigate apparent violations.
- If an investigation indicates 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 HSR filing thresholds effective 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 and Internet resources, (2) responding to and following up on case leads from Congressional offices, other Executive branch agencies, and state and local government, and (3) encouraging consumers, businesses, and the bar to notify the FTC of possibly anticompetitive mergers. After identification, seek investigational clearance through the interagency 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 from Congressional offices, other Executive branch agencies, and state and local government, (3) following up on complaints from consumers, businesses, the bar, and the general public, (4) pursuing investigative leads developed by staff in other investigations, and (5) using task forces to identify harmful practices in selected areas. Seek investigative clearance through the interagency liaison process. If clearance is 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, comprising senior officials of the Bureau 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. A percentage significantly below that level may suggest that the FTC is targeting enforcement resources ineffectively by investigating too many competitively benign transactions (and unduly burdening businesses as a result), while a percentage significantly above that level may suggest that the agency is focusing too narrowly and thus potentially allowing problematic transactions to go forward without sufficient review.
- Open a comparable number of new nonmerger investigations as in each of FYs 1991 through 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 the effectiveness of the “model second request” implemented in FY 1995 and revised in FY 1999, and make any additional revisions that may be warranted to make investigations more efficient without compromising effectiveness. The model second request, which addresses issues typically encountered in a merger investigation, is designed to assist agency attorneys and economists in preparing requests for additional information.
- 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 largest matters (measured in terms of hours spent) in the investigational stage each year.
- Conduct joint sessions with the Department of Justice Antitrust Division on “best practices” in merger investigations.

Objective 2.2: Stop anticompetitive mergers and practices through law enforcement.**FY 2002 Budgeted Resources:** 406 FTE \$59,112,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

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 block anticompetitive mergers and halt anticompetitive business practices.

In recent years, the increasing number, size, and scope of proposed corporate mergers required the Maintaining Competition mission to shift resources from nonmerger activities to the merger arena. Dollar values of reported mergers increased 18-fold in nominal terms, from \$169 billion in 1991 to nearly \$3 trillion in 2000. While the trend toward increasing size and scope of merger transactions has continued, a moderation in the pace of merger activity should permit renewed emphasis on the nonmerger area in FY 2002.

The sophistication and complexity of merger transactions and nonmerger matters that the FTC investigates continue to increase, stretching the agency's resources even more than does the volume of mergers alone. 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. More so than ever before, FTC investigations may involve difficult scientific and technical material. In addition, antitrust matters increasingly intersect with intellectual property, raising difficult issues on how to reconcile two different bodies of law with similar goals. These trends inevitably place more and more demands on available enforcement resources. In addition, the increasing emphasis on quantitative evidence and econometric analysis in antitrust investigations and litigation requires that the FTC spend more resources in analysis and understanding of the issues. Merging firms increasingly rely on sophisticated accounting, econometric, and other data-intensive economic studies regarding competitive effects, entry issues, and efficiency and failing company defenses, requiring analogous investments by the FTC. More significantly, merger challenges that are litigated through preliminary injunction actions in federal court or through administrative trials absorb major commitments in resources – both 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 devising and drafting effective compliance orders in individual matters, a highly fact-specific process. In addition, the FTC conducts general and historical analyses on the effectiveness of various kinds of merger and nonmerger remedies, 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. The FTC continues to absorb some of this ever-increasing workload through more efficient use of resources.

The FTC is renewing emphasis on non-merger activity, focusing on the scope of antitrust exemption doctrines such as *Noerr-Pennington* and state action, restraints on competition among professionals, and anticompetitive abuses of the standards-setting process.

1. GPRA Five-Year Strategies

- Save consumers millions of dollars a year directly by stopping anticompetitive mergers and anticompetitive conduct.
- Save consumers money indirectly by negotiating consent orders and winning litigated orders that have significant remedial, precedential, and deterrent effects in merger and nonmerger cases.
- Improve negotiation, litigation, and economic skills through continuous learning.
- Continue to ensure that divestiture remedies in Commission orders are achieved in a timely fashion, employing, where appropriate, requirements that suitable divestitures be arranged before consummation of a merger.
- 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, written discovery, trial advocacy, negotiation skills, and advanced legal writing, as well as mission-specific procedures and substantive law. Ensure that lead attorneys, economists, and managers identify any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation into training programs and model pleadings.
- Monitor the timeliness of administrative adjudication and issue to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.

B. Merger Enforcement

- During the initial HSR review period, carefully identify those merger transactions that are likely 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 indicates that a merger is anticompetitive, seek to negotiate consent orders that effectively cure the competitive problem and protect consumers, while permitting the benign aspects 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, (3) the number of HSR investigations that result in enforcement action, and (4) the number of such matters resolved through a “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.
- Review the effectiveness of the Commission’s merger consent orders and litigated orders and make adjustments to future orders where appropriate.

- 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 and assess whether there is sufficient evidence to establish a 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 indicates 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.
- Continue to refine methods 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.¹ 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.² 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.³ 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 a net loss to consumers amounting to at least 1% of the relevant market(s) would occur absent enforcement action.⁴

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

¹ The agency may prevent an anticompetitive result from a proposed merger by (1) conducting successful litigation to block the merger, (2) negotiating a settlement to resolve anticompetitive aspects of the merger while allowing the underlying transaction to go forward, or (3) identifying antitrust concerns sufficient to cause the parties to abandon the transaction without court action. The consumer savings estimate does not include transactions abandoned by the parties for business considerations unrelated to antitrust. Settlements are subject to Commission approval and require sufficient supporting evidence for the Commission to have “reason to believe” that a law violation would occur.

² 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.

³ 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.

⁴ One reason for the conservative approach is that, in some instances, a proposed merger may create consumer savings through efficiencies that could partially offset losses to consumers due to reduced competition. The 1% figure takes into account the possibility of such efficiencies.

competitors would occur within two years.⁵ Therefore, it is assumed 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.⁶

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 an 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 \$4 billion over a five-year period through its merger enforcement. Determine how the savings compares to the resources spent on the mission.

⁵ See *id.* § 3.0. This is because the prospect of rapid entry is likely to deter anticompetitive pricing.

⁶ 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.

- Assess the estimated consumer savings from nonmerger enforcement actions. Determine whether the agency is on track to save consumers \$1 billion over a five-year period by stopping anticompetitive conduct. 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 and business conduct.
- 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 statistical data relating to 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 a “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. Determine an appropriate basis of comparison with historic benchmarks, in light of revised reporting thresholds in 2001.
- Evaluate effectiveness of FTC merger policy by conducting retrospective studies of FTC enforcement actions, or decisions not to take enforcement action, to determine if actual outcomes were consistent with expectations.
- 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:** 44 FTE \$6,379,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

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 (*ftc.gov*).
- Continue to provide advice to other governmental bodies upon request.

2. FY 2002 Implementation Plan

- 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.
- Provide Commission and staff advisory opinions on competition issues.
- Upon request of other governmental entities considering proposed regulatory and legislative actions, prepare and submit comments or testimony to share information and analysis about how the proposed action may affect competition and consumers.
- Prepare and file amicus briefs in appropriate competition matters.
- Monitor the content of Commission 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. In appropriate cases in which the Commission determines that enforcement action would not be in the public interest, issue statements explaining the Commission's reasoning leading to its conclusion.
- Make available prepared texts of speeches; as appropriate, develop other materials that explain Commission policies and procedures; circulate economic papers on competition issues.
- Have Commissioners and staff speak at and participate in seminars, panel discussions, and conferences to explain how the Commission analyzes mergers and business practices.

- Support outreach efforts to international bodies to explain U.S. competition perspectives; aid the development of antitrust laws and programs in developing nations by participating in technical missions.
- Respond to correspondence, e-mail, and telephone calls from the public. Provide informal guidance, particularly on HSR matters. Evaluate inquiries and complaints about potentially anticompetitive practices, and respond to questions about the antitrust laws and the FTC.
- Make available on the FTC's Web site the guidelines issued by the agency, advisory opinions, advocacy comments, written press 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 the success of educational efforts on a consistent, reliable basis.
- Continue to hold public hearings and workshops to expand understanding of increasingly significant public policy issues, such as factors that affect the price of refined petroleum products, and the implications of antitrust and patent law and policy for innovation and other aspects of consumer welfare.

3. FY 2002 Performance Measures

In FY 2002, the agency will:

- Determine a baseline by quantifying and comparing with previous years the number of education and outreach efforts, including speeches and public speaking opportunities/participations by FTC personnel on competition issues, advisory opinions issued, advocacy comments filed, amicus briefs filed, and international outreach efforts.
- Determine a baseline by quantifying and comparing 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.

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 2003 Budgeted Resources: 55 FTE \$8,309,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

After a decade of rapid growth, overall merger activity abated somewhat during FY 2001 and 2002, but the FTC's merger review workload is likely to remain very high. Revisions to the Hart-Scott-Rodino Act (HSR) reporting thresholds that became effective in 2001 significantly reduced the number of transactions subject to the notification requirement, but not the standard of legality. Thus, the FTC now devotes more resources to identification of non-reportable mergers that may harm competition. At the same time, the trend toward larger and more complex transactions continues. Antitrust review of large, multifaceted transactions is generally much more resource-intensive than usual, as these transactions almost always involve many more separate antitrust markets, each of which requires a separate analysis. Finally, the easing of the pace of merger activity has enabled the FTC to increase the resources devoted to nonmerger investigations and cases, making the balance between merger and nonmerger activities more consistent with historic allocations.

1. GPRA Five-Year Strategies

- Administer the Hart-Scott-Rodino (HSR) premerger notification program, under which parties to certain mergers and acquisitions must report the planned transactions in advance to the FTC and Department of Justice to allow for antitrust review. Track and maintain the timeliness of merger review under the HSR Program.
- In light of the higher HSR premerger reporting thresholds effective in early 2001, continue increased use of trade press articles, consumer and competitor complaints, and other means to identify possibly illegal mergers that are not subject to the HSR reporting requirement. Encourage the legal and business communities to bring such matters to the FTC's attention.
- 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 interagency 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.

- Continue the use of task forces and other means to examine the scope of exemptions to the antitrust laws to identify possible categories of harmful conduct that, while ostensibly protected from antitrust challenge, are in fact not exempt from the antitrust laws.
- Refine the investigative and decisional tools used in both merger and nonmerger investigations through continuous learning.
- Continue to strengthen the timeliness, efficiency, and effectiveness of nonmerger investigations through the restoration of resources to the nonmerger program, to the extent permitted by the level of merger activity.

2. FY 2003 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 regular basis.
- Monitor merger and nonmerger resource needs and utilization, and make adjustments as appropriate.
- Identify anticompetitive practices by using speeches, electronic and print media, and other means to inform potentially aggrieved parties that they can lodge complaints with the FTC.
- Analyze competition issues. Continue ongoing studies relating to areas of current activity. Continue in-depth studies of important competition issues, such as the 2000-2001 studies of business-to-business (B2B) electronic marketplaces and the planned hearings on intellectual property and antitrust in 2002.
- Continue training programs in investigative skills and antitrust analysis, and hold seminars featuring distinguished scholars speaking on substantive research and analysis of important antitrust law and policy issues. Participate in planning, developing, and conducting agency-wide basic and advanced legal skills training, focusing on taking and defending depositions, using other forms of discovery, motions practice, trial advocacy, negotiation, and legal writing. Ensure that lead attorneys and managers identify any important lessons learned at the close of each significant investigation and transmit them to appropriate personnel for incorporation into training programs and model pleadings.

B. Mergers Filed Under HSR

- In the initial review of each HSR filing, determine compliance with reporting requirements; prepare a summary of the transaction and a recommendation regarding further review; transmit summary information and recommendations to Bureau of Competition management, merger litigation divisions, and the Bureau of Economics.
- Based on the transaction summary and recommendations resulting from initial review, an examination of the filing if necessary, and other available information, promptly determine whether further review is needed to determine whether the transaction may be anticompetitive. If further review is deemed unnecessary, recommend early termination of the statutory waiting period. If additional review is required, seek investigational clearance from the Department of Justice through the interagency liaison process.
- Continue the review during the remainder of the initial 30-day period after filing (15 days for a cash tender offer) by employing appropriate investigative techniques and various sources of information. Render a sound and well-informed determination of 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, comprising 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

- To promote voluntary compliance with HSR premerger notification requirements, vigorously pursue violations. Monitor compliance of merging entities and fully investigate apparent violations.
- If an investigation indicates 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 HSR filing thresholds effective in FY 2001, continue increased 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 and Internet resources, (2) responding to and following up on case leads from Congressional offices, other Executive branch agencies, and state and local government, and (3) encouraging consumers, businesses, and the bar to notify the FTC of possibly anticompetitive mergers. After identification, seek investigational clearance through the interagency 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 from Congressional offices, other Executive branch agencies, and state and local government, (3) following up on complaints from consumers, businesses, the bar, and the general public, (4) pursuing investigative leads developed by staff in other investigations, and (5) using task forces to identify harmful practices in selected areas. Seek investigative clearance through the interagency liaison process. If clearance is 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, comprising senior officials of the Bureau of Competition and Economics, for a full phase investigation and, if appropriate, a request to seek Commission authorization to use compulsory process.

3. FY 2003 Performance Measures

In FY 2003, 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. A percentage significantly below that level may suggest that the FTC is targeting enforcement resources ineffectively by investigating too many competitively benign transactions (and unduly burdening businesses as a result), while a percentage significantly above that level may suggest that the agency is focusing too narrowly and thus potentially allowing problematic transactions to go forward without sufficient review.
- Open a comparable number of new nonmerger investigations as in each of FYs 1991 through 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 the effectiveness of the “model second request” implemented in FY 1995 and revised in FY 1999, and make any additional revisions that may be warranted to make investigations more efficient without compromising effectiveness. The model second request, which addresses issues typically encountered in a merger investigation, is designed to assist agency attorneys and economists in preparing requests for additional information.
- 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 largest matters (measured in terms of hours spent) in the investigational stage each year.
- Conduct joint sessions with the Department of Justice Antitrust Division on “best practices” in merger investigations.

Objective 2.2: Stop anticompetitive mergers and practices through law enforcement.**FY 2003 Budgeted Resources:** 406 FTE \$62,115,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

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 block anticompetitive mergers and halt anticompetitive business practices.

In recent years, the increasing number, size, and scope of proposed corporate mergers required the Maintaining Competition mission to shift resources from nonmerger activities to the merger arena. Dollar values of reported mergers increased 18-fold in nominal terms, from \$169 billion in 1991 to nearly \$3 trillion in 2000. While the trend toward increasing size and scope of merger transactions has continued, a moderation in the pace of merger activity permitted renewed emphasis on the nonmerger area in FY 2002

The sophistication and complexity of merger transactions and nonmerger matters that the FTC investigates continues to increase, stretching the agency's resources even more than does the volume of mergers alone. 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. More so than ever before, FTC investigations may involve difficult scientific and technical material. In addition, antitrust matters increasingly intersect with intellectual property, raising difficult issues on how to reconcile two different bodies of law with similar goals. These trends inevitably place more and more demands on available enforcement resources. In addition, the increasing emphasis on quantitative evidence and econometric analysis in antitrust investigations and litigation requires that the FTC spend more resources in analysis and understanding of the issues. Merging firms increasingly rely on sophisticated accounting, econometric, and other data-intensive economic studies regarding competitive effects, entry issues, and efficiency and failing company defenses, requiring analogous investments by the FTC. More significantly, merger challenges that are litigated through preliminary injunction actions in federal court or through administrative trials absorb major commitments in resources – both personnel and program dollars.

Increased emphasis on nonmerger case identification and investigations will likely result in an increase in nonmerger litigation in FY 2003. Continue focus on the scope of antitrust exemption doctrines such as *Noerr-Pennington* and state action, restraints on competition among professionals, and anticompetitive abuses of the standards-setting process.

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 devising and drafting effective compliance orders in individual matters, a highly fact-specific process. In addition, the FTC conducts general and historical analyses on the effectiveness of various kinds of merger and nonmerger remedies, 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. The FTC continues to absorb some of this ever-increasing workload through more efficient use of resources.

1. GPRA Five-Year Strategies

- Save consumers millions of dollars a year directly by stopping anticompetitive mergers and anticompetitive conduct.
- Save consumers money indirectly by negotiating consent orders and winning litigated orders that have significant remedial, precedential, and deterrent effects in merger and nonmerger cases.
- Improve negotiation, litigation, and economic skills through continuous learning.
- Continue to ensure that divestiture remedies in Commission orders are achieved in a timely fashion, employing, where appropriate, requirements that suitable divestitures be arranged before consummation of a merger.
- Ensure that administrative litigation and adjudication reach a timely resolution.

2. FY 2003 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, written discovery, trial advocacy, negotiation skills, and advanced legal writing, as well as mission-specific procedures and substantive law. Ensure that lead attorneys, economists, and managers identify any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation into training programs and model pleadings.
- Monitor the timeliness of administrative adjudication and issue to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.
- Enhance the FTC's ability to investigate and litigate matters involving high-tech segments of the economy by obtaining technical support from independent industry experts and experts in specialized aspects of intellectual property law.
- Enhance the FTC's ability to litigate complex cases by investing in more sophisticated use of technology to support litigation, including document management and courtroom presentations.

B. Merger Enforcement

- During the initial HSR review period, carefully identify those merger transactions that are likely 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 indicates that a merger is anticompetitive, seek to negotiate consent orders that effectively cure the competitive problem and protect consumers, while permitting the benign aspects 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, (3) the number of HSR investigations that result in enforcement action, and (4) the number of such matters resolved through a "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.
- Review the effectiveness of the Commission's merger consent orders and litigated orders and make adjustments to future orders where appropriate.
- 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 and assess whether there is sufficient evidence to establish a 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 indicates 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.
- Continue to refine methods 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 2003 Performance Measures**In FY 2003, 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.¹ 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.² 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.³ 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

¹ The agency may prevent an anticompetitive result from a proposed merger by (1) conducting successful litigation to block the merger, (2) negotiating a settlement to resolve anticompetitive aspects of the merger while allowing the underlying transaction to go forward, or (3) identifying antitrust concerns sufficient to cause the parties to abandon the transaction without court action. The consumer savings estimate does not include transactions abandoned by the parties for business considerations unrelated to antitrust. Settlements are subject to Commission approval, and require sufficient supporting evidence for the Commission to have "reason to believe" that a law violation would occur.

² 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.

³ 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.

agency will conservatively estimate that a net loss to consumers amounting to at least 1% of the relevant market(s) would occur absent enforcement action.⁴

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.⁵ Therefore, it can be assumed 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.⁶

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 an 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.

⁴ One reason for the conservative approach is that, in some instances, a proposed merger may create consumer savings through efficiencies that could partially offset losses to consumers due to reduced competition. The 1% figure takes into account the possibility of such efficiencies.

⁵ See *id.* § 3.0. This is because the prospect of rapid entry is likely to deter anticompetitive pricing.

⁶ 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.

- 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 \$4 billion over a five-year period through its merger enforcement. Determine how the savings compares to the resources spent on the mission.
- Assess the estimated consumer savings from nonmerger enforcement actions. Determine whether the agency is on track to save consumers \$1 billion over a five-year period by stopping anticompetitive conduct. 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 and business conduct.
- 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 statistical data relating to 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 a “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. Determine an appropriate basis of comparison with historic benchmarks, in light of revised reporting thresholds in 2001.
- Evaluate effectiveness of FTC merger policy by conducting retrospective studies of FTC enforcement actions, or decisions not to take enforcement action, to determine if actual outcomes were consistent with expectations.
- 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 2003 Budgeted Resources:** 44 FTE \$6,703,000*

*Excludes the Administration's proposal to fully fund federal employee retirement costs.

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 (*ftc.gov*).
- Continue to provide advice to other governmental bodies upon request.

2. FY 2003 Implementation Plan

- 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.
- Provide Commission and staff advisory opinions on competition issues.
- Upon request of other governmental entities considering proposed regulatory and legislative actions, prepare and submit comments or testimony to share information and analysis about how the proposed action may affect competition and consumers.
- Prepare and file amicus briefs in appropriate competition matters.
- Monitor the content of Commission 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. In appropriate cases in which the Commission determines that enforcement action would not be in the public interest, issue statements explaining the Commission's reasoning leading to its conclusion.
- Make available prepared texts of speeches; as appropriate, develop other materials that explain Commission policies and procedures; circulate economic papers on competition issues.
- Have Commissioners and staff speak at and participate in seminars, panel discussions, and conferences to explain how the Commission analyzes mergers and business practices.

- Support outreach efforts to international bodies to explain U.S. competition perspectives; aid the development of antitrust laws and programs in developing nations by participating in technical missions.
- Respond to correspondence, e-mail, and telephone calls from the public. Provide informal guidance, particularly on HSR matters. Evaluate inquiries and complaints about potentially anticompetitive practices, and respond to questions about the antitrust laws and the FTC.
- Make available on the FTC's Web site the guidelines issued by the agency, advisory opinions, advocacy comments, written press 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 the success of educational efforts on a consistent, reliable basis.
- Continue to hold public hearings and workshops to expand understanding of increasingly significant public policy issues, such as factors that affect the price of refined petroleum products, and the implications of antitrust and patent law and policy for innovation and other aspects of consumer welfare.

3. FY 2003 Performance Measures

In FY 2003, the agency will:

- Determine a baseline by quantifying and comparing with previous years the number of education and outreach efforts, including speeches and public speaking opportunities/participations by FTC personnel on competition issues, advisory opinions issued, advocacy comments filed, amicus briefs filed, and international outreach efforts.
- Determine a baseline by quantifying and comparing 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.

President's Management Agenda

In August 2001, the President launched a Management Agenda addressing five government-wide initiatives to improve performance: Strategic Management of Human Capital; Expanded Electronic Government; Competitive Sourcing; Improved Financial Performance; and Budget and Performance Integration.

Initiative: Strategic Management of Human Capital

The FTC is a small agency with a large mission. As we have noted, demands on the agency have increased dramatically over the past decade as commerce has become increasingly electronic and the economy has gone high-tech and global. During this same period, the agency has been required to find new ways to meet the growing demands placed upon it and to reach out to more consumers and businesses without an appreciable addition of personnel. To address these issues, the FTC has been engaged in concerted efforts to work better and smarter. These efforts will continue.

1. Actions Over the Past Five Years

- **Eliminated Management and Support Positions and Layers of Review** The FTC examined a range of management and support positions to determine which could be eliminated to put more staff at the front lines of the agency's missions. The agency also examined decision processes to eliminate layers of review.
 - ▶ The Office of the Executive Director, the agency's management and administrative organization, shrank by 24 percent in the late 1990s. Some administrative positions were moved to other organizations where the work could be performed more efficiently. But most of these positions were eliminated, freeing slots for attorneys, investigators, and other positions at the front lines of the agency's law enforcement and consumer information and education missions.
 - ▶ The Bureau of Competition removed an entire level of management from its reporting structure, eliminating positions with the title *Director for Litigation* and streamlining decision making on recommendations to the Commission concerning investigations and litigation.
 - ▶ The Office of General Counsel capped the number of reviewers' signatures on official memos to two, speeding recommendations to the Commission and other agency actions. The General Counsel delegated approval or decision making authority to lower-level managers on several types of matters, including federal-state information access requests, routine civil investigative demands, and agency confidentiality determinations.
 - ▶ The Bureau of Consumer Protection also streamlined review to ensure that cases were considered at an early stage, thus eliminating unnecessary work on investigations or projects. Through its strategic planning process, the Bureau also ensures that staff understands its mission and objectives.

- **Established Programs for Honors Paralegals and Economic Research Assistants** Starting in 1996, the agency began the Honors Paralegal Program to relieve attorneys of the more routine tasks of investigations and allow them to focus more on complex matters of policy, analysis, and strategy. The first program began in the Bureau of Competition with six members, subsequently expanded into the Bureau of Consumer Protection and the Office of General Counsel, and now numbers almost 50 participants. Honors Paralegals are recent college graduates, hired at the GS-7 level under expedited procedures of the Outstanding Scholar Program, who work for the agency for one to three years under term appointments before moving on to graduate or professional school. The Bureau of Economics established a similar program, using recent college graduates with backgrounds in economics to provide technical support to Ph.D. economists.
- **Engaged Visiting Scholars and Fellows** The Bureau of Economics established a Visiting Scholars and Fellow Program to facilitate hiring of senior and junior economists with special skills on a short-term basis to respond to specialized needs without increasing the permanent workforce. These positions are term appointments, typically used to bring university economists to the agency for approximately one year.
- **Initiated E-Government** The agency has been a pioneer in the use of technology and the Internet to expand knowledge of its mission to citizens without having to enlarge its workforce significantly. Starting in the mid 1990s, the FTC began building a number of consumer protection Web sites, many in connection with other domestic or foreign law enforcement agencies, to educate consumers and to collect and analyze data on a broad range of consumer protection issues, including high-tech fraud and Identity Theft.
- **Restructured the Regional Office System** In 1999, the agency restructured its regional office system to use FTE more efficiently. The agency closed two offices (Boston and Denver) located in areas of the country with a relatively low incidence of consumer fraud; enlarged two offices (New York and San Francisco) by consolidating regional competition mission FTE in those offices so they could better handle resource-intensive merger cases; and consolidated regional consumer contact functions into the FTC's centralized Consumer Response Center (CRC). The CRC offers a toll-free line that allows consumers from across the country to contact the FTC with complaints or questions over a toll-free line.
- **Obtained Support Services Through Contracting Out and Franchising** The FTC streamlined support and administrative functions and eliminated support positions through contracting out or franchising with other agencies. These activities include employee benefits administration; payroll, personnel, and accounting system operations; information technology support and operation; and major components of the administrative payment and retirement processing systems.
- **Developed Model Pleadings** Throughout the agency, attorneys and others are taking advantage of technology to generate and use more model pleadings and often used forms, reducing duplicative work and inconsistent language and increasing staff productivity.

2. Current Actions

- **Expanding E-Government** The FTC is currently expanding and building upon electronic initiatives begun during the 1990s. Effective use of the Internet is allowing the FTC to reach more consumers, businesses, and other constituents and to respond to law enforcement matters more quickly and effectively. Current efforts are detailed in the *Expanded Electronic Government Initiative* section of this exhibit.
- **Developing Electronic Litigation and the Electronic Courtroom** The growing use of sophisticated electronic systems and software in litigation requires the FTC to keep its technology current, not only to be competitive in the courtroom, but also to reduce the paperwork burden on the public. The FTC has developed the ability to accept computerized document production systems that allow law firms to provide documents and information to the agency more efficiently, thus significantly reducing the volume of paper coming into the agency. This also allows FTC personnel to work more efficiently by freeing staff members from involvement in routine copying, sorting and filing of documents. In addition, the agency is employing state-of-the-art computerized litigation systems that support attorneys' litigation preparation and courtroom presentations.
- **Employing Electronic Administrative Processes** The FTC is using the Internet to replace paperwork and reduce the number of support personnel necessary to serve FTC employees various administrative needs. In the human resources area, *Employee Express* allows FTC employees to change their own payroll and benefit options online without going through personnel assistants. In the procurement area, the agency is buying more products at the micro-purchase level with credit cards, and submitting all requirements processed by the Acquisition Office electronically.
- **Using Technology to Improve Economist Productivity** The development and presentation of complex empirical evidence in FTC litigation has become increasingly important. This has placed considerable pressure on economists who must work under tight litigation timetables against much better funded outside litigation teams. In response to significant increases in economists' attrition rates, the agency has taken steps to provide better tools and better working conditions for staff. We have purchased and optimized new computers and other technology to deal with the large data sets and complex statistical analyses now common in litigation. We also have acquired more appropriate software packages and have addressed the security issues that arise from allowing remote access for staff working nights and weekends to meet litigation deadlines. These efforts have helped reduce the loss of skilled economic staff, and we continue to look for more technological tools to increase staff's ability to prepare for and support the agency's litigation and investigation efforts.
- **Improving Agency Training** The FTC is engaged in a systematic program to improve training at all levels – professional, management, technical and clerical. Training is a key component to working smarter and improving productivity. It is also critical in managing FTC attrition, especially in the ranks of lawyers and economists, where training and professional development may be valued almost as much as increased cash awards and salaries.

3. Actions Planned For the Next Five Years

- **Establishment of a National Consumer Protection Academy** The Bureau of Consumer Protection plans to establish a National Consumer Protection Academy to train our law enforcement agency partners about frontier issues concerning fraud and the Internet. This effort is a natural outgrowth of existing efforts to share the FTC's expertise by training federal, state, local, and non-U.S. agencies to use *Consumer Sentinel* (the FTC's computerized database of fraud complaints shared with other law enforcement agencies) to identify and target consumer needs. Since FY 2000, the FTC has offered 27 "hands-on" training programs to more than 1,750 law enforcement personnel representing 20 countries, 38 states, 23 U.S. federal agencies and 19 Canadian agencies.
- **Greater Use of E-government** The FTC will continue to exploit the use of the Internet and electronic systems to reach the public on more consumer and competition topics. The Bureau of Consumer Protection will refine its online investigative techniques to fight against new technological frauds. The Bureau also will examine analytical techniques to ensure it is efficiently and effectively reviewing its computerized database of complaint data.
- **Workshops, Conferences, and Hearings on Competition and Consumer Protection Topics** The FTC will continue to increase its use of workshops, conferences, and hearings, such as the planned public hearings on antitrust and intellectual property. Through these events, industry representatives, consumer groups, the bar, and the academic community provide the latest information and insight on developing technologies, market innovations, and important policy issues. The knowledge gained from these events allows the Commission's to make informed decisions and meet its mission more efficiently by educating the public on issues as they arise, instead of confronting them in the context of resource-intensive law enforcement actions.
- **Automated Monitoring of Agency's IT Operations** The FTC plans the development of automatic processes to monitor and alert staff when problems develop in the agency's operating technology infrastructure. These automatic processes will free staff positions directed at monitoring these systems manually. They also will allow us to avoid or reduce computer down time and the loss of productivity that occurs when FTC staff and members of the public are unable to access our systems and information sources.
- **Replacement of Clerical and Administrative Positions with "Front-Line" Positions** Across the agency, a number of clerical and administrative staff will retire over the next five years, and the development of new technology will allow us to accomplish more administrative tasks electronically. This will allow us to transfer these support positions to the front lines of the missions, either in consumer education or law enforcement. We also will focus on training and employee development for staff members who are not yet ready to retire, but who are performing tasks that could be automated.

- **Improvements in the Merger Review Process** The FTC has taken a number of steps to reduce burden and delay in the Hart-Scott-Rodino premerger review process, in part in response to revisions to the law effective on February 1, 2001. These steps include increased involvement of senior management in review of requests for additional information from merging parties (“second requests”); use of expedited procedures for addressing second request modification or clarification issues, including systematic status-checks on the progress of negotiations between agency staff and merging parties; and implementation of an internal appeal mechanism to resolve disagreements on second request scope and compliance matters. The FTC is also studying ways to address concerns about the burdens associated with the production of information from electronic systems, and will confer with Department of Justice Antitrust Division to identify “best practices” in merger investigations.

Initiative: Expanded Electronic Government

The FTC relies heavily upon electronic means to accomplish many aspects of its missions. The agency has been a leader in using technology to reach out to the American public. Our electronic educational materials help individuals identify and avoid harm caused by fraudulent practices in the marketplace and provide businesses with guidance on complying with FTC rules and regulations. The FTC also has dramatically increased its use of technology to work with other law enforcement agencies on international, federal, state, and local levels to leverage both our resources and those of the other agencies to resolve consumer issues and monitor the marketplace. Finally, the FTC uses technology to reach out to industry, consumer group representatives and other stakeholders in our law enforcement and rulemaking efforts. All of these efforts will continue.

1. Actions Over the Past Five Years

- **Structured a Systematic Approach to Technology Development** The FTC’s Information and Technology Management Office (ITM) implemented a “life cycle management” approach to managing and developing agency technology. Through this approach, ITM identified existing products and services, determined how frequently each should be reassessed, and scheduled reassessments for the next several years. When a new project is proposed, ITM evaluates both its cost and relative need, then makes a recommendation to the ITM “Board of Directors,” comprised of senior agency managers. Review and decision making by the Board of Directors ensures that technological projects are in line with the agency missions and included in budget requests.
- **Developed a General Agency Internet Presence** The FTC has a diverse presence on the Web. Our technology office maintains the infrastructure for an agency Internet site, *ftc.gov*, that provides information about the actions and operations of the agency, and direct access to consumer and business education information and publications. Organizations throughout the agency contribute the information and materials that are posted on the agency Web site.
- **Collected Consumer Complaints** As a law enforcement agency with wide consumer protection responsibilities, the FTC is keenly interested in the public’s comments, complaints, and opinions about the operation of the marketplace and individual companies. Our Web site provides an easy-to-use mechanism for the public to submit

complaints and information about the business practices of individual companies. Those complaints are then stored in a database, the *Consumer Information System*, that is used by agency attorneys and investigators and law enforcement partners to identify specific practices that warrant investigation and general trends in issues that are of interest to the public.

- **Promoted Consumer and Business Education** The FTC recognizes that the complexity of the federal government makes it difficult for the public to know where to go for information and assistance on consumer issues. Several years ago, the FTC led a group of agencies with consumer protection responsibilities to create a Web site, called *consumer.gov*, that is a "one-stop" link to a broad range of federal consumer information resources available online. It is designed to allow the public to locate information by category, such as Food, Health, Product Safety, Your Money, and Transportation. Each category has subcategories to direct the individual to areas within individual federal Web sites containing related information. One component of *consumer.gov* is "ScamAlert!," which provides current information on fraudulent and deceptive practices in the marketplace. This feature appears on each page of the site, where relevant, and contains important law-enforcement information and tips to avoid scams. Another feature, "In the Spotlight," showcases new education and consumer awareness campaigns and other items of significant interest on all pages. This Web site links to documents located on Web sites maintained by the 179 participating federal agencies.

2. Current Actions

- **Coordinating Law Enforcement** The FTC uses the Internet to assist in law enforcement coordination with more than 400 partners in other federal agencies, in state and local agencies, in agencies of other countries, and with public interest and business groups. As mentioned above, the FTC developed and hosts a secure online database, *Consumer Sentinel*, that makes consumer complaints and other information collected from our partners accessible to officials in authorized law enforcement agencies. Collecting that information in one place and sharing it with federal, state, local, and international agencies ultimately reduces redundancy and helps the law enforcement community to identify both general trends in consumer issues and the activities of specific businesses.
- **Stopping Identity Theft** The agency also has implemented a special Internet site dedicated to Identity Theft complaints and information. Many of the same partners who use *Consumer Sentinel* also access the ID Theft Web site for specific information about this growing consumer problem.
- **Building E-Consumer.gov** The FTC recently has implemented the first phase of a global consumer protection approach to education and law enforcement. That phase includes a Web site where consumers can register a complaint about a company anywhere in the world and obtain educational information on various topics. Currently, a dozen nations can access those complaints for law enforcement purposes.

- **Providing Textile Information** The FTC has implemented an electronic process that allows businesses to request “Registered Numbers,” which are required under FTC regulations for textiles and other apparel goods. The public also can search the list of manufacturers to retrieve information about manufacturers and the source of the component fabrics in garments.
- **Developing E-procurement** The FTC’s planned and ongoing procurement enhancements are designed around the Administration’s e-procurement initiatives. As requirements arise, the FTC is prepared to use the government-wide FED BIZ OPPS Web site. This provides a single Web site from which interested vendors can view and, if interested, respond to government requirements for goods and services. The FTC plans to convert to the Central Contract Registration Web site by October 1, 2003. This site provides Federal agencies with a single source for vendor contact and payment information and requires that each vendor maintain all appropriate information on a current basis.
- **Public Sentinel** The FTC created a publicly available version of Consumer Sentinel, located at *consumer.gov/sentinel*, that provides consumer fraud and identity theft trend data and information on how Consumer Sentinel serves the public. Consumers can view data that shows the scams that garner the most frequent consumer complaints; the scams that cost consumers most; the location of companies complained about, by state and for Canada by province; the number of identity theft complaints by state; the types of identity theft most frequently reported; and how to spot and avoid fraud and deception online and off.

3. Actions Planned for the Next Five Years

- **Full Implementation of Electronic Premerger Notification Filings** The FTC has begun to develop a process for electronic filing of information related to proposed mergers and acquisitions under the Hart-Scott-Rodino Premerger Notification Act. Electronic options will allow businesses to select the submission method that is most effective and efficient, and reduce the administrative cost of reviewing and analyzing those filings.
- **Public Involvement in Agency Actions** The FTC frequently requests that the public comment on proposed or contemplated agency actions. Each time the FTC seeks comments, the public will be offered paper and electronic options for submitting responses.
- **Outreach to Consumers Who Speak Languages Other Than English** The FTC has created an impressive collection of consumer education materials, which are available through our Internet sites. However, the vast majority of that material is written in English. Projects are planned to translate this material to other languages, such as Spanish, used by large numbers of U.S. citizens and residents.
- **Identity Theft** The Identity Theft project will be expanded to distribute appropriate information automatically and securely to the major credit bureaus to enable them to assist in the fight against this problem.

- **E-Consumer.gov** Consumers currently can access the Web site (including the complaint form) in four different languages. As more nations wish to participate in the project, the FTC will translate both the Web site and the educational materials into more languages to reach a wider group of consumers.
- **Web Casting** The FTC makes announcements and conducts conferences that are important to all consumers in the U.S. Adding the capability to broadcast those sessions over the Internet would allow the agency to reach a significant segment of the population in real time.
- **Soldier Sentinel** This companion Internet site to *Consumer Sentinel* will target consumer issues concerning members of the U.S. armed forces.

Initiative: Competitive Sourcing

The FTC uses contractor support in both program and administrative activities. The agency's information systems "help desk" staff, financial/ payroll/personnel system support staff, and technical support staff for the Consumer Response Center were contracted out prior to the enactment of the Federal Activities Inventory Reform (FAIR) Act. More recently, the agency converted 3 FTE to a contract with the National Institute for the Severely Handicapped to provide services in support of the FTC's Consumer Response Center. The staff resources freed up by these actions have been moved to front line program activities.

To comply with the requirements of the FAIR Act in FY 2001, the FTC identified 42 so-called "commercial FTE" remaining in the agency. To date, the 42 FTE represent the balance remaining after 9 FTE were removed – 1 FTE from the systems design, development, and programming functional area in our FY 2000 inventory, and 8 FTE from the printing and reproduction functional area in our FY 1999 inventory. Therefore, to date, the FTC has reduced its FAIR Act inventory by 17 percent (9 of 51). The FTC will continue to apply the FAIR Act in its continuing reviews of its "commercial" activities.

Initiative: Improved Financial Performance

The FTC is proud of its financial performance. Without a statutorily mandated requirement, the FTC since 1997 has prepared Audited Financial Statements that follow government-wide accounting standards for four consecutive years and has received an unqualified opinion in each year. The standards provide a framework for the FTC and other Federal agencies to provide financial information to the Congress, agency managers, and the public. The FTC's financial performance has passed scrutiny. As stated by the FTC's Inspector General, "this represents the fourth time the FTC has undertaken a financial statement audit. I am pleased to report the agency received an unqualified opinion . . . the highest opinion possible from independent auditors."

The FTC focuses on three goals as it continues to refine each of its financial management systems and activities. First, to provide accurate, reliable, consistent and timely financial and performance information. Second, to capitalize on technologies, e-solutions, and state-of-the-art business techniques. Third, to expand the capabilities of the FTC's financial and administrative management staff and use their talents efficiently and effectively.

The FTC takes advantage of available outside resources to accomplish its financial goals. To use its small, highly skilled, in-house financial staff efficiently, the FTC contracts with the Department of Interior's National Business Center for more routine accounting, payroll, personnel and voucher payment services. The result is the best use of agency resources and a significant improvement in the accuracy and timeliness of financial data available to agency managers.

Initiative: Budget and Performance Integration

The FTC's Strategic Plan under the Government Performance and Results Act (GPRA) identifies five-year performance measures. These measures are an integral part of the FTC's fiscal budget requests. Each year's budget submission lists a Performance Plan with measurable goals. The Performance Plans provide an assessment of the dollar and other savings and benefits to consumers and businesses that are expected from the requested level of resources.

At the end of each fiscal year, the FTC prepares a Performance Report. Management uses the Report to compare planned and actual performance, and to determine whether changes are required to the agency's mission activities or strategic goals.

Linking budget and performance data is an increasingly important part of the FTC's management process. For example, the FTC's Strategic Plan describes one key performance measure in each of its two missions: savings to consumer from FTC enforcement actions. For FY 2001, the key performance measure for the Consumer Protection Mission was to save consumers \$400 million a year by stopping acts of consumer fraud. Similarly, the key measure in the Maintaining Competition Mission was to save consumers \$1 billion a year by stopping anticompetitive mergers and business practices.

To accomplish these FY 2001 performance measures, the FTC used 1,007 staff years and \$146 million. Employing these human and fiscal resources, the FTC saved consumers an estimated \$3.3 billion -- a savings of \$23 for each \$1 spent on FTC operations. Future FTC requests for resources will be made with a similar goal of a high return on the investment of appropriated funds in the agency.

Work is ongoing to better link performance and budget, both by refining the selection and the measurement of performance goals and measures, and by developing improved management processes for data use and analysis. Over time, this work will enhance agency performance by improving the quality, access, and timeliness of management information throughout the FTC.