

SUMMARY

The Federal Trade Commission (FTC) is the only Federal agency with broad jurisdiction to enhance consumer welfare in virtually all sectors of the economy. The FTC enforces the laws that prohibit business practices that are anti-competitive, deceptive, or unfair to consumers, and seeks to do so without impeding legitimate business activity. The agency also promotes informed consumer choice and public understanding of the competitive process. The FTC's work is critical in protecting and strengthening free and open markets in the United States and, increasingly, the world.

Through its Consumer Protection Mission, the FTC protects consumers from fraud, deception, and unfair practices in the marketplace. The agency addresses current issues of importance to consumers, including identity theft, telemarketing fraud, Internet fraud, and consumer credit. The FTC targets law enforcement actions and consumer and business education to protect the public. We work to ensure that consumers have accurate information for purchasing decisions, and confidence in the traditional and electronic marketplaces.

Through its Maintaining Competition Mission, the FTC enforces the laws that prohibit anticompetitive mergers and business practices. Free and open competition is the cornerstone of our economy, bringing consumers the benefits of low prices, high quality products and services, and innovation. We work to remove restrictions on competition so that markets can function at their best. Our focus is on market segments that matter most to consumers, including energy, health care, prescription drugs, grocery retailing, and high tech. By promoting vigorous competition in these and other

markets, we help to ensure a strong economy.

The FTC's consumer and business educational materials, as well as information about the agency and its activities, can be found on the Web at www.ftc.gov.

About the FTC

The FTC is an independent agency headed by five Commissioners, who are nominated by the President, confirmed by the Senate, and serve staggered seven-year terms. The President selects one Commissioner to act as Chairman. No more than three Commissioners can be of the same political party. The FTC reports to Congress on its activities and on important matters affecting consumers.

The FTC has two law enforcement bureaus, Consumer Protection and Competition, supported by the Bureau of Economics and regional and mission support offices. The Bureau of Consumer Protection works to protect consumers against fraudulent, deceptive, or unfair practices. The Bureau enforces a variety of consumer protection and credit laws enacted by Congress, as well as trade regulation rules issued by the Commission. Its actions include consumer complaint collection and analysis, individual company and industry-wide investigations, administrative and federal court litigation, rulemaking proceedings, and consumer and business education.

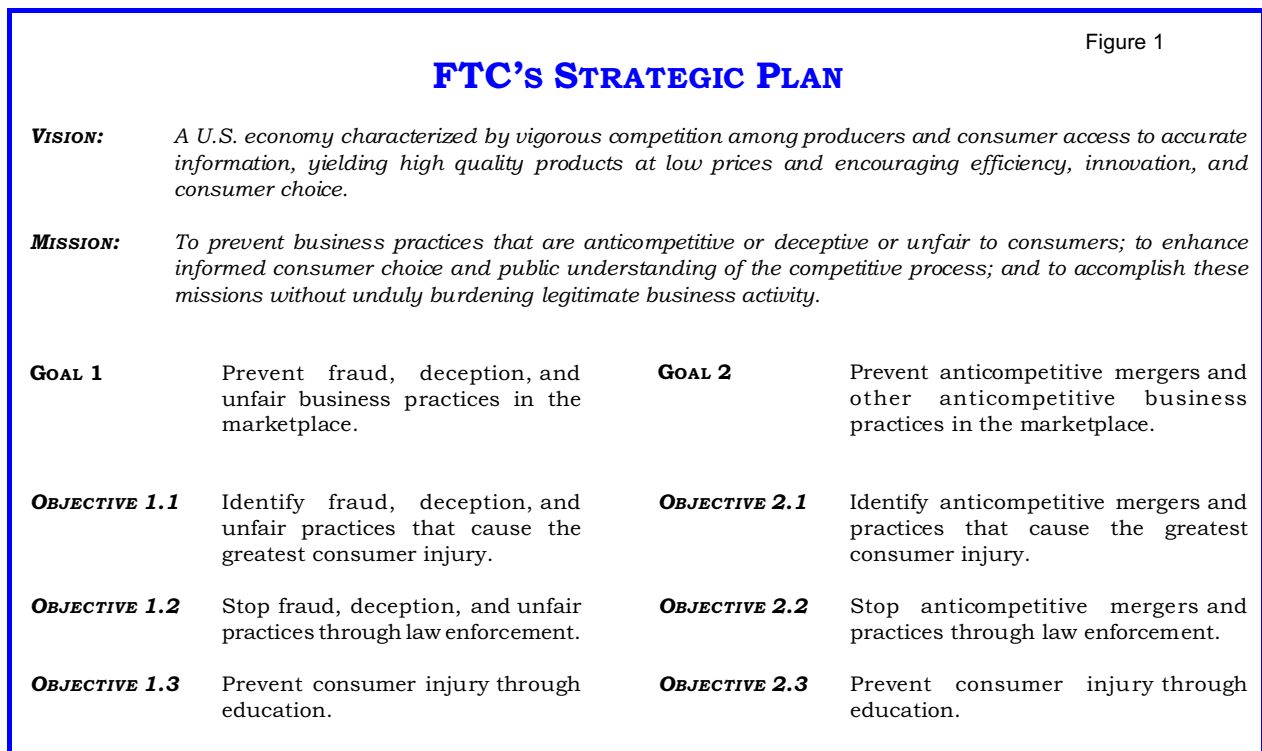
The FTC's antitrust arm, the Bureau of Competition, seeks to prevent anti-competitive mergers and other anti-competitive business practices in the marketplace. The Bureau promotes consumers' freedom to choose goods and services in a competitive marketplace at

price and quality levels that fit their needs. It also fosters opportunity for businesses by ensuring open and competitive markets.

The Bureau of Economics helps the two law enforcement bureaus evaluate the economic impact of their actions. To do so, the Bureau provides economic analysis and support to investigations, litigation, and rulemakings. It also analyzes the impact of government regulation on competition and consumers, and provides Congress, the Executive Branch, and the public with economic analysis of market processes as they relate to antitrust, consumer protection, and regulation.

The FTC’s regional offices cover seven geographic areas. The regional offices work with the Bureaus of Consumer Protection and Competition by conducting investigations and litigation, and recommending new cases. Along with the two bureaus, they also provide advice to state and local officials on the competitive implications of proposed actions, provide local outreach services to consumers and business persons, and coordinate activities with local, state, and regional authorities. FTC regional offices frequently sponsor conferences for small businesses, local authorities, and consumer groups.

The mission support offices provide management and administrative services to support the operations of the agency.



Strategic Plan

The FTC's Strategic Plan sets forth the agency's Vision and Mission for its two goals. These goals, and their corresponding objectives (see Figure 1), are the framework of the activities we pursue during the course of each year. Performance measures help us assess the impact of these annual activities.

2002 Highlights

During FY 2002, the FTC's activities continued to benefit consumers and businesses. We successfully achieved or exceeded the majority of the performance targets we use to measure our effectiveness. Our internal control review program, along with our Inspector General's audits and other independent reviews, plays a significant role in ensuring effective and responsive agency operations. Highlights of our 2002 results include:

- Saving consumers an estimated \$1.4 billion through law enforcement actions – a savings of almost \$9 for each \$1 appropriated for FTC operations. In addition, the FTC's law enforcement activities and education efforts deter many fraudulent or anticompetitive practices that likely result in substantial, though unmeasurable, consumer savings.
- Analyzing the more than 680,000 consumer complaints and inquiries we received in 2002, targeting our law enforcement and education efforts to address the most serious of the identified problems affecting consumers, and sharing consumer complaint data with more than 610 law enforcement partners.
- Providing access to the 315,000 identity theft complaints and inquiries

to more than 380 law enforcers to help them identify trends and select targets.

- Expanding outreach to consumers by launching two new initiatives – a Hispanic Outreach initiative, which includes a dedicated Spanish-language page on the FTC Web site and translations of our consumer publications, and *Military Sentinel*, an online consumer complaint database that allows the military community to file complaints and access the FTC's consumer education information. *Military Sentinel* also gives the Department of Defense and law enforcement officers secure access to the complaints that military personnel and their families enter, enabling them to spot the most prevalent and troublesome consumer problems plaguing military personnel.
- Negotiating the largest consumer settlement in FTC history. Under this settlement, Citigroup Inc. agreed to pay \$215 million to resolve FTC charges against Associates First Capital Corporation and Associates Corporation of North America. FTC's complaint alleged that the defendants engaged in deceptive marketing practices that induced consumers to refinance existing debts into home loans with high interest rates and fees, and to purchase high-cost credit insurance. The federal district court preliminarily approved the settlement in September 2002, but it will not become final until the approval of a related settlement in a class action lawsuit currently pending in California. Once final, the FTC settlement and the related class action settlement are expected to provide \$240 million in redress through cash refunds or reduced loan balances to more than two million consumers throughout the United States, Puerto Rico, and the U.S. Virgin Islands.

- Taking the first steps to enforce prohibitions against “pretexting,” the practice of using false pretenses to obtain customer financial information, which is prohibited under the Gramm-Leach-Bliley Act (GLBA). FTC staff surfed more than 1,000 Web sites in 2002, reviewed more than 500 publications, and sent warning notices to 200 firms whose advertising indicated possible GLBA violations. The FTC filed three lawsuits in federal district court against alleged pretexters and obtained settlements in those cases. In addition, the Commission finalized the Safeguards Rule to implement the GLBA security provisions. The Rule establishes standards for financial institutions to maintain the security of consumers’ financial information.
- Considering amendments to the Telemarketing Sales Rule that would, among other things, create a national “Do Not Call” registry. The FTC received more than 64,000 comments to the amendments proposed in January 2002 and adopted the amendments in December 2002.
- Applying the full range of its capabilities to protect and promote competition in sectors of the economy most critical to consumers, including:

Energy, which is vital to the economy and has a direct and significant impact on the budgets of consumers. In 2002, the FTC investigated or monitored required divestitures in several multi-billion dollar petroleum industry mergers. In addition to enforcement actions, the agency held a second public conference on the factors contributing to gasoline price increases

and monitored gasoline prices in 360 U.S. cities for anomalies indicating possible illegal conduct. We provided comments to the Federal Energy Regulatory Commission, Environmental Protection Agency, and state legislatures on electricity deregulation, the competitive effects of different approaches to clean air regulation, and the effect of minimum mark-up laws on gasoline prices, and also presented testimony on gasoline pricing before a House subcommittee.

Health Care, which accounts for about 15 percent of the U.S. gross domestic product or about \$1.3 trillion per year. In 2002, the FTC prevented anticompetitive effects of mergers in markets involving cervical cancer screening tests, biopharmaceuticals, medical gases, urological products, and drug information databases, and forced disgorgement of \$19 million in illegal profits from an anticompetitive merger. We also stopped price fixing by hundreds of doctors in four U.S. cities and brought enforcement actions that facilitated consumers’ access to lower-cost generic drugs. In addition to enforcement actions, the FTC held a workshop on competition law and policy in health care, issued four advisory opinions relating to health care services markets, provided advice on competition in the sale of contact lenses and the applicability of *Noerr-Pennington* antitrust immunity to a drug firm’s filing of allegedly false patent information with the FDA, and testified before a Senate committee on pharmaceutical competition. We also released an authoritative report entitled *Generic Drug Entry Prior to*

Patent Expiration, prominently cited by President Bush when he announced regulatory measures to implement key FTC recommendations.

In summary, the FTC's 2002 performance provided significant benefits to American consumers. The cost of the agency's operations represents a sound investment for consumers and businesses.

Figure 2

FY 2002 Performance Measures and Targets

GOAL 1

OBJECTIVE 1.1

Measure 1.1.1: Annual number of consumer complaints and inquiries entered into database.

Target: 400,000
Actual: 680,000 ✓

OBJECTIVE 1.2

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

Target: \$400 million
Actual: \$561 million ✓

Measure 1.2.2: Total expenditures of deceptive or unfair advertising campaigns stopped.

Target: \$100 million
Actual: \$40 million

OBJECTIVE 1.3

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

Target: 10.5 million
Actual: 19.3 million ✓

✓ met or exceeded target

GOAL 2

OBJECTIVE 2.1

Measure 2.1.1: Percent of HSR second request resulting in enforcement action.

Target: 60% - 80%

Actual: 68% ✓

Measure 2.1.2: Number of nonmerger investigations opened per year.

Target: 45-70

Actual: 59 ✓

OBJECTIVE 2.2

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

Target: 80%

Actual: 100% ✓

Measure 2.2.2: Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.

Target: \$800 million

Actual: \$726 million

Measure 2.2.3: Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.

Target: \$200 million

Actual: \$86 million

OBJECTIVE 2.3

Measure 2.3.1: Quantify number of education and outreach efforts.

Determine baseline

Actual: 285

Measure 2.3.2: Quantify number of hits on antitrust information on FTC Web site.

Determine baseline

Actual: 4.3 million

2002 Assessment – Measuring Performance Through Results

An integral component of the FTC's strategic planning is the ongoing evaluation of our objectives, performance measures, and performance targets. This process gives us the opportunity to assess our effect on the marketplace and evaluate how well we are protecting the American consumer. It also allows us to determine whether our measures accurately reflect how we are achieving our mission (see Figure 2).

Our Strategic Plan is based on two goals: preventing fraud, deception, and unfair business practices in the marketplace (Consumer Protection), and preventing anticompetitive mergers and other anticompetitive business practices (Maintaining Competition). We have performance measures for both of our goals and their corresponding objectives.

Consumer Protection

Under our Consumer Protection goal, we measured our effectiveness in accomplishing three objectives: (1) identifying, (2) stopping, and (3) preventing fraud, deception, and unfair practices.

Identifying Our performance in identifying these illegal practices was measured by the number of consumer complaints and inquiries added to our Consumer Information System database (Measure 1.1.1). These data enable the FTC and its law enforcement partners to more effectively spot trends, identify emerging scams, and coordinate activities with other enforcement agencies. In 2002, we added more than 680,000 entries, exceeding our target of 400,000 by 70%. This growth reflects the increasing interest of

organizations in contributing complaint data to our database and consumers' growing awareness of our online complaint forms and toll-free telephone numbers for consumer and identity theft complaints.

Stopping We use two measures of our performance in this objective, one for law enforcement efforts related to stopping fraud and another for law enforcement aimed at stopping unfair or deceptive practices that do not involve fraud. In 2002, we sought to save consumers more than \$400 million by stopping fraudulent practices. We surpassed the target, with our actions saving consumers an estimated \$561 million.

Because consumer savings from nonfraud law enforcement are difficult to quantify, we measured our nonfraud efforts by the value of the deceptive or unfair advertising campaigns we were able to stop. In 2002, our target was to reduce consumer injury by stopping campaigns with combined media expenditures totaling \$100 million. In fact, we stopped only \$40 million of advertising campaign expenditures or 40% of our target. After careful consideration, this performance measure was eliminated in FY 2003 because it did not prove to be useful in measuring performance. Since we first created this measure, the agency has increased its focus on deceptive Internet advertising, which is very broadly disseminated, but is considerably less expensive to business than traditional advertising campaigns. Therefore, calculating the total dollar volume of deceptive advertising stopped is no longer a useful measure.

Preventing We measured our prevention impact by tracking the number of consumer and business education publications distributed to the public (Measure 1.3.1). Tracking the distribution of publications in response to consumer requests

gives us an approximate idea of how many consumers believe our information will prove useful. In 2002, the FTC distributed approximately 19.3 million publications: nearly 7 million print publications and more than 12 million publications accessed through the FTC Web site. We exceeded our goal of 10.5 million publications by 84%, due primarily to the continued increase in the number of publications accessed online – electronic distribution has surpassed print distribution in each of the past three years. Our national outreach efforts were enhanced by aggressive public awareness campaigns and promotion of FTC materials, and our toll-free complaint line.

Maintaining Competition

Under our Maintaining Competition goal, we measured our effectiveness in three parallel objectives: (1) identifying, (2) stopping, and (3) preventing anticompetitive mergers and other practices.

We employed the same performance measures in 2002 as in 2001. During the year, however, we carefully re-examined all of the Maintaining Competition performance measures, based on our experience to date, to determine how we might improve them. Given the nature and breadth of the FTC's antitrust mission, designing meaningful measures of its performance is a formidable challenge. For reasons outlined below, we changed some of the current measures following our review, with the changes becoming effective in 2004. We identified the new measures in our FY 2004 Performance Plan submitted to Congress in February 2003, and will incorporate them into our 2003-2008 Strategic Plan.

Identifying We measured our success in identifying anticompetitive mergers and business practices by tracking (1) the percentage of significant merger investigations (defined by the issuance of

a Hart-Scott-Rodino Act second request to the merging parties) that resulted in enforcement action (Measure 2.1.1), and (2) the number of new nonmerger investigations opened (Measure 2.1.2). Our target under the first measure is a percentage of at least 60 percent, but no more than 80 percent.¹ A percentage in this range indicates that we have effectively balanced our resources, the need for careful review of all potentially anticompetitive merger transactions, and the private sector burdens imposed by a second request. In 2002, the Commission took enforcement action by authorizing a preliminary injunction action, issuing an administrative complaint, or accepting a consent agreement for comment in 68 percent (19 of 28) of the second request investigations concluded during the year, a level well within the target range.

The number of new nonmerger investigations opened is a simple barometer that reflects our resource commitment to the nonmerger area. Our goal is to open 45 to 70 new investigations. The most significant challenge we have faced in our nonmerger program in recent years has been maintaining a productive program in light of the drain on nonmerger resources caused by an unprecedented level of merger activity. In 2002, the continued decline in merger activity made it possible for the agency to open 59 new nonmerger investigations, more than double the level in 2000.

Stopping Three measures gauge our success in stopping anticompetitive mergers and practices through law enforcement: (1) the percentage of positive outcomes obtained in antitrust enforcement actions (Measure 2.2.1), (2) the esti-

¹ Based on an internal assessment of this performance measure, as referenced in our 2001 Performance Report, we raised our 2002 target from 50 percent to a range of 60 to 80 percent.

mated savings to consumers resulting from FTC merger enforcement actions (Measure 2.2.2), and (3) the estimated savings to consumers resulting from FTC nonmerger enforcement actions (Measure 2.2.3).

The first (Measure 2.2.1) is the percentage of anticompetitive mergers and practices in which we achieved a positive outcome for consumers. We seek to obtain a positive result in at least 80% of matters where we determine that a merger or a course of conduct is anticompetitive. A “positive outcome” for an enforcement action includes abandonment of a transaction after the FTC identifies antitrust concerns, a consent agreement to resolve antitrust concerns, or a successful result in court after all proceedings, including appeals, have concluded. A negative outcome occurs when parties refuse to settle antitrust concerns raised by the FTC, and the agency is unsuccessful in obtaining relief through the courts. We significantly exceeded our goal of positive outcomes in 80 percent of FTC enforcement actions, achieving a positive result in all 33 of the enforcement actions concluded during the year.

Through 2002, the FTC estimated the dollar savings to consumers resulting from its enforcement efforts involving both mergers and nonmerger matters (Measures 2.2.2 and 2.2.3). In our 2000-2005 Strategic Plan, we established aggregate targets for a five-year period rather than annual goals because fluctuations in the economy, wholly unrelated to antitrust, significantly influence the opportunities and priorities for antitrust enforcement in any given year. These two measures are among those we have changed, however, so they will not be in place for the full five-year period.

Nonetheless, having finished two of the five years in the Strategic Plan period, we can compare our performance against modified targets representing 40 percent of

the five-year goals. On this basis, we have been on pace with the target we set. For mergers, that figure is \$1.6 billion. In 2002, the agency obtained an estimated \$726 million in merger enforcement consumer savings. The total estimated consumer savings from FTC merger enforcement in 2001 and 2002 combined was over \$3.2 billion, substantially exceeding the modified target.

For nonmerger enforcement, the modified target is \$400 million. We obtained an estimated \$86 million in consumer savings in 2002 and an estimated \$243 million for 2001 and 2002 combined. Although this figure falls short of the modified target, the figure represents the aftermath of the merger wave peak in 2000, when essential resource shifting permitted us to open only 25 nonmerger investigations. The agency invested significantly in nonmerger enforcement in 2001 and 2002, but, for the most part, the enforcement actions resulting from those matters will be completed in 2003 or later. Moreover, the total merger and nonmerger consumer savings of about \$3.5 billion for FY 2001 and 2002 still exceeds the combined modified targets of \$2 billion for the 2001-2002 period.

Preventing The FTC measures its success in preventing consumer injury through education by counting the number of outreach efforts designed to educate the public about antitrust policies and initiatives during the year (Measure 2.3.1), and by tracking the number of public “hits” on antitrust-related pages of the FTC’s Web site (Measure 2.3.2).

In 2002, the agency directed 285 outreach efforts, more than double the 141 outreach efforts of 2001, and received more than 4.35 million hits on its antitrust-related web pages in 2002, an increase from 2.6 million hits in 2001. These increases represent the resolve of

the FTC to educate consumers and the public's interest in the FTC's information.

Ongoing Challenges

The FTC is a small agency with a large mission that constantly evolves in response to changes in the marketplace. The agency continues to adapt its strategies and its workforce to ongoing challenges such as the rapid growth of technology as a dominant force in our lives and in the increasingly global economy. Two developments have posed particular challenges to the FTC: threats to consumer privacy through the rapid development of electronic media, and demands imposed by long-term trends toward increased, more complex, and more frequently global merger activity.

Consumer Privacy

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

Recent amendments to the TSR include initiatives designed to afford consumers greater privacy protections. Most significantly, the amended Rule creates a

national "Do-Not-Call" list, enabling consumers to protect themselves from unwanted and often intrusive telemarketing calls. Once implemented, through one simple step, either online or by telephone, consumers will be able to register their preference not to receive telemarketing calls from organizations under the FTC's jurisdiction. Covered telemarketers will be prohibited from calling consumers who place their telephone number in the database. Further, the amendments address the use of "pre-acquired account information" – a situation when, unbeknownst to consumers, a telemarketer has their billing information in hand before initiating a sales call. Account information that has been "pre-acquired" can be misused, resulting in unauthorized charges on consumers' accounts. The TSR amendments also impose new restrictions on the practice of "call abandonment" – where a consumer answers the telephone only to find "dead air" – and require telemarketers to transmit caller-ID identifying information.

Merger Demands

Merger enforcement continues to be a major emphasis of the FTC's law enforcement efforts. Stopping mergers that substantially may lessen competition ensures that consumers pay lower prices and have greater choice in the selections of goods and services than they otherwise would. The level of merger activity in the marketplace, along with other factors, affects the FTC's merger workload. During the 1990s, record-setting levels of mergers, both in numbers and in size, required extraordinary efforts by the FTC staff to manage the necessary reviews within statutory time requirements.

Despite recent economic conditions that have reduced merger activity, and amendments to the Hart-Scott-Rodino Act that have cut the reportable number of proposed mergers to the government, the

FTC's antitrust enforcers remain busy and productive. Because the number of mergers raising antitrust concerns did not decline appreciably in 2002, merger enforcement remained a significant responsibility. The recent economic conditions affecting merger activity have permitted the agency to pursue a broader agenda of initiatives to aid consumers in the nonmerger area, in accordance with historic norms. In the future, the FTC faces challenges such as long-term trends toward increased number, size, scope, and complexity of mergers; more matters involving high-technology markets, complex scientific research and development, and intellectual property; resource-inten-

sive litigation (particularly in cases when a merger already has been consummated or the applicable law is unsettled); and increased scrutiny and attention to non-reportable mergers.

Although the FTC faces challenges – especially addressing consumer privacy issues and maintaining competition in a growing global and electronic marketplace – we strive to meet them through strategic planning, performance management, and results measurement. Using these processes, we will continue to assess and re-assess the challenges and opportunities facing the FTC.

THE RESULTS

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

Congress has charged the FTC with the broadest legislative mandate of any federal consumer protection agency. While most federal consumer protection agencies have jurisdiction over a specific market sector, we possess broad law enforcement authority that encompasses virtually all segments of the economy, including most business and consumer transactions on the Internet. Our goal is to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace. We apply three related objectives to achieve this broad-reaching goal.

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

First, we identify practices that cause consumer injury by analyzing the consumer complaint data collected in our Consumer Information System database, holding public discussions, and monitoring the marketplace, including the Internet. Next, we use this information to target law enforcement efforts. Our law enforcement program aims to stop and deter fraud and deception, protect consumers' privacy, and increase compliance with our consumer protection statutes to ensure that consumers have accurate information for purchasing decisions. Finally, we target

our education efforts to give consumers the information they need to protect themselves from injury, and explain to businesses how to comply with applicable laws.

As the nation's leading consumer protection agency, one of the greatest challenges we face is safeguarding consumer information in the electronic marketplace so consumers will enjoy the same confidence in these commercial transactions that they enjoy in the traditional marketplace. Online commerce has the potential to deliver goods and services, often more conveniently, faster, and at lower prices than traditional brick-and-mortar operations. Online commerce promises enormous benefits to consumers and the economy. Moreover, the Internet is stimulating the development of innovative products and services that were barely conceivable just a few years ago. It also enables consumers to tap into rich sources of information that they can use to make better informed purchasing decisions.

There is real risk, however, that these benefits may not be realized if consumers associate the Internet with fraudulent operators. The boom in e-commerce has opened up fertile ground for fraud. In the FTC's experience, fraudulent operators are always among the first to appreciate the potential of a new technology to exploit and deceive consumers. Of particular concern is that Internet health fraud continues to plague consumers looking for solutions to serious illnesses. Traditional scams, such

as pyramid schemes, also have found new life on the Internet. We are using all the tools at our disposal – such as our consumer complaint database – to help us target areas of consumer problems, and are fashioning law enforcement and educational efforts to respond quickly and vigorously to these concerns.

Privacy of personal information is important and companies that make specific promises to consumers about privacy need to live up to those promises. Companies that honor their promises add to consumer confidence in the marketplace. The FTC is concerned with the misuse of personal information and is fully committed to both enforcement and education in this area. For example, the FTC is charged with enforcing the Children’s Online Privacy Protection Act and its implementing Rule, which became

effective in April 2000. In 2002, we brought enforcement actions challenging alleged rule violations. We also continued an extensive education campaign on children’s privacy directed to businesses, parents, and educators.

The FTC’s comprehensive, multi-year review of the Telemarketing Sales Rule revealed widespread consumer frustration over unwanted telephone solicitations, which some see as a violation of privacy in their home. To address this concern, during 2002 the FTC proposed amending the Rule to establish a National Do-Not-Call Registry. The Rule was amended in December 2002 and once the Registry is created, consumers will be able to make one call to register their preference not to receive telemarketing calls from companies under the FTC’s jurisdiction.

OBJECTIVE 1.1 IDENTIFY PRACTICES THAT CAUSE CONSUMER INJURY

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

Strategies

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

All of this information is entered into the Consumer Information System database and then analyzed by FTC staff to identify trends and target fraudulent, deceptive, and unfair business practices. We share the fraud complaints that we collect with more than 600 other law enforcement agencies across the United States, Canada, and Australia via an encrypted Web site called *Consumer Sentinel*. Although the FTC is not empowered to act on behalf of individual consumers, consumer complaint data obtained through *Consumer Sentinel* enables the FTC and its other law enforcement partners to coordinate their enforcement efforts, and to spot trends and target the most serious consumer problems.

Summary and trend data are shared on our public *Consumer Sentinel* Web site (consumer.gov/sentinel). The constant input and analysis of fresh complaint data have allowed the FTC to move quickly to stop illegal practices before they cause more harm to consumers.

In 2002, we worked with the Department of Defense to launch a new site (*Military Sentinel*) that allows military service members to enter complaints and receive consumer education materials online. This complaint data is added to our *Consumer Sentinel* database and will be tracked by the Defense Department, which can then address the most prevalent forms of consumer harm plaguing its personnel. We also translated the FTC Consumer Complaint form into Spanish in 2002.

Performance Measure 1.1.1

Annual number of consumer complaints and inquiries entered into database.

FY 2002 Target: 400,000
FY 2002 Actual: 680,000
Met or Exceeded: ✓

Consumers can call our second toll-free number, 1-877-ID-THEFT, or view our Web site to obtain information about and report identity theft. They also can receive guidance on the steps they can take to resolve credit and other problems that may have resulted from identity theft. In 2002, we received more than 185,000 identity theft complaints and inquiries, more than double the amount received in 2001. The FTC uses this data to spot patterns that can help criminal law enforcement agencies prosecute identity theft and help businesses avoid the financial consequences of this crime. To further help consumers, the FTC released a universal *ID Theft Affidavit* that victims of identity theft can submit to many companies, simplifying the process of alerting companies when a fraudulent

account has been opened in their name. Although most ID theft cases are criminal, the FTC staff systematically examines complaint data for civil cases within its jurisdiction and will bring those cases where appropriate. Criminal cases are identified by our joint FTC/U.S. Secret Service Case Referral Program and strong leads are referred to regional task forces, many led by the Secret Service Financial Crimes Division.

In addition to receiving and analyzing consumer complaints, we monitor the growing online marketplace through “surfs,” where we and partner organizations systematically surf the Internet to identify Web sites engaged in questionable practices. In 2002, the FTC led or coordinated 7 surfs with more than 115 partners. The surfs focused on claims about unsubscribing from unsolicited commercial e-mail (“spam”), bioterror protection devices, cures or preventive products for anthrax and other bioterror-related diseases, e-tailer holiday shopping, and products and services advertised internationally that promise to cure or prevent cancer, HIV, and arthritis. When suspect sites are identified during a surf, e-mail warnings are sent to the operators explaining the law and providing a link to the FTC Web site for further information. If a Web operator ignores the warning, we or one of our partners may file suit.

Performance Measure and Results

To assess our effectiveness in identifying fraudulent and deceptive practices, we measured the number of consumer complaints and inquiries added to the Consumer Information System database. Additional consumer data enables us to more effectively spot trends, identify emerging scams, and coordinate activities with other law enforcers. In 2002, we added more than 680,000 entries, ex-

ceeding our target of 400,000 by 70%. This reflects the increasing interest of organizations in contributing complaint data to our database and consumers’ growing awareness of our online complaint form and toll-free telephone numbers, and gives us a broader view of what reporting consumers are experiencing. The database allows the FTC and its law enforcement partners to identify and develop cases against fraudulent operators that cause the greatest consumer injury. By analyzing consumer complaints, we can identify and ultimately refine our enforcement and education efforts to target the most serious consumer problems. These include: identity theft, online auction fraud, Internet service provider scams, unauthorized billing scams, pyramid and other investment schemes, travel and vacation fraud, pay-per-call solicitation frauds, high-tech Internet-based fraud, and health care fraud.

Performance Assessment and Future Trends

Not only does our database help us identify the most serious consumer protection problems, it quickly informs us of emerging scams so that we can move rapidly to stop consumer injury. In addition, by collecting data from consumers and other sources and sharing it with our law enforcement partners, we are able to coordinate and, thus, augment the effectiveness of law enforcement agencies across the country and in Canada and Australia. To make the database even more valuable, we continue to pursue upgrades to increase our collection of information from consumer agencies in other countries. For example, through the *econsumer.gov* Web site, we partner with other members of the International Consumer Protection and Enforcement Network (ICPEN), an international group that identifies and shares information about worldwide consumer protection

issues. Through *econsumer.gov*, consumers in the 17 participating countries can file complaints using an online form and obtain consumer education materials. Law enforcement members can access a nonpublic site to obtain specific information about the complaints that consumers have filed.

We continue to increase our capacity to analyze data quickly through database upgrades that improve our ability to respond to frauds and identity theft earlier, and thus prevent greater consumer injury. For example, several features have been added to *Consumer Sentinel* to assist law enforcement personnel. An “alert” function allows *Consumer Sentinel* users to place a tag in the database on companies and individuals that are under investigation to inform other law enforcers using the database. The “alert” function thus has enhanced coordination of law enforcement efforts. New reports, top violator lists, and Internet-related complaint trend data are posted on *Consumer Sentinel*. We also upgraded *Consumer Sentinel* by adding information to assist law enforcers with coordinating cross-border investigations. Examples include a list of contacts in the countries participating in *Consumer Sentinel* and tips on how to determine the business, domain, and postal box registration in 19 countries. *Consumer Sentinel* soon will offer additional tools to assist coordination of investigations.

The FTC will continue to expand the complaint database and increase its use by recruiting and training additional law enforcement partners. We also will make better use of its rich store of data by identifying repeat offenders and sharing this information with other law enforcers. In addition, the FTC will increase its capacity to analyze data quickly in order to 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 and upgrade its system to track and analyze privacy-related complaints more effectively.

The FTC will establish a new performance measure in FY 2003 under Objective 1.1 to report the annual number of consumer complaints and inquiries entered into the database relating to identity theft. This measure was added as a result of a training program initiated in March 2002 with the U.S. Secret Service and the Department of Justice to provide local and state law enforcement officers with practical tools to enhance their efforts to combat identity theft. During 2002, the FTC and its partners held four seminars and trained more than 440 persons from more than 140 agencies. Through this new measure, and a new performance measure under Objective 1.2 that will track the number of accesses by law enforcement personnel, we hope to be able to evaluate the usage of the identity theft system post-training and tailor future training to meet law enforcers’ needs.

Finally, in 2002 FTC staff attorneys and economists began work with an outside contractor to design two surveys of several thousand consumers: one addressing fraud that they have experienced; the second addressing identity theft. Through these surveys, the FTC seeks to learn whether complaints in the database are representative of consumers’ actual experiences. The agency also expects that the survey results will help determine whether certain classes of consumers are not represented in the database, so that it can target those populations with information about the fraudulent scams they may encounter and information on how to submit complaints to the FTC either

through our toll-free numbers or *Sentinel*. After reviewing the survey results, the FTC will analyze its enforcement efforts to ensure that it is addressing the most costly and prevalent forms of fraud through legal action. The identity theft survey will allow us to assess the nature and prevalence of identity theft more completely and to judge

the effectiveness of agency efforts to assist and educate consumers, identity theft victims, law enforcement officials, and industry representatives. Based on the information received through these surveys, we also intend to review and, if appropriate, revise our performance measures.

OBJECTIVE 1.2 STOP PRACTICES THAT CAUSE CONSUMER INJURY

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

Strategies

The FTC plays a vital role in protecting consumers' privacy, emphasizing both enforcement and education. We focus on telemarketing, unsolicited commercial e-mail (spam), identity theft, and pretexting, as well as enforcement of the Children's Online Privacy Protection Act, the Gramm-Leach-Bliley Act, the Telemarketing Sales Rule as amended in December 2002, and Section 5 of the Federal Trade Commission Act, including matters involving the protection of personal information.

Telemarketing fraud continues to be a significant law enforcement priority. As a culmination of 2002 efforts, in December 2002, the FTC amended the Telemarketing Sales Rule, establishing a National Do-Not-Call Registry and addressing the use of "pre-acquired account information," among other things.

Other priorities include protecting consumers from more traditional scams that have moved to the Internet, including health-related fraud. In 2002, we also increased our enforcement activities against fraudulent and deceptive spam promoting chain letters, pyramid schemes, and other kinds of "get-rich-quick" schemes that can cause substantial economic injury.

One of the most effective tools in the battle against fraud has been the law enforcement sweep – simultaneous law enforcement actions by federal, state, and/or local partners against numerous defendants nationwide that focus on a particular, widespread type of fraud. Each sweep is supported by consumer education aimed at preventing future losses to the public. Since our first sweep in 1995, the FTC and its partners have brought more than 2,040 law enforcement actions in 73 sweeps against fraudulent operators. This total includes 492 cases brought by the FTC alone. Thus, for every action that we bring, our partners bring an average of three. In 2002, the FTC led 9 sweeps resulting in a total of 252 actions, including 77 FTC cases. In addition to

leveraging our resources, sweeps generate substantial local, regional, and international interest, thereby further raising consumer awareness.

In the nonfraud area, we work to ensure compliance with the consumer protection statutes that we enforce. Given our broad jurisdiction and limited resources, we focus on the most serious problems, using varied enforcement tools and encouraging self-regulation in appropriate situations. Information obtained from our Consumer Information System database and from monitoring national advertising enables us to focus our law enforcement actions on areas that pose the greatest risks to consumer health, safety, and economic well-being. We also work with

Performance Measure 1.2.1

Dollar savings for consumers from FTC actions that stop fraud.

FY 2002 Target: **\$400 million**
FY 2002 Actual: **\$561 million**
Met or Exceeded: ✓

Performance Measure 1.2.2

Total expenditures of deceptive or unfair advertising campaigns stopped.

FY 2002 Target: **\$100 million**
FY 2002 Actual: **\$40 million**

industry and interested groups to support private initiatives where appropriate.

Performance Measures and Results

Our goal in 2002 was to save consumers more than \$400 million by stopping fraudulent practices in the marketplace. We surpassed this target, saving consumers an estimated \$561 million. Consumer savings are measured by estimating the annual sales made by defendants in the 12 months prior to filing a complaint. The total dollar value of sales is an approximate measure because, in the majority of fraud cases we pursue, the consumer pays money and receives nothing of value in return. The savings calculation actually may underestimate the FTC's impact because it assumes that the fraud would have continued for only one additional year; however, it provides a uniform method for calculating savings and minimizes speculation about the likely duration of the fraud.

The law enforcement actions included in this measure were taken against individuals or small companies, as well as scam artists operating large schemes on the Internet. Our experience in most cases is that once we file a complaint in federal district court and obtain a court order, the defendants stop their fraudulent practices; if they fail to comply, they are subject to contempt proceedings. Thus, in stopping these frauds, we stop further consumer losses to these defendants. By publicizing these law enforcement actions and distributing consumer education materials, we seek to alert consumers to fraudulent and deceptive practices, educate them to avoid such practices in the future, and ultimately increase consumer confidence in the marketplace.

In the nonfraud area, our goal was to reduce consumer injury by stopping

deceptive or unfair advertising campaigns with combined media expenditures totaling \$100 million. This measure is based on the assumption that advertisers seek to increase sales by at least as much as they spend on advertising, and that the more a company spends on an advertising campaign, the more widespread the deceptive or unfair message. We stopped \$40 million, or 40% of our goal. As previously explained in the "2002 Assessment" section above, the FTC will eliminate this performance measure in 2003 and evaluate how better to measure our performance in the nonfraud area.

Performance Assessment and Future Trends

Based on *Consumer Sentinel* data, Internet fraud is significant and growing. We are targeting the most pervasive online fraud and moving quickly to stop large, fast-growing Internet scams. In 2002, the FTC brought 31 cases involving fraudulent or deceptive marketing practices related to the Internet, bringing the total number of Internet cases filed by the FTC since 1994 to 231. We expect fraud to continue to grow as the use of the Internet rises and, in response, we will increase our efforts to slow online fraud and prevent consumer injury. In particular, online fraud has the potential to reach consumers worldwide and cause great economic injury. As our expertise in high and new technologies develops, we will be better able to detect and deter online fraud before these schemes take hold. This effort, combined with strategies such as law enforcement sweeps, demonstrates our effectiveness in preventing consumer injury.

In addition to fighting fraud, we also focus on compliance with traditional advertising law and FTC Rules and Guides. We work cooperatively with our law enforcement partners, industry, and consumer groups to extend the reach of our

efforts to increase compliance. The scope of our current and upcoming priorities spans our broad jurisdiction, and this broad jurisdiction makes it difficult to measure the overall impact of our non-fraud activities. We are exploring using new performance measures focusing on our impact in more narrowly defined areas. Nonetheless, we will continue to use business and consumer education, as well as selective enforcement, to ensure broad compliance with the consumer credit statutes, the Mail and Telephone Order Rule, and other rules and regulations we enforce.

The FTC will establish two new performance measures in FY 2003. These measures will report the number of data searches by FTC and other law enforcement personnel of our *Consumer Sentinel* complaints and the number of data searches by law enforcement personnel of our identity theft complaints. Although Congress established the FTC as

the central clearinghouse for identity theft complaints, the FTC – a civil law enforcement agency – has no enforcement authority to prosecute identity theft crimes. The information contained in our database, however, directly supports such criminal prosecutions. We have learned from experience that hands-on information and training provided to our law enforcement partners greatly enhances their abilities to mine the information in the complaint database and ultimately prosecute identity theft crimes more successfully. Consequently, the FTC initiated identity theft training for local, state, and federal criminal enforcement groups and, through December 2002, trained approximately 520 law enforcers from more than 165 agencies. Through the new performance measures, the FTC will monitor the success of these training programs to determine how such training should be modified to better meet the needs of its partner agencies.

OBJECTIVE 1.3 PREVENT CONSUMER INJURY THROUGH EDUCATION

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

Strategies

The FTC is committed to using education and outreach as cost-effective methods of preventing consumer injury, increasing business compliance, and adding an extra dimension to our law enforcement program. Virtually every consumer protection effort contains an educational component, from compliance surfs and law enforcement sweeps to the announcement of new rules and regulations. Through reports, publications, Web sites, media events, speeches, advocacies, and collaborative activities with other organizations, the FTC reaches tens of millions of consumers and businesses every year. In 2002, we issued 126 new or revised publications – 104 for consumers and 22 for businesses – covering traditional subjects such as work-at-home scams, purchases of exercise equipment, and credit insurance. These publications also addressed high-tech subjects such as Internet security, cell phone radiation shields, online gambling, and unsubscribing from e-mail lists; and other timely subjects such as privacy, cross-border fraud, offers to treat biological threats, and “Do Not Call” scams.

Our Consumer Information System database helps us tailor our education efforts to topical areas where fraud, deception, unfair practices, and information gaps are causing the greatest injury. Consumers are given the tools they need

to spot potentially fraudulent and other illegal promotions, and businesses are advised how they can comply with the law. As with our law enforcement, more of our educational efforts now involve the Internet. We not only address consumer issues involving the Internet, such as shopping online, but we also use the Internet as a tool to reach consumers, for example, through our Web sites, online banner public service announcements, and online distribution of “news” consumers can use.

Performance Measure 1.3.1	
Number of education publications distributed to or accessed electronically by consumers.	
FY 2002 Target:	10.5 million
FY 2002 Actual:	19.3 million
Met or Exceeded:	✓

We coordinate with hundreds of private and public partners to provide information about specific promotions, products, and services. The FTC continues to manage the *consumer.gov* Web site, which is linked with the interagency *firstgov.gov* Web site that offers one-stop access to federal consumer information. The FTC continues to increase the federal agency partnership base for *consumer.gov*, with more than 180 agencies now participating. In 2002, the FTC took the lead for the fourth consecutive year in organizing National Consumer Protection Week. This year’s theme campaign was privacy. Our partner organizers were the National Association of Consumer Agency Administrators, AARP, the National Consumers League, the Council of Better Business Bureaus, the Consumer Federation of America, the U.S. Postal Service, the U.S. Postal Inspection Service, the National Association of Attorneys General, and the Department of Justice.

To reach the expanding population of Hispanic consumers in the U.S., the FTC instituted an Hispanic Outreach Program in January 2002. This outreach effort

included a dedicated Spanish-language page on the FTC Web site and translations of 32 consumer publications. The FTC Consumer Complaint Form also was translated into Spanish.

In September 2002, the FTC launched an Internet security initiative and Web site, complete with the “Dewie the Turtle” mascot, to remind consumers to stay safe online and develop a “culture of security.” The site, www.ftc.gov/infosecurity, includes numerous consumer education publications.

Performance Measure and Results

We gauge the impact of our education efforts by tracking the number of consumer and business education publications we distribute to the public in response to consumer requests. Ideally, we would like to measure the extent to which our educational materials improve consumer understanding and help them get better value for their money. This effect would be extremely difficult to measure, but tracking the distribution of publications gives us a rough idea of how many consumers believe our information will prove useful. In 2002, the FTC exceeded our goal of 10.5 million publications by distributing 19.3 million publications: nearly 7.0 million print publications and more than 12.0 million through the consumer protection Web page on the FTC Web site. This is the third year in which electronic distribution surpassed print distribution.

Performance Assessment and Future Trends

The FTC seeks to alert as many consumers as possible to the telltale signs of fraud, deception, and unfair business practices, and other critical consumer

protection issues. Use of the Internet to disseminate information about fraud and technology-related matters plays an integral role in the FTC’s education, deterrence, and enforcement efforts, permitting the agency to reach vast numbers of consumers and businesses quickly, simply, and at low cost. As demonstrated by our online distribution total, the FTC has successfully promoted and led the use of the Internet to educate and empower consumers, a trend that we expect will accelerate in the future.

Our measure of the number of publications distributed by the FTC indicates our impact in educating consumers, although it does not fully capture the millions of FTC publications that are distributed to consumers by others. While the number of print publications we distribute remained relatively static, the number of publications accessed through the Internet has soared as more consumers and businesses go online. In 1996, we distributed only 140,000 publications online. In 2002, we distributed more than 12.0 million through our Internet Web site alone. These numbers illustrate the Internet’s coming of age as a mainstream medium and highlight its usefulness in any large-scale educational campaign. Consequently, we will increase our use of the FTC’s Web site, ftc.gov, and the multi-agency Web site, consumer.gov, to reach consumers, businesses, law enforcement officials, and the media more efficiently and effectively.

In the next year, we will continue to focus consumer and business education efforts on topics identified by our consumer complaint databases where information gaps cause the greatest injury, such as globalization, Internet scams, fraudulent schemes, and identity theft. In the privacy area, we will use an approach that has proven successful in the past by establishing an outreach program to increase consumer awareness of and busi-

ness compliance with the privacy requirements of the Gramm-Leach-Bliley Act. We will continue to creatively use technology, including new interactive media, to extend the reach of consumer and business education.

In 2003, the FTC will establish two new performance measures to report the annual number of education publications distributed to or accessed electronically by consumers relating to identity theft,

and the annual number of Spanish-language publications distributed to or accessed electronically by consumers. These measures will highlight our outreach in the identity theft arena and our efforts to reach the nation's growing Hispanic population. The FTC will continue to work to identify and educate under-served consumer groups to help protect them from becoming victims of fraud.

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

Competition among sellers in an open marketplace results in lower prices for consumers, leads to high quality products and services, maximizes consumer choice, and spurs the discovery and development of beneficial new products and services. Anticompetitive mergers, and other practices that diminish competition, deny consumers these benefits, and are illegal under the antitrust laws. Thus, the FTC's goal is to promote vigorous competition by applying the antitrust laws to (1) prevent anticompetitive mergers and (2) stop business practices that diminish competition, such as agreements among competitors about prices or other aspects of competition. We refer to these two types of law enforcement as merger and non-merger enforcement, respectively. We apply three related objectives to achieve this broad-reaching goal.

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

First, we identify potentially or actually anticompetitive mergers and business practices by conducting thorough factual investigation and applying economic analysis to distinguish between actions that

threaten the operation of free markets and those that are benign or procompetitive. This step is critical because a merger or business practice may be either neutral, beneficial (by enabling sellers to be more efficient and pass those savings along to consumers), or harmful (by enabling sellers to reduce the output of their product and raise the price to consumers). Thus, indiscriminate or ill-considered intervention into the marketplace may do more harm than good.

Second, once we identify a potentially or actually anticompetitive merger or business practice, we take enforcement action under the antitrust laws to stop it, either through an administrative challenge or in federal court. In many instances, we are able to reach a consent agreement that remedies our competitive concerns and avoids litigation.

Third, we seek to prevent anticompetitive activity by educating businesses and consumers about the antitrust laws and the FTC's efforts to ensure competitive markets. Increased knowledge and understanding on the part of businesses facilitate their efforts to comply with the law. Increased knowledge and understanding on the part of consumers enable them to identify anticompetitive activity more readily, and bring such activity to our attention for possible enforcement action.

OBJECTIVE 2.1

IDENTIFY ANTICOMPETITIVE MERGERS AND PRACTICES THAT CAUSE CONSUMER INJURY

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

Strategies

To achieve this objective, we identify anticompetitive mergers and practices as accurately as possible, avoiding both under- and over-inclusion. We seek to undertake enforcement action as often as possible against transactions or conduct that harm consumers, but at the same time, avoid taking enforcement action that prevents businesses from completing transactions or engaging in practices that fundamentally benefit consumers. We also try to accomplish this task as efficiently as possible so that we can devote the bulk of our resources to further investigation of and possible challenge to the most problematic mergers and practices. A collateral, but important, consideration is that we conduct our inquiry in a way that minimizes the cost or inconvenience to businesses.

The premerger notification requirements of the Hart-Scott-Rodino (HSR) Act are our primary means for identifying potentially anticompetitive mergers, acquisitions, and joint ventures (which we refer to collectively as mergers). The HSR Act requires companies to report certain proposed mergers to the FTC and Department of Justice (which jointly

enforce the antitrust laws), and wait for a specified period (usually 30 days) to allow antitrust review.

We carefully examine each transaction reported under HSR to determine whether it poses a threat to competition. We seek to identify as many of the competitively harmless transactions as possible within the initial waiting period, both to conserve resources and to minimize the delay imposed on businesses by the HSR requirements. In most cases, we can make a reasonable judgment about whether a merger has the potential to be anticompetitive or not after an initial screening based on materials filed with

the HSR notification. The staff further examines transactions that raise more difficult questions, and the agency may authorize a more extensive investigation, generally including the issuance of a formal request under the HSR Act for additional information from the parties (a "second request"). Because of the typical scope and complexity of the issues, and the fact that the HSR statute contemplates only one second request per transaction, an investigation extended by the issuance of a second request almost always requires a significant investment of resources by both the agency and the parties.

Most HSR transactions raise no anti-trust issues and we permit these to proceed. In 2002, the FTC extended the investigation of a reported merger (by issuing

Performance Measure 2.1.1

Percent of HSR second request resulting in enforcement action.

FY 2002 Target: 60% - 80%

FY 2002 Actual: 68%

Met or Exceeded: ✓

Performance Measure 2.1.2

Number of nonmerger investigations opened per year.

FY 2002 Target: 45 - 70

FY 2002 Actual: 59

Met or Exceeded: ✓

a second request) in about 2.3 percent of the reported mergers. Together, the FTC and the Department of Justice Antitrust Division issue second requests in less than 5 percent of reported mergers. Moreover, the government frequently completes its initial screening in less time than it is allowed under the HSR Act and therefore grants “early termination,” of the HSR waiting periods, allowing transactions to go forward. Nearly two of every three filed transactions in 2002 received early termination.

Amendments to the HSR Act, effective in 2001, modified the criteria governing when the reporting requirement applies. Thus, we now receive fewer formal notifications of proposed mergers under the HSR Act. This change in HSR filing thresholds did not change the standard of legality under the antitrust laws, however. While the vast majority of potentially problematic mergers continue to be subject to the revised HSR filing requirements, smaller merger transactions may still be anticompetitive. We now must devote more effort to identify non-reportable mergers that may harm (or have harmed) competition. We do this by monitoring the trade press and Internet resources to stay informed of industry developments, following up on case leads from Congressional offices, other Executive branch agencies, and state and local governments, and encouraging consumers, businesses, and the bar to notify the FTC of possibly anticompetitive mergers.

Although we had fewer mergers to review in 2002, the volume of merger activity remained significant by historic standards, and the recent pattern of larger and more complex merger transactions continued. Antitrust review of large transactions is invariably much more complex and time consuming than is the case for smaller transactions. Large, multi-faceted transactions are more likely to raise antitrust issues, and those issues

may involve a number of separate product and geographic markets, each requiring separate analysis. In addition, the number of mergers requiring investigation did not fall appreciably in 2002. We opened 181 merger investigations in 2002, a decrease of about seven percent from 2001.

In the nonmerger area, we review complaints received from consumers, business, Congressional offices, and elsewhere to identify potentially anticompetitive nonmerger business practices. Beyond this process, however, we pursue a “positive agenda” of planned initiatives, i.e., we take a systematic and proactive approach to identifying specific conduct that poses the greatest threat to consumer welfare. Fundamentally, we focus closely on the types of practices, such as agreements among competitors, that are most likely to harm consumers. In addition, we take into account:

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

Thus, in 2002, for example, we developed important nonmerger cases through two task forces focusing on substantive areas of law (the *Noerr-Pennington* and State Action doctrines). A third task force is studying a range of responses to a set of competitive issues in a particular sector of the economy, including issues involving restrictions on e-commerce. Another case generation working group is devoted to a specific set of practices involving actions to “protect”

intellectual property rights in a manner we believe to have anticompetitive effects without corresponding consumer benefits. Finally, we make a systematic effort to identify instances of a specific type of competitive problem, such as review of professional associations' codes of ethics for anticompetitive restrictions. We also take advantage of information we gain in workshops, conferences, and hearings including the workshop on antitrust policy in the health care sector in September, which will be followed by related hearings in 2003.

Our ability to undertake initiatives of this sort depends on the availability of resources. During the late 1990s, a record wave of merger activity required the agency to focus a significant percentage of staff resources on the review and investigation of mergers under statutory timetables. During 2002, the FTC continued efforts begun in 2001 to restore resources to, and thus reinvigorate, the nonmerger portion of its Maintaining Competition Mission.

Performance Measures and Results

We used two performance measures to gauge how well we identified anticompetitive mergers and practices in 2002.

First, we measured the percentage of HSR second request investigations concluded during the year that ultimately resulted in enforcement action. Our goal is for that percentage to fall between 60 and 80 percent. We base this measure on the universe of investigations completed during the fiscal year, regardless of when the second request was issued, because second request investigations often extend beyond fiscal year boundaries. Matters ultimately resulting in enforcement action typically entail more investigation than those that do not, so limiting the universe to those transactions in which a second

request was issued and the matter was concluded within the same year could skew the results by disproportionately excluding enforcement outcomes.

Meeting the minimum percentage set by our goal (60 percent) signifies that we have effectively screened out the most likely candidates for enforcement action during the initial HSR waiting periods by targeting more matters ultimately requiring intervention. The rationale for an upper bound may be less clear. Because the need for enforcement is fairly clear from the beginning in many transactions, the agency could raise its percentage under this measure by setting overly rigorous standards – perhaps approaching certainty of a violation – for the issuance of second requests. However such an approach would likely screen out some matters for which a fuller investigation would demonstrate the need for enforcement. Thus, a result approaching 90 or 100 percent on this measure would suggest the possibility of our having failed to pursue illegal mergers.

In 2002, the FTC took enforcement action in 68 percent (19 of the 28) of the second request merger investigations concluded during the year, the same percentage as in 2001, and well within our goal. Thus, parties in only nine transactions (less than 0.8 percent of all reported transactions) had to undergo the time and expense of a second request production that ultimately demonstrated no significant likelihood of a violation.

Comparing the underlying numbers with those from earlier years provides a useful check on the validity of this measure. In 2002, the FTC took 24 merger enforcement actions, one more than in 2001, and only somewhat less than in 1996 and 1997 (27 and 28 enforcement actions, respectively), when merger activity was considerably higher. The 27 second requests issued in 2002 represented 2.27

percent of the reported transactions, a figure nearly indistinguishable from the 2.34 percent of comparable filings² from 1995 through 2001 in which the FTC issued second requests.

We measured our success in identifying possibly illegal conduct by counting the number of nonmerger investigations opened. While the mere opening of a formal investigation does not signal the presence of anticompetitive conduct, we do require evidence and a viable legal/economic theory of consumer harm as a prerequisite to opening an investigation. We screen hundreds of allegations of illegal conduct each year, but few present sufficient grounds for formal investigation. The number of investigations we open reflects our ability to identify conduct that may be anticompetitive, along with the level of resources we are able to devote to this area.

The year 2002 was successful in terms of identifying anticompetitive conduct in the market. Our goal has been to open 45 to 70 nonmerger investigations over the course of each year, a range reflecting the number of new nonmerger investigations opened in recent years. We met this goal, opening 59 nonmerger investigations in 2002, three more than in 2001, more than double the 25 investigations opened in 2000, and more than any year since 1997.

Performance Assessment and Future Trends

The issuance of a second request is a significant step in a merger investigation. Because the law permits only one second request, the FTC typically issues a very comprehensive request that calls for all

relevant information on all possible issues in the investigation. Given the size of the parties involved and the scope of the inquiry, it is not unusual for a response to run in the hundreds (or even thousands) of boxes of documents. Gathering and examining this material involves a major resource commitment by the parties and by FTC attorneys and economists. Moreover, the law prevents the parties from proceeding with the merger while this process is taking place, sometimes resulting in significant delays in closing transactions when second requests are issued.

For all of these reasons, we do not lightly issue a second request. In fact, we do as much as possible within the initial waiting period to determine which transactions pose no competitive threat, so that the truly benign mergers may proceed without the delay and expense of a second request. In 2002, for example, we issued second requests in only about 2.3 percent of the mergers reported under HSR. At the same time, it is more difficult to challenge a consummated merger than it is to investigate those filed under HSR, so we try to isolate and focus our resources on those few matters that genuinely seem likely to violate the law.

Our first measure, the percentage of HSR second request investigations concluded during the year that ultimately resulted in enforcement action, reflects the balance between these two considerations. If we do our jobs effectively during the initial HSR waiting period, we should be able to “clear” the great majority of reported transactions, permitting them to go forward without further delay or burden. We should also be able to isolate for more intensive investigation those transactions that could be harmful. And while we want to allow as many benign transactions as possible through this initial screen, we should not focus so narrowly that we cull out for more invest-

²To make a valid comparison, this computation is based on the number of filings that would have satisfied the current filing requirements.

igation only those transactions in which an antitrust problem is relatively obvious, while allowing other transactions that may be similarly harmful, but in more subtle ways, to proceed unchallenged.

We believe that our result for 2002 (68 percent), and the goal we have set (60 to 80 percent) represent appropriate results on this measure. Reaching the goal indicates that we issued second requests only when a violation was more likely than not. In 2002 and 2001, in fact, it was more than twice as likely as not that a second request would result in enforcement action. While the imposition of some burden on parties to benign transactions is unescapable, we have kept it to a minimal level (less than 1 percent of reported transactions). The underlying data are consistent with earlier years, so there is no reason to question whether the presence of this measure affected agency decision-making.

Fiscal year 2002 continued the restoration of the historic workload balance between merger and nonmerger activity. As a result, we opened 56 new nonmerger investigations in 2001 and 59 in 2002 – more than double the number opened in 2000. While the number of investigations opened may resemble a count of agency activities or outputs, it can also be viewed instead as a measure of the outcome of the FTC’s systematic efforts to implement a positive agenda. Moreover, while not every investigation will result in enforcement action, the number of proposed investigations meeting the agency’s criteria has a direct bearing on the number of enforcement actions – which have a direct positive impact on consumers’ budgets – that ultimately result. Our systematic approach, including task forces, working

groups, workshops, and related activities, yielded investigations targeted to specific practices and sectors of the economy that have the most impact on consumers (e.g., health care, pharmaceuticals, standards setting).

Our success in 2002 was due in large measure to our ongoing investments in competition policy research and development. These efforts have included (1) improving the empirical understanding of our theoretical framework through roundtables with some of the most prominent industrial organization economists in the field, (2) studying the outcomes of past mergers to determine what lessons they might provide for future enforcement efforts, (3) reviewing two decades of change, with particular focus on recent events, in the petroleum industry through an update of the agency’s earlier reports on mergers in the petroleum industry and hearings on factors that contribute to the cost of gasoline and other refined petroleum products, (4) making a unique effort in the real time monitoring of wholesale and retail gas prices across the nation, (5) holding hearings on the state of the health care marketplace and the role of antitrust and consumer protection in satisfying the preferences of Americans for high-quality, cost-effective health care, (6) studying the development of barriers to e-commerce, (7) holding a series of hearings on the interplay between the competition and intellectual property regimes, and (8) a working paper on estimating demand, an important component in merger analysis. Our findings in these areas will continue to form the basis for enforcement actions and policies, as well as recommendations to government policymakers, and public reports.

OBJECTIVE 2.2

STOP ANTICOMPETITIVE MERGERS AND PRACTICES THROUGH LAW ENFORCEMENT

Law enforcement represents the most direct method by which the FTC pursues its goal of stopping anticompetitive mergers and anticompetitive business practices.

Strategies

To stop potentially anticompetitive mergers and practices through law enforcement, we seek legal remedies under the antitrust laws, through federal court action, administrative proceedings, or negotiated settlements. For mergers, our preferred strategy - that is, the most effective and cost-efficient strategy - is to prevent such mergers before they occur. We implement this strategy primarily through our authority to seek a federal court injunction preventing the transaction. In many cases, the merger parties elect not to defend a court challenge, and we are able to resolve a competitive concern by negotiating a consent agreement before having to seek an injunction. This approach is suitable when the competitive problem relates to only a portion of the transaction, such that a divestiture of assets sufficient to preserve or restore competition will allow other, competitively neutral or beneficial aspects of the merger to go forward.

In other instances, the parties may abandon a transaction after assessing the

likely outcome of an FTC court challenge. When a merger has already been consummated, we rely on the FTC's internal administrative remedial powers to restore competition lost as a result of the merger. Administrative litigation seeking to restore competition following an illegal merger likely will be more frequent in light of the revisions to HSR premerger filing thresholds.

In nonmerger matters, we seek to stop ongoing activity that harms competition. To do so, we may ask the Commission to initiate administrative proceedings before an Administrative Law Judge to challenge the conduct and establish a basis for an order that the respondents (the parties to the proceeding) "cease and desist" the conduct. The FTC also has authority to seek relief in federal courts, though we use this option infrequently in nonmerger matters. Again,

we are often able to negotiate a consent agreement with the parties that remedies the problem without resorting to litigation.

In both merger and nonmerger matters, we emphasize thorough investigation, as well as sophisticated legal and economic analysis, to ensure we accurately assess the potential for competitive harm resulting from the transaction or conduct in question. When the FTC concludes that the likelihood of such harm indicates a law violation, and no settlement is possible,

Performance Measure 2.2.1

Positive outcome of cases brought by FTC due to alleged violations.

FY 2002 Target: **80%**
FY 2002 Actual: **100%**
Met or Exceeded: ✓

Performance Measure 2.2.2

Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.

FY 2002 Target: **\$800 million**
FY 2002 Actual: **\$726 million**

Performance Measure 2.2.3

Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.

FY 2002 Target: **\$200 million**
FY 2002 Actual: **\$86 million**

the Commission authorizes the staff to litigate the matter. We prepare thoroughly for litigation, whether before an Administrative Law Judge or in federal court. The high percentage of settlements in FTC antitrust cases (or, in the case of mergers, the parties' abandonment of the anti-competitive transaction) results, in large measure, from our readiness to obtain the needed relief through litigation, if necessary.

We emphasize the crafting of remedies that will successfully eliminate the anti-competitive effects of the activity in question, and do so in a timely fashion. As part of this strategy, we study and evaluate the remedies used in past antitrust cases, particularly divestiture orders used to resolve merger cases. This ongoing process focuses on what makes divestiture orders most effective in preserving or restoring competition, and on how to expedite the completion of curative divestitures.

As discussed above, we also study current or emerging topics involving possible antitrust enforcement to develop policy positions. The learning derived from these research and development initiatives, besides helping us to select better cases with higher positive impact, provide important economic support that help us succeed in the enforcement matters we pursue.

Performance Measures and Results

We use three measures to gauge our success in stopping potentially anti-competitive mergers and practices through law enforcement. These measures include (1) the percentage of positive outcomes when we challenge anti-competitive mergers and practices, (2) the estimated savings to consumers resulting from our merger enforcement efforts, and (3) the

estimated savings to consumers resulting from our nonmerger enforcement efforts.

We seek to obtain a positive result in at least 80% of the matters in which we determine that a merger or a course of conduct is anti-competitive (Performance Measure 2.2.1). Positive results include the parties' abandonment of an anti-competitive transaction after we identify antitrust concerns, a consent agreement to resolve antitrust concerns, or a successful challenge in court. A negative result occurs when parties refuse to settle antitrust concerns raised by the agency and we are unsuccessful in obtaining relief through the courts.

Because successful enforcement of the antitrust laws leads to beneficial outcomes, it is important that we usually succeed when we challenge anti-competitive mergers and practices. We do not help consumers if we do not succeed in persuading a court to block a merger, for example, either because we failed to present our case adequately or because the merger turns out not to be anti-competitive. This is not to say that the FTC, or any law enforcement agency, should win every case. Some cases involve very close questions, on which reasonable minds can and do differ. Other cases may be very difficult from a litigation standpoint, but still worth pursuing. Furthermore, all of the FTC's antitrust challenges are defended by highly competent and well-financed counsel.

In addition, the FTC's responsibilities include taking action to help shape the development of the antitrust laws. Fulfillment of this duty requires occasionally litigating cases involving more than the usual degree of risk, such as where there is no clear precedent and the FTC is seeking to establish a new legal principle. In other instances, the FTC brings cases seeking to benefit consumers by clarifying, or perhaps improving upon, existing

precedent. For example, the *Noerr-Pennington* and State Action doctrines each insulate a growing amount of economic activity from the powerful discipline of the antitrust laws. Whatever the underlying merits of these two immunities, it is clear that some court decisions have expanded their scope in ways that raises concerns among many observers.³ The FTC's mission includes bringing cases that highlight difficult issues such as these and seeking to persuade the courts of the merit of its views on what the law should be. While we frequently succeed in such efforts, the results are far from certain. Thus, our goal on this measure reflects the reality that, even when the agency brings a meritorious case and litigates it well, success is not assured. Moreover, setting the standard too high could be detrimental if the effect were to deter the agency from bringing important, but risky, cases.

We exceeded our goal in 2002, achieving relief through litigation, reaching a successful settlement agreement, or persuading parties not to proceed with an anticompetitive acquisition in all enforcement matters brought to conclusion during the year. The Commission approved 21 proposed administrative consent agreements (three following a federal court or administrative complaint), issued three administrative complaints (of which one resulted in settlement and two remain in litigation), authorized staff to seek preliminary injunctions in five matters (of which 2 resulted in settlements and three concluded when the parties abandoned the proposed transactions), and successfully concluded two federal court actions. In addition, parties to proposed mergers

abandoned their transactions in ten instances following our investigation (three following Commission approval to seek a preliminary injunction). Thus, we were able to obtain a positive result in 100 percent of the matters in which we sought to stop or prevent adverse effects on competition.

Antitrust enforcement saves consumers money by preventing price increases that likely would have occurred due to the loss of competition if an anticompetitive merger had gone forward unchallenged, or by stopping anticompetitive conduct that raises prices. To date, as a very rough proxy, we have estimated consumer savings using an arbitrary percentage of the volume of commerce in the affected markets (for two years in merger cases, and for one year in nonmerger cases). As critics have noted, however, this methodology suffers from significant flaws, not the least of which is that the resulting figures imply a greater degree of accuracy in measuring consumer benefit than realistically is possible.

A related difficulty involves the assumptions implicit in these measures. For example, we implicitly assume that every agency enforcement decision is correct, for purposes of the consumer savings measures. This assumption is problematic, however, because merger enforcement involves making predictions about the future performance of markets under complex alternative scenarios. While our predictions are informed by broad knowledge about economic theory as well as intensive investigation into every relevant facet of the transactions and relevant market(s) in question, the process requires us to make predictions and, thus, is subject to error. In short, our consumer savings estimate has always been a prediction of the effects that we hope our actions will have, rather than an evaluation of the actual effects of those actions. Based on a careful review of our

³For example, the Antitrust Section of the American Bar Association noted last year that "[s]tate action immunity drives a large hole in the framework of the nation's competition laws." *The State of Federal Antitrust Enforcement - 2001: Report of the Task Force on the Federal Antitrust Agencies* 42 (2001), available at <http://www.abanet.org/antitrust/antitrustenforcement.pdf>.

performance measures over the past year, we have concluded that the disadvantages of the consumer savings measures outweigh their advantages. Accordingly, we intend to replace these measures with more justifiable measures in the FTC's upcoming 2003-2008 Strategic Plan.

The agency may prevent an anti-competitive 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. Through 2002, we calculated the estimated consumer savings resulting from the FTC's efforts to prevent anti-competitive mergers as a rough indicator of the scope of our merger enforcement activity (Performance Measure 2.2.2). The consumer savings estimate does not include transactions abandoned by the parties for business considerations unrelated to antitrust.

These estimates of consumer savings from the Maintaining Competition mission took into account three principal factors: (1) the volume of commerce in the markets affected by a merger or other anti-competitive practice, (2) the percentage increase in price that likely would have resulted from the merger or other anti-competitive practice absent enforcement action, and (3) the likely duration of the anticompetitive price increase. We routinely obtain information bearing on these factors in our investigations. Generally, we used a methodology derived from the analytical method used to identify the relevant market to estimate consumer savings.⁴ Specifically, we assumed that

⁴This 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

the merger, if left unchecked, would result in at least a 1% price increase in the relevant market(s), lasting for at least two years. While we cannot with high accuracy predict the amount of a price increase following a merger, we only proceed when we have a reason to believe an anti-competitive effect is likely to ensue.⁵

In light of the impending change in measures, we are limiting our comparison of consumer savings to our performance in the first two years of the original five-year target. In 2002, the estimated consumer savings of \$726 million from merger enforcement was less than half of the adjusted two-year goal. Combining the 2002 figure with the \$2.5 billion in merger-related consumer savings in 2001, however, produces a two-year total of \$3.2 billion, double the adjusted target of \$1.6 billion.

Nonmerger enforcement also benefits consumers by stopping anticompetitive activity that raises prices or restricts non-price competition. In 2002, we obtained an estimated \$86 million in consumer savings from our nonmerger enforcement. Our two-year total for 2001 and 2002 is \$243 million. The significant variation in savings between the two years exemplifies why, as explained above, we also will replace this measure in 2003. Through 2002, we calculated the estimated consumer savings resulting from the FTC's

Commission, Horizontal Merger Guidelines §§ 1.1, 1.2, available at <http://www.ftc.gov/bc/docs/horizmer.htm>. We may use an alternative methodology if case-specific information that provides a basis for a more accurate estimate is available.

⁵In some cases, however, the harm may take some form other than a price increase. For example, a particular merger may not have an immediate price effect, but may enable the parties to curtail innovation that would otherwise result in new or better products in the future. Because it would be much more difficult to quantify this sort of harm, we do not attempt to do so, relying instead on the 1% price increase calculation as a proxy for all forms of harm to consumers.

efforts to prevent anticompetitive conduct as a rough indicator of the scope of our nonmerger enforcement activity. We based our nonmerger consumer savings estimates on industry and company data obtained in our investigations. Because the types of activity involved in nonmerger cases vary considerably, no one methodology represents an ideal way to compute consumer savings.

Performance Assessment and Future Trends

In 2002, we achieved a positive outcome in 100% of the challenges initiated by the agency (e.g., court orders in litigated cases and negotiated settlements), exceeding by a significant margin our goal of an 80% success rate. This level of success was due, in part, to the high percentage of our cases that were resolved through consent agreement, as well as a number of merger transactions abandoned by the parties who chose not to contest an FTC challenge. This does not diminish the accomplishment, however, because we are more likely to obtain settlements when the parties see that our case would likely prevail in court. We realistically do not expect to succeed in every litigated case every year, however. A law enforcement agency that prevails in every litigated matter may do so because it pursues only the cases that are easiest to win. Particularly given the FTC's responsibility to aid in antitrust policy development, we will sometimes undertake diffi-

cult cases with no clear precedent. Four matters involving difficult issues currently are pending in administrative litigation and the outcome is uncertain in each instance. The FTC will continue to bring law enforcement actions where it has reason to believe that the merger or practice in question is unlawful and harms consumers, even where litigation risks may exist. Thus, in years in which litigated cases make up a larger proportion of the total number of resolved cases, our success rate may be closer to the target of 80%.

As we have noted in the past, the amount of consumer savings achieved in any one year is highly dependent on the pattern of corporate merger-related activity, including the size and nature of transactions proposed in that year. The more than threefold difference in estimated consumer savings of \$2.5 billion in 2001 and \$726 million in 2002, two years in which we believe we were similarly effective on stopping anticompetitive mergers, illustrates this point.

While we are short of the adjusted goal in consumer savings in nonmerger matters, we have cautioned that differences in opportunities from year to year would likely result in variable results on this measure. Since nonmerger antitrust matters typically take as much as a year or more to complete (more if litigation is involved), the estimated consumer savings in any given year is primarily a product of the investigations opened in earlier years.

OBJECTIVE 2.3 PREVENT CONSUMER INJURY THROUGH EDUCATION

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

Strategies

The FTC uses education and outreach to help prevent consumer injury, increase business compliance, and augment our law enforcement efforts. We pursue this strategy through guidance to the business community; outreach efforts to federal, state and local agencies, business groups and consumers; development and publication of antitrust guidelines and policy statements; and speeches and publications. By using these mechanisms to signal its enforcement policies and priorities, the FTC deters would-be violators of the antitrust laws.

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

In addition, the FTC educates the public through Congressional testimony (such as testimony on gasoline pricing and competition in the pharmaceutical

industry); conferences, hearings, and workshops (such as our series of hearings on the interrelationship between antitrust and intellectual property law, a second conference on factors contributing to the price of refined petroleum products, and hearings on health care and competition law and policy); advisory opinions (addressing issues such as the scope of the Nonprofit Institutions Act); and reports (such as the FTC's study on *Generic Drug Entry Prior to Patent Expiration*).

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

Performance Measure 2.3.1

Quantify number of education and outreach efforts.

FY 2002 Target: **Determine baseline**

FY 2002 Actual: **285**

Performance Measure 2.3.2

Quantify number of hits on antitrust information on FTC web site.

FY 2002 Target: **Determine baseline**

FY 2002 Actual: **4.3 million**

Finally, we make our law enforcement presence visible and our enforcement policies transparent in order to serve our objectives through deterrence. Each successful enforcement action not only promotes competition in specific market(s), but also serves to communicate to the business and legal communities that the FTC can and will move successfully to challenge the type of merger transaction or conduct at issue. We explain the relevant facts and issues of settled cases in press releases and in published "Analyses to Aid Public Comment" so the nature of the problem is clear. In addition, on several occasions during 2002, the FTC issued statements explaining why it declined to take actions involving mergers for which the agency had issued a second request or otherwise conducted a significant inquiry.⁶ By doing so, the agency has sought to provide greater transparency concerning our analysis of mergers.

Opinions issued by the Commission in adjudicative matters not only serve as legal precedent, but also help to explain in depth the FTC's policies and their underlying rationale for its policies and priorities in depth. Currently, four anti-trust matters are in administrative proceedings, with more likely to be added during 2003. Each provides an opportunity for the FTC to set out in detail its analysis of important legal issues. Understanding fully what kinds of transactions or conduct the FTC is likely to challenge, and why, greatly facilitates antitrust lawyers'

counseling of their clients, and prevents many anticompetitive mergers from being proposed or anticompetitive practices being implemented.

Performance Measures and Results

In FY 2002, the FTC advised the public on its enforcement decisions by:

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

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

⁶See, e.g., Statement of the Federal Trade Commission Concerning Royal Caribbean Cruises, Ltd./P&O Princess Cruises plc and Carnival Corp./P&O Princess Cruises plc, FTC File No.021-0041, available at <<http://www.ftc.gov/os/2002/10/cruisestatement.htm>>. See also Dissenting Statement of Commissioners Sheila F. Anthony and Mozelle W. Thompson, available at, <<http://www.ftc.gov/os/2002/10/cruisedissent.htm>>. We also published highlights of the Bureau of Economics' empirical research and financial analyses performed in this matter, available at <<http://www.ftc.gov/ftc/economic.htm>>.

content should provide a good indication of the quality of information provided to the public, as well as its quantity (because visitors will stay longer and return more often if the information is helpful).

In 2002, agency representatives undertook 285 antitrust outreach efforts, including speeches, testimony, written comments on regulatory proposals, policy statements, etc. – more than twice the number reported for 2001. Although improvements in counting methodology likely resulted in some of the gain, the result still shows a significant expansion in the FTC’s public outreach efforts during 2002.

The FTC’s Web site recorded about 4.35 million hits on antitrust-related content in 2002, an increase from 2.6 million hits in 2001. This measure is significant in that it represents initiative taken by the public, to seek out FTC information, rather than merely reflecting agency activities.

Performance Assessment and Future Trends

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

The FTC fills two educational roles in the Maintaining Competition Mission. First, education serves to leverage the FTC’s enforcement resources by explaining the scope of the antitrust laws, demonstrating that the FTC is active in bringing enforcement actions against certain types of mergers and practices, and signaling future enforcement intentions – all of which serve to deter harmful marketplace activity. Just as citizens benefit from the

effect of the local “cop on the beat” in deterring crime, consumers ultimately benefit when the FTC makes its presence visible.

Second, the FTC has a unique set of tools and capabilities for analyzing important policy issues and conveying information about competition policy to a larger community, including, on occasion, issues over which the FTC has no direct authority. As one example of the value of FTC analysis and information dissemination efforts, President Bush prominently cited a recent FTC report entitled *Generic Drug Entry Prior to Patent Expiration*, when he announced regulatory measures to foster competition in the pharmaceutical industry in October 2002. The report suggested certain changes in balance between competition and intellectual property law, such as permitting only one automatic 30-day stay per drug product, per generic entry application pending patent infringement litigation, which the President adopted in his program.

We measured our effectiveness in educating the public about the antitrust laws and the FTC’s enforcement activities, policies, and priorities by tracking the number of public outreach efforts in written (e.g., guidelines and policy statements) or oral (e.g., speeches and testimony) form. This measure of activity does not directly relate to outcomes in the marketplace, but there is evidence that success in communicating enforcement priorities has a strong impact on the level of anticompetitive activity taking place.⁷

⁷ See American Bar Association Section of Antitrust Law, *The State of Federal Antitrust Enforcement - 2001*, 11 (Jan. 2001) (“... private compliance efforts are a critical prophylactic against anticompetitive behavior, and the effectiveness of private compliance efforts is directly affected by the nature and clarity of the communication of enforcement priorities.”).

While the FTC's outreach activities have been and remain important, we determined after careful examination that the current performance measure does not effectively measure our performance in this area. The various items counted are not of equal weight. For example, a successful amicus brief persuading a court to adopt a pro-consumer position likely will have far more impact than a speech simply recounting past actions before a small group, yet no effective way of distinguishing among different efforts has been identified. Second, measurements of activities, such as the number of speeches given, may indicate the level of effort put toward an objective, but not the agency's effectiveness in accomplishing it.

With the importance of the Internet as a vital source of information in today's society, we believe that the number of "hits" on antitrust education and outreach material on the FTC's Web site is a more meaningful indicium of our success in educating those who influence policy as well as the general public, and in stimulating public interest in our work. Use of the Internet to disseminate information about antitrust and other competition-related matters plays an inte-

gral role in the FTC's education and deterrence efforts, permitting the agency to convey a wealth of information quickly, simply, and inexpensively to the business, legal, and regulatory communities, and to consumers. This measure more directly reflects our effectiveness because it is not based on FTC actions, but on the actions of our constituencies. That is, the level of activity on our Web site depends to a large degree on the scope, utility, and reliability of the information made available there. People will revisit the site to the extent that what they find there is of value. Matters that are of great importance to the public – as determined by the public – will draw a large number of visitors. But if the material presented is irrelevant, difficult to understand, or misleading, then interest in the site inevitably will diminish.

Because our prevention objective has two different components – (1) educating the legal and business communities about applicable legal standards and enforcement policies to facilitate compliance with the law, and (2) educating the public in general, as well as policymakers, about the benefits of competition – we plan to report the Web hits relevant to each as separate, new measures in 2004.

APPENDIX

FY 2002 PERFORMANCE MEASURES

	FY 2002 Target	FY 2002 Actual	Met or Exceeded
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.	400,000	680,000	✓
<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 that stop fraud.	\$400 million	\$561 million	✓
Measure 1.2.2: Total expenditures of deceptive or unfair advertising campaigns stopped.	\$100 million	\$40 million	see text
<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.	10.5 million	19.3 million	✓
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 request resulting in enforcement action.	60% to 80%	68%	✓
Measure 2.1.2: Number of nonmerger investigations opened per year.	45 to 70	59	✓
<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%	100%	✓
Measure 2.2.2: Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.	\$800 million	\$726 million	see text
Measure 2.2.3: Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.	\$200 million	\$86 million	see text
<i>Objective 2.3—Prevent consumer injury through education:</i>			
Measure 2.3.1: Quantify number of education and outreach efforts.	determine baseline	285	✓
Measure 2.3.2: Quantify number of hits on antitrust information on FTC Web site.	determine baseline	4.35 million	✓