

## Annual Performance Plan Objectives by Program FTE

	Fiscal Year 2000				Fiscal Year 2001			
	CP Objective I	CP Objective II	CP Objective III	Program Total	CP Objective I	CP Objective II	CP Objective III	Program Total
<b>Consumer Protection Mission</b>								
Advertising Practices	5	54	3	62	5	61	3	69
Marketing Practices	10	104	5	119	10	126	5	141
Service Industry Practices	6	44	3	53	6	59	3	68
Financial Practices	3	56	3	62	3	61	3	67
Enforcement	40	5	5	50	51	5	5	61
Planning & Information	0	0	12	12	0	0	26	26
Economic & Consumer Analysis	1	4	1	6	1	4	1	6
Program Management	5	13	2	20	6	16	2	24
CP Mission Support	24	94	12	130	22	101	14	137
<b>Total Mission</b>	<b>94</b>	<b>374</b>	<b>46</b>	<b>514</b>	<b>104</b>	<b>433</b>	<b>62</b>	<b>599</b>

	Fiscal Year 2000				Fiscal Year 2001			
	MC Objective I	MC Objective II	MC Objective III	Program Total	MC Objective I	MC Objective II	MC Objective III	Program Total
<b>Maintaining Competition Mission</b>								
Premerger Notification	21	0	13	34	21	0	13	34
Merger & Joint Venture-Enforcement	9	156	0	165	9	196	0	205
Merger & Joint Venture-Compliance	1	15	0	16	1	15	0	16
Nonmerger Enforcement	6	93	0	99	6	113	0	119
Nonmerger Compliance	0	12	0	12	0	9	0	9
Antitrust Policy Analysis	0	5	1	6	0	7	1	8
Other Direct Mission Resources	0	7	8	15	0	11	8	19
MC Mission Support	13	98	7	118	13	104	7	124
<b>Total Mission</b>	<b>50</b>	<b>386</b>	<b>29</b>	<b>465</b>	<b>50</b>	<b>455</b>	<b>29</b>	<b>534</b>

Fiscal Year 2001 Congressional Budget Justification

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Fiscal Year 2001 Congressional Budget Justification

**Annual Performance Measures**  
 FY 1999 actuals as of September 30, 1999

**Consumer Protection Mission**

<b>Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.</b>			
	FY 1999 Actual	FY 2000 Target	FY 2001 Target
<i>Objective 1.1-Identify fraud, deception, and unfair practices that cause the greatest consumer injury:</i>			
Measure 1.1.1: Cumulative number of consumer complaints and inquiries entered in database.	398,558	600,000	800,000
<i>Objective 1.2-Stop fraud, deception and unfair practices through law enforcement:</i>			
Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud.	\$454.1 million	\$250 million	\$250 million
Measure 1.2.2: Increase compliance in areas targeted for law enforcement.	59%	n/a	n/a
Measure 1.2.3: Increase compliance in targeted self-regulated areas.	55%	n/a	n/a
Measure 1.2.4: Percentage of targeted industry brought into compliance through law enforcement and self regulation.	78%	50 - 75%	50 - 75%
<i>Objective 1.3-Prevent consumer injury through education:</i>			
Measure 1.3.1: Number of education publications distributed to or accessed electronically by consumers.	8.589 million	8.7 million	10.0 million

**Maintaining Competition Mission**

<b>Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.</b>			
	FY 1999 Actual	FY 2000 Target	FY 2001 Target
<i>Objective 2.1-Identify anticompetitive mergers and practices that cause the greatest consumer injury:</i>			
Measure 2.1.1: Average number of days for review of HSR-reported transactions.	19	20	20
Measure 2.1.2: Number of non-merger investigations opened per year.	45	45 to 70	45 to 70
<i>Objective 2.2-Stop anti-competitive mergers and practices through law enforcement:</i>			
Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.	80%	80%	80%
Measure 2.2.2: Dollar savings for consumers resulting from FTC actions.	\$1.2 billion	\$500 million	\$500 million
Measure 2.2.3: Average time, in months, from proposed consent orders to divestitures.	4	9	9
<i>Objective 2.3-Prevent consumer injury through education:</i>			
Measure 2.3.1: Identify and survey FTC "customers" in the marketplace.	design survey	test survey	analyze results
Measure 2.3.2: Average number of days to issue advisory opinions in health care area.	63	90	90

# Consumer Protection Mission

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

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

**FY 2000 Budgeted Resources:** 94 FTE      \$12,000,800

## **1. GPRA Five-Year Strategies**

- a. Establish and expand the capacity of a comprehensive nationwide consumer complaint database, using the existing Telemarketing Complaint System as the foundation.
- b. Assure the privacy and security of database information.
- c. Improve the agency's ability to collect information by monitoring the marketplace and holding hearings and workshops.
- d. Search for new methods of collecting reliable data to identify problem areas.

## **2. FY 2000 Implementation Plan**

- ! Expand the Consumer Sentinel database by (1) identifying new sources of consumer complaint data and problem areas, (2) soliciting broader participation by U.S. and foreign law enforcement partners, and (3) taking the steps necessary to permit more data exchange with foreign countries.
- ! Continue to enhance the ability to collect and analyze information in the databases so the agency can better evaluate the economic impact of consumer protection problems and the effectiveness of law enforcement, regulation, and education.
- ! Systematically monitor the Internet, through "surf days" and the use of new technologies in order to target illegal practices and track the effectiveness of our education and law enforcement efforts.
- ! Identify newly emerging consumer protection issues (e.g., the effect of new information technologies and the global economy on the consumer market) and explore them through public workshops, hearings, and studies.

## **3. FY 2000 Performance Measures**

**In FY 2000, the agency will:**

- ! Increase the number of consumer complaints and inquiries in the FTC's databases to at least 600,000.

The FTC continues to focus law enforcement resources on the most serious consumer protection problems identified from its consumer complaint databases. Our data enable us to rapidly detect and respond to fraud, deception, and other illegal practices, and to prevent consumer injury in a timely fashion. Further, by broadly sharing our fraud complaints with

external partners, we are able to enhance the effectiveness of law enforcement agencies across the U.S. and Canada.

#### **4. Program Evaluations**

- ! Determine whether the Consumer Information System is providing adequate data analysis and security, and whether it would be cost-effective to update it.
- ! Assess privacy protections by reviewing complaints, if any, and evaluating the policies in place.
- ! Evaluate the utility of workshops and hearings for identifying and exploring newly emerging consumer protection issues by, among other things, surveying participants in these public forums and reviewing the information obtained at these events.

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

**FY 2000 Budgeted Resources:** 374 FTE \$48,027,400

**A. Stopping Fraud**

**1. GPRA Five-Year Strategies**

- a. Lead and coordinate a nationwide attack on telemarketing fraud.
- b. Target law enforcement efforts every year on three or four additional areas of significant fraud, based on the number of complaints, extent of consumer injury, trends shown by the database, etc.
- c. Leverage resources, where possible, through joint enforcement with federal and state partners (e.g., Postal Inspection Service, Department of Justice, State Attorneys General, Securities and Exchange Commission, Federal Communications Commission).
- d. Establish a comprehensive program to assure compliance with federal district court orders in fraud cases.
- e. Target newly emerging “frontier” areas of fraud (e.g., cross-border and online scams).

**2. FY 2000 Implementation Plan**

- ! Lead law enforcement efforts against telemarketing fraud with federal/state partners; target those who “assist and facilitate” telemarketing fraud; initiate review of the Telemarketing Sales Rule.
- ! Target fraud on the Internet.
- ! Increase the role of the Rapid Response Team to stop rapidly emerging high tech frauds identified by the database and other sources.
- ! Continue the comprehensive program to stop fraudulent “pay-per-call” schemes and the “cramming” of unauthorized charges on telephone bills.
- ! Increase efforts to stop abusive lending practices in the subprime mortgage industry which have an especially adverse impact on low-income, minority and elderly consumers.
- ! Leverage the agency’s resources through public sector partnerships, and develop cooperative strategies with other countries to combating international fraud.
- ! Monitor compliance with federal district court orders, prosecute violators for civil and/or criminal contempt, and publicize actions to increase deterrence.

**3. FY 2000 Performance Measures**

**In FY 2000, the agency will:**

- ! Save consumers over \$250 million by stopping consumer fraud.

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

settlement with the agency. We increase these consumer savings by leading joint law enforcement initiatives with federal, state, and international partners.

#### **4. Program Evaluations**

- ! Assess the impact of anti-fraud efforts using database information (e.g., the number of complaints, the amount of injury, the number of fraudulent operators).
- ! Assess the overall trends revealed by the database to determine whether the amount of resources dedicated to the fraud program should be altered or the program's priorities modified.
- ! Compare the cost-effectiveness of existing efforts to fight fraud with the cost-effectiveness of alternative approaches, such as criminal enforcement, more stringent civil remedies, and consumer education.

### **B. Ensuring Broad-Based Protections for Consumers**

#### **1. GPRA 5-Year Strategies**

- a. Monitor national advertising in print, television, radio and other electronic media to identify illegal practices that may not be fully captured by the database.
- b. Identify and target for law enforcement areas that create the greatest risks to consumer health, safety, and economic well-being.
- c. Minimize the burdens of FTC rules, guides, and orders through systematic review.
- d. Encourage self-regulation and private initiatives, where appropriate, in lieu of regulation or law enforcement.

#### **2. FY 2000 Implementation Plan**

- ! Monitor advertising in traditional media and the Internet, targeting deceptive claims involving, among other things: (1) health and safety, (2) children, (3) the new technologies, and (4) major manufacturers, products, or ad campaigns. Among the products raising the greatest health and safety concerns are over-the-counter drugs, weight loss products/programs, dietary supplements, health care products and services, tobacco, and alcohol.
- ! Monitor the Internet for misleading uses of online technologies, e.g., hyperlinks, search engine practices, etc.
- ! Continue online privacy program: (1) implementing the Children's Online Privacy Protection Act; (2) encouraging self-regulation; (3) monitoring the adoption of privacy principles by online marketers.
- ! Conduct a major study of the marketing of violent videos, music and movies and the effectiveness of industry rating systems and systems for preventing marketing and sale of age-restricted products to an inappropriate audience.
- ! Target significant violations of the consumer credit statutes, with a focus on enforcing recently enacted amendments to those statutes.



- ! Work with public and private sector partners to promote truthful, non-deceptive practices and compliance with FTC Rules and Guides; develop self-regulatory, amnesty, and/or leniency programs to resolve routine, less significant violations.
- ! Monitor compliance in areas of targeted law enforcement and self-regulatory programs pursued in FY 1998, and take appropriate follow-up action (e.g., enforcement, education, etc.) where compliance goals have not been met.
- ! Initiate review of scheduled Rules and Guides for current relevance, addressing application to "frontier" areas and, where applicable, NAFTA harmonization; recommend amendment or repeal as appropriate.
- ! Evaluate compliance by companies under order, work with them to achieve voluntary compliance, and initiate formal enforcement where compliance falls short.

### **3. FY 2000 Performance Measures**

#### **In FY 2000, the agency will:**

- ! Bring 50-75% of the industries targeted in FY 1998 for law enforcement or self-regulatory programs into compliance with the law.

Our goal in the non-fraud area is to increase compliance with the laws against deceptive and unfair practices, and thereby ensure that consumers have more accurate and complete information for their purchasing decisions. One strategy is to target areas where misleading or unfair practices are widespread, and to improve significantly the level of compliance and consumer protection through law enforcement or self-regulatory programs.

### **4. Program Evaluations**

- ! Assess the adequacy of data for targeting non-fraud law enforcement efforts and the cost-effectiveness of gathering better data.
- ! Assess whether the mix of resources allocated to fraud and non-fraud programs is appropriate in light of changes in the marketplace.
- ! Evaluate the effectiveness of law enforcement for increasing compliance in targeted areas.
- ! Evaluate the success of self-regulatory programs and identify factors to evaluate success in the future.
- ! Determine whether there are new industries or areas of marketing that require law enforcement or that may be appropriate for self-regulation.

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

***FY 2000 Budgeted Resources:*** 46 FTE \$5,724,800

**1. GPRA Five-Year Strategies**

- a. Focus consumer and business education efforts on areas where fraud, deception, unfair practices, and information gaps cause the greatest injury.
- b. Extend the reach of consumer and business education through private and public partnerships and the use of new media such as the Internet.
- c. Improve the timeliness of responses to consumer and business inquiries.
- d. Increase public awareness of consumer protection problems and solutions by conducting and publishing studies on changes in the marketplace and the impact of business and government actions on consumers.

**2. FY 2000 Implementation Plan**

- ! Develop consumer education campaigns for all major law enforcement initiatives, using new and traditional media and public and private partnerships.
- ! Publicize widely the FTC's new toll-free number and the telephone number for identity theft complaints.
- ! Expand the reach of consumer education messages by targeting new population groups.
- ! Develop new consumer and business education content for the FTC's website and the inter-agency **consumer.gov** website to attract more visitors.
- ! Upgrade the agency's capacity and technology for handling telephone, mail, and e-mail inquiries from consumers and businesses, and increase the timeliness of responses to such inquiries.
- ! Publish and distribute reports on important consumer protection issues, including economic studies of consumer and advertising issues.
- ! File advocacy comments to inform other governmental entities about consumer protection issues, upon their request.

**3. FY 2000 Performance Measures**

**In FY 2000, the agency will:**

- ! Ensure that at least 8.7 million consumers are reached through education messages.

Public education programs benefit consumers by alerting them to their rights under various consumer protection laws and providing practical tips on how to recognize and avoid scams and rip-offs. To reach the broadest possible audience, we make maximum use of the national media, the FTC's **ftc.gov** website, and the inter-agency **consumer.gov** website. Our messages also reach the public through the Consumer Response Center, and hundreds of partners who distribute our materials, link to our website, or post our messages on their websites.

#### **4. Program Evaluations**

- ! Assess whether the agency is using the appropriate mix of media to communicate its consumer education messages and whether the agency is making the best use of the available media.
- ! Determine whether the FTC should reach new audiences, in light of any changes in demographics and marketing practices.
- ! Encourage consumer behavioral research within and outside the Commission that will help the agency to evaluate the effectiveness of its education messages.
- ! Review the focus of FTC education efforts and adjust based on changing consumer and business needs.

## Maintaining Competition Mission

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

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

**FY 2000 Budgeted Resources:** 50 FTE      \$6,318,200

### **1. GPRA Five-Year Strategies**

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

### **2. FY 2000 Implementation Plan**

#### **A. All Programs**

- ! Timeliness of review. Monitor the time and resources needed to conduct preliminary investigations. Review the progress of all ongoing investigations on at least a monthly basis. For mergers filed under the HSR program, maintain statistics for the average time for clearing transactions that do not require further review and the average time for completing all HSR investigations. Review the statistics on a semi-annual basis. If the average time to complete HSR investigations during the preceding 12 months exceeds 20 days, review the efficiency of merger reviews during the initial 30-day period under HSR and make any necessary adjustments.
- ! Resource management. Monitor resource needs and consumption of merger and nonmerger programs and make adjustments as appropriate.

- ! Encourage reporting of anticompetitive practices. Use speeches, electronic media and other publications to inform potential aggrieved parties that they can lodge complaints with us.
- ! Analysis of competition issues. Evaluate the need for in-depth study of a major competition issue, such as the 1996 study of competition in the global economy and the 1997 study of joint ventures and other collaborative arrangements.
- ! Training. Conduct training programs in investigative skills and antitrust analysis, including a competition overview program given twice-yearly for new attorneys, summer interns and paralegals, and supplemental programs offered periodically on various skills such as witness interviewing, taking and defending depositions and legal writing. Conduct monthly luncheon programs featuring speakers from within and outside the agency on substantive or procedural topics. In addition, provide career enhancement training for support staff in subjects such as paralegal skills and effective writing, and computer training for all staff. Ensure that lead attorneys and managers collect any important lessons learned at the close of each significant investigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.

## **B. Mergers Filed Under HSR**

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

## **C. HSR Compliance Enforcement**

- ! HSR compliance. Monitor compliance with the requirements of the *HSR Act* by merging entities. As necessary, investigate apparent violations and prepare a recommendation on whether to seek civil penalties if merging entities failed to fulfill their obligations under HSR.
- ! Consent orders. If an investigation establishes reason to believe that a merging party has failed to comply with requirements of the *HSR Act* and that an enforcement action would be in the public interest, seek to negotiate a consent order for an appropriate amount of civil penalties.

- ! Civil penalty litigation. If an appropriate consent order cannot be negotiated, prepare a recommendation that the Department of Justice file an action for civil penalties under the *HSR Act*; if filed, litigate such action as authorized by the Attorney General.

#### **D. Mergers Not Subject to HSR**

- ! Not all mergers are subject to HSR requirements. Examples include mergers that do not meet threshold values or create specific types of joint ventures. To identify potentially anticompetitive mergers not reported under HSR requirements, we must use other techniques such as (1) monitoring the trade press; (2) responding to and following up on case leads by Congressional offices, other Executive branch agencies, state and local government; and (3) following up on complaints from consumers, businesses, the bar and the general public. After identification, we seek investigational clearance through the inter-agency liaison process. If initial review indicates a need for further investigation, prepare a recommendation to the Merger Screening Committee for the opening of an initial phase investigation or, if appropriate, a full phase investigation with a request that the Commission authorize the use of compulsory process. If appropriate, seek an agreement from the merging entities to postpone the merger (if not already completed) or to hold competing businesses separate pending further review.
- ! Initial phase investigation. Employ appropriate investigative techniques to obtain other relevant information, including documents, declarations or testimony, from the merging parties and third parties. If the evidence indicates a potential for competitive harm, prepare a recommendation to the Merger Screening Committee for the opening of a full phase investigation with a request that the Commission authorize the use of compulsory process.

#### **E. Nonmerger Practices**

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

### **3. FY 2000 Performance Measures**

#### **In FY 2000, the agency will:**

- ! Complete the review of all HSR-reported transactions, on average, within 20 days.
- ! Maintain the number of new nonmerger investigations opened during fiscal years 1991-1996 (from 45 to 70 new investigations per year), if that number of nonmerger investigations continues to be appropriate in light of marketplace conduct and the need to deter anticompetitive business practices.

### **4. Program Evaluations**

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

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

***FY 2000 Budgeted Resources:*** 386 FTE \$49,177,900

**1. GPRA Five-Year Strategies**

- a. Continue to save consumers millions of dollars a year by challenging anticompetitive mergers by negotiating consent orders and winning litigated orders.
- b. Negotiate merger and nonmerger consent orders and win litigated orders that have significant remedial, precedential, and deterrent effects.
- c. Improve negotiation, litigation and economic skills through continuous learning.
- d. Maintain the progress made in FY 1995-96 in ensuring the effectiveness of remedies in Commission orders.
- e. Ensure that administrative litigation and adjudication reach a timely resolution.

**2. FY 2000 Implementation Plan**

**A. All Programs**

- ! Review ongoing investigations. Review the progress of all ongoing investigations on at least a monthly basis. Monitor time and resource expenditures. Review substantive issues and assess results of the investigation and the likelihood of serious competitive and consumer injury from the practice under investigation.
- ! Training. Continue and improve the training programs begun in 1995, including courses in taking and defending depositions, litigation skills, negotiation skills and competition analysis. Ensure that lead attorneys, economists and managers collect any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.
- ! Trial administration. Monitor the timeliness of administrative adjudication, including by issuing to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.

**B. Merger Enforcement**

- ! HSR "second request" investigations. For those merger transactions found during the initial HSR review period to raise potentially significant competitive concerns, employ HSR "second requests" and other appropriate investigative techniques during the extended HSR waiting period to obtain additional information relevant to determining the legality of the transaction, including documents, declarations or testimony, from the merging parties and third parties. Prior to the expiration of the extended waiting period (20 days from the parties' substantial compliance with the second requests, or 10 days for cash tender offers), complete the analysis of likely competitive effects of the transaction and prepare recommendations to Bureau management and the Commission on whether enforcement action is warranted.
- ! Non-HSR investigations. Employ appropriate investigative techniques to obtain other relevant information, including documents, declarations or testimony, from the merging parties and



third parties. Upon completion of the investigation, prepare recommendations to Bureau management and the Commission on whether enforcement action is warranted.

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

### **C. Merger Compliance**

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

### **D. Nonmerger Enforcement**

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

#### **E. Nonmerger Compliance**

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

### **3. FY 2000 Performance Measures**

#### **In FY 2000, the agency will:**

- ! Achieve a positive result in at least 80% of the cases in which the Commission finds reason to believe a violation has been committed (including consent orders, litigation victories, and, for mergers, transactions abandoned after recommendation of a complaint).
- ! Maintain pace to save consumers at least \$500 million during fiscal year 2000 by taking action against anticompetitive mergers that would otherwise increase prices.

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

other anticompetitive practice absent enforcement action, and (3) the likely duration of the anticompetitive price increase. This information generally will be available in merger investigations and some, but not all, nonmerger investigations, depending on the nature of the analysis required for the violation.<sup>1</sup> In some cases, detailed pricing data or other information will enable the calculation of a relatively precise estimate of the likely price increase. In other cases, an estimate can be derived from the analytical method used to identify the relevant market.<sup>2</sup> Under that methodology, prices of products in the relevant market generally could be increased by at least 5% before a significant number of consumers would turn to potential substitute products that are outside that market. In these cases, the agency will conservatively estimate that at least a 1% anticompetitive price increase would occur absent enforcement action.

The duration of the anticompetitive price increase generally will be assumed to be two years. This also is based on the analytical guidelines used by the FTC and the Department of Justice for the analysis of horizontal mergers. Under the Horizontal Merger Guidelines, an enforcement action is not likely if the entry of significant new competitors would occur within two years.<sup>3</sup> Therefore, we can safely assume that the benefits of merger enforcement persist for at least two years. In some cases, the facts may indicate that anticompetitive prices could be maintained for more than two years.<sup>4</sup>

Case-specific estimates of consumer savings, if available, will be used to validate the reasonableness of the one percent, two-year default parameters. These default parameters may significantly underestimate the likely consumer savings in some cases. For example, in the *Staples/Office Depot* merger case, agency staff estimated, based on company data, that the merger would result in consumer

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

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

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

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

losses totaling approximately \$1.1 billion over a five-year period. The conservative default estimate would have been \$24.75 million over two years.

- ! Maintain an average time from proposed consent order to divestiture of no more than 9 months. The agency seeks to achieve prompt divestiture of the assets needed to restore competition to the market. Experience shows that most respondents can achieve divestiture within 9 months or less.

#### **4. Program Evaluations**

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

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

***FY 2000 Budgeted Resources:*** 29 FTE      \$3,740,900

**1. GPRA Five-Year Strategies**

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

**2. FY 2000 Implementation Plan**

- ! Guidelines—Consider whether further revisions are needed to the Horizontal Merger Guidelines or other guidelines; consider whether to issue additional guidelines, as appropriate.
- ! Advisory opinions—Continue to provide Commission and staff advisory opinions on competition issues; continue to provide guidance in informal telephone requests, particularly concerning HSR matters.
- ! Advocacy comments—File advocacy comments to inform other governmental entities about competition issues, upon their request.
- ! Amicus briefs—File amicus briefs in appropriate competition matters.
- ! Written releases—Monitor the content of complaints, press releases, and analyses to aid public comment to ensure they are “transparent,” i.e., that they explain in sufficient detail and with sufficient clarity the evidence and theory of a case, within the constraints of confidentiality.
- ! Other materials—Make available prepared texts of speeches; as appropriate, develop other materials that explain Commission policies and procedures; circulate economic papers on competition issues.
- ! Public speaking—Continue to have Commissioners and staff speak at and participate in seminars, panel discussions and conferences to explain how the Commission analyzes mergers and business practices.
- ! International efforts—Continue to support outreach efforts to international bodies to explain U.S. competition perspectives; continue to aid the development of antitrust laws and programs in developing nations by participating in technical missions.
- ! Consumer/business inquiries—Respond to communications from consumers, businesses and others regarding potentially anticompetitive practices.
- ! Disseminating information through the Internet—To the extent feasible, make competition-related information, including guidelines, written releases, advisory opinions, advocacy comments, speeches and other informative documents, available on the Internet.
- ! Assessment—Assess whether education and outreach efforts target the right audiences and address the issues that have the most impact on the marketplace. Seek input from consumer groups, business groups, bar groups and other FTC “customers” on the effectiveness of FTC educational efforts. Assess methods of measuring success of educational efforts on a consistent, reliable basis.

### **3. FY 2000 Performance Measures**

#### **In FY 2000, the agency will:**

- ! Quantify and compare with previous years the number of education and outreach efforts, including the number of speeches, public speaking opportunities and participations by Commission personnel on competition issues, the number of advisory opinions issued, the number of advocacy comments filed, the number of amicus briefs filed, and the number of international outreach efforts.
- ! Pursuant to the Health Care policy statements, issue advisory opinions in the health care area within 90 days from the receipt of all necessary information from the requesting party.

### **4. Program Evaluations**

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

## Consumer Protection Mission

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

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

***FY 2001 Budgeted Resources:***    104 FTE            \$15,332,500

***Change from Prior Year:***            10 FTE            \$3,331,700

### **Additional Resources**

The FTC Consumer Response Center (CRC) answers a growing volume of consumer complaints and inquiries received by telephone, mail, and e-mail. The complaint data are downloaded into Consumer Sentinel -- the largest consumer fraud database in North America and the only one accessible through a secure web site to enforcement partners across the U.S. and Canada. Before implementation of the toll-free number, the CRC was responding to over 14,000 consumers calls and 15,000 consumer letters, internet complaints, and brochure requests each month. Call volume on the new toll free number -- 877-FTC-HELP -- has the potential to increase the number of incoming calls by as many as 25,000-45,000 calls per month.

Additional resources will support (a) the expansion of the CRC to handle the increasing number of consumer complaints and inquiries, (b) continuous data analysis of complaints to identify targets for enforcement and consumer education programs, and (c) the transformation of Consumer Sentinel into a worldwide consumer complaint database.

The Commission will systematically collect consumer complaints about identity theft, as required by the recently enacted Identity Theft and Assumption Deterrence Act. The database of these complaints is expected to grow significantly, as the telephone number for "ID Theft" is more widely publicized. The Commission not only will receive and record complaints from consumers, it will refer individual cases to appropriate agencies, undertake consumer education about the identity theft problem, and regularly analyze the complaint data to identify trends.

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

### **1. GPRA Five-Year Strategies**

- a. Establish and expand the capacity of a comprehensive consumer complaint database, using the existing Telemarketing Complaint System as the foundation.
- b. Assure the privacy and security of database information.
- c. Improve the agency's ability to collect information by monitoring the marketplace and holding hearings and workshops.

d. Search for new methods of collecting reliable data to identify problem areas.

## **2. FY 2001 Implementation Plan**

- ! Continue to expand the Consumer Sentinel database by soliciting broader participation by U.S. and foreign law enforcement partners and developing data sharing arrangements with foreign countries.

Build and operate a new database for identity theft complaints pursuant to the Identity Theft and Assumption Deterrence Act and refer individual cases to criminal law enforcement agencies.

- ! Improve our technological capacity to monitor the Internet, and expand our capacity to analyze the increasing volume of information in the databases and to assess the economic impact of consumer protection problems and the effectiveness of our law enforcement and education efforts.
- ! Identify -- through workshops, hearings, and studies -- newly emerging consumer protection issues (e.g., the impact on consumers of electricity deregulation, the applicability of existing consumer protection laws to new types of information products, how technology convergence impacts consumers, etc.).

## **3. FY 2001 Performance Measures**

### **In FY 2001, the agency will:**

- ! Increase the number of consumer complaints and inquiries in the FTC's databases to at least 800,000.

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

## **4. Program Evaluations**

- ! Determine whether the software is providing adequate data analysis and security, and whether it would be cost-effective to update it.
- ! Assess privacy protections by reviewing complaints, if any, and evaluating the policies in place.
- ! Evaluate the utility of workshops and hearings for identifying and exploring newly emerging consumer protection issues by, among other things, surveying participants in these public forums and reviewing the information obtained at these events.



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

***FY 2001 Budgeted Resources:***    433 FTE            \$62,745,800

***Change from Prior Year:***            59 FTE            \$14,718,400

**Additional Resources**

The Internet

The Internet has the potential to deliver traditional goods and services, often more conveniently, faster, and at lower prices than traditional media. Moreover, at an ever increasing rate, it is stimulating the development of innovative products and services that were barely conceivable just a few years ago and enabling consumers to tap into rich sources of information that they can use to make better-informed purchasing decisions. E-commerce is growing exponentially and already has had a profound impact of the marketplace. Annual consumer sales on the Internet are expected to skyrocket from \$15 billion in 1999 to \$78 billion in 2003. The next revolution in technology is likely to be information devices that enable consumers -- any time and anywhere -- to surf the Web, schedule appointments, program home appliances, compute, e-mail, telephone, take notes, etc. The convergence of technologies will lead to vast changes in the way consumers shop and what they spend their money on. They'll be spending less on things and more on services to get things done. Subscriptions, contracts, and license fees will be the vehicles for purchasing information and software applications.

These developments obviously promise enormous benefits to consumers and the economy. There is real danger, however, that these benefits may not be realized if consumers identify the Internet with fraudulent operators. Fraud on the Internet is an enormous concern for the Commission. The FTC has responded with a comprehensive law enforcement campaign. We have monitored the Internet and identified problems through 20 surf days conducted with over 250 state, federal, international and private sector partners. We have brought over 100 Internet-related cases against over 300 companies and individuals.

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

As this new marketplace continues to grow explosively, the FTC will need to expand its online presence. With additional resources, we will increase our Rapid Response team to tackle high-tech frauds that are getting bigger and more complicated, and appearing at a faster pace. As the Internet market becomes more mainstream, we will assure compliance with all our consumer protection laws, including the many credit statutes we enforce. We will focus more resources on traditional advertising issues, and develop appropriate standards for online compliance, taking into account unique characteristics of the electronic environment. We will work with industry and encourage self-regulatory approaches. We will continue our role in promoting online privacy, which remains an area of deep concern for consumers. The Commission will monitor compliance with the recently enacted Children's Online Privacy Protection Act and continue to encourage self-regulatory initiatives. In addition, we will also, encourage our international consumer protection partners to undertake online consumer protection.

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

### Telecommunications

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

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

### Newly Deregulated Markets

Most states are considering deregulation of their electricity markets; a few already have active competition, and it is estimated that approximately 20 states will have it in the next few years. This new deregulated market will fall within the FTC's consumer protection jurisdiction and be subject to our rules and guides and the credit statutes we enforce. With additional resources, we will assure compliance with our consumer protection laws in this market, provide consumer/business education, and encourage self-regulatory initiatives.

### Subprime Lending and "Fringe" Banking

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

## **A. Stopping Fraud**

### **1. GPRA Five-Year Strategies**

- a. Lead and coordinate a nationwide attack on telemarketing fraud.
- b. Target law enforcement efforts every year on three or four additional areas of significant fraud, based on the number of complaints, extent of consumer injury, trends shown by the database, etc.
- c. Leverage resources, where possible, through joint enforcement with federal and state partners (e.g., Postal Inspection Service, Department of Justice, State Attorneys General, Securities and Exchange Commission, Federal Communications Commission).
- d. Establish a comprehensive program to assure compliance with federal district court orders in fraud cases.
- e. Target newly emerging "frontier" areas of fraud (e.g., cross-border and online scams).

## **2. FY 2001 Implementation Plan**

- ! Target the growing number and variety of fraudulent marketing practices on the Internet.
- ! Use the Rapid Response Team to stop rapidly emerging high tech frauds identified by the database and other sources.
- ! Continue to lead the attack on telemarketing fraud nationwide and complete the Telemarketing Sales Rule review.
- ! Monitor compliance with the newly amended Pay Per Call Rule, and bring enforcement actions as appropriate.
- ! Investigate practices surrounding loans by non bank lenders to low income consumers, such as pay day loans, and target those that violate existing consumer protection statutes.
- ! Leverage the agency's resources through joint law enforcement and education initiatives with public sector partnerships; develop cooperative strategies with other countries to combat cross border fraud.
- ! Monitor compliance with federal district court orders, prosecute violators for civil and/or criminal contempt, and publicize actions to increase deterrence.

## **3. FY 2001 Performance Measures**

### **In FY 2001, the agency will:**

- ! Save consumers over \$250 million by stopping consumer fraud.

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

#### **4. Program Evaluations**

- ! Assess the impact of anti-fraud efforts using database information (e.g., the number of complaints, the amount of injury, the number of fraudulent operators).
- ! Assess the overall trends revealed by the database to determine whether the amount of resources dedicated to the fraud program should be altered or the program's priorities modified.
- ! Compare the cost-effectiveness of existing efforts to fight fraud with the cost-effectiveness of alternative approaches, such as criminal enforcement, more stringent civil remedies, and consumer education.

### **B. Ensuring Broad-Based Protections for Consumers**

#### **1. GPRA 5-Year Strategies**

- a. Monitor national advertising in print, television, radio and other electronic media to identify illegal practices that may not be fully captured by the database.
- b. Identify and target for law enforcement areas that create the greatest risks to consumer health, safety, and economic well-being.
- c. Minimize the burdens of FTC rules, guides, and orders through systematic review.
- d. Encourage self-regulation and private initiatives, where appropriate, in lieu of regulation or law enforcement.

#### **2. FY 2001 Implementation Plan**

- ! Monitor advertising in traditional media and the Internet and target unfair and deceptive claims that create the greatest health, safety and economic risks to consumers.
- ! Focus resources on traditional advertising issues arising online and develop legal standards that take into account the unique aspects of the electronic marketplace. Identify and pursue misleading uses of new technologies in marketing practices.
- ! Continue to promote industry self-regulation of online privacy, and monitor compliance with the Children's Online Privacy Protection Act.
- ! Promote compliance with FTC Rules and Guides, focusing on marketers in e-commerce and in newly deregulated industries.
- ! Target significant violations of the consumer credit statutes, with particular attention to marketers of newly deregulated services.
- ! Monitor compliance in areas of targeted law enforcement and self-regulatory programs pursued in FY 1999, and take appropriate follow-up action (e.g., enforcement, education, etc.) where compliance goals have not been met.
- ! Initiate review of scheduled Rules and Guides for continuing need and current relevance, addressing application to "frontier" areas and, where applicable, NAFTA harmonization; recommend amendment or repeal as appropriate.

- ! Evaluate compliance by companies under order, work with them to achieve voluntary compliance, and initiate formal enforcement where compliance falls short.

### **3. FY 2001 Performance Measures**

#### **In FY 2001, the agency will:**

- ! Bring 50-75% of the industries targeted in FY 1999 for law enforcement or self-regulatory programs into compliance with the law.

Our goal in the non-fraud area is to increase compliance with the laws against deceptive and unfair practices, and thereby ensure that consumers have more accurate and complete information for their purchasing decisions. One strategy is to target areas where misleading or unfair practices are widespread, and to improve significantly the level of compliance and consumer protection through law enforcement or self-regulatory programs.

### **4. Program Evaluations**

- ! Assess the adequacy of data for targeting non-fraud law enforcement efforts and the cost-effectiveness of gathering better data.
- ! Assess whether the mix of resources allocated to fraud and non-fraud programs is appropriate in light of changes in the marketplace.
- ! Evaluate the effectiveness of law enforcement for increasing compliance in targeted areas.
- ! Evaluate the success of self-regulatory programs and identify factors to evaluate success in the future.
- ! Determine whether there are new industries or areas of marketing that require law enforcement or that may be appropriate for self-regulation.

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

***FY 2001 Budgeted Resources:***    62 FTE            \$10,778,000

***Change from Prior Year:***            16 FTE            \$5,053,200

**Additional Resources**

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

Additional resources -- both human and financial -- will allow us to use available information technology to be more efficient and effective at reaching consumers, businesses, law enforcement officials, and the media. In order to target our audiences, we will utilize multimedia interaction, information kiosks, partnering, electronic communication, and town hall meetings.

We will build online communities based on the different kinds of information and resources we offer and the different audiences we serve, e.g., we will offer free online “subscription services” for our publications, alerts, etc., and opportunities for online training and education. We will expand opportunities for interactivity by developing a graphics-based site to augment our text-based information. We will develop games, contests and quizzes to help educate consumers and reinforce the text messages already available.

Mobile information kiosks will be made available to consumers in their communities. Interactive CD-ROM will steer consumers, whether they are nine or 90, through the variety of subject the FTC deals with, from the newest scams to using credit wisely to being able to spot deceptive advertising. Consumer and business publications will be available for consumers. The FTC’s Web site, [www.ftc.gov](http://www.ftc.gov) and the multi-agency Web site, [www.consumer.gov](http://www.consumer.gov), will be demonstrated at the kiosks. Specifically, consumers will learn how to access publications and file an online complaint on the FTC’s site. A telephone will be available at the kiosk for consumers who want to file a complaint about a fraudulent or deceptive business practice thought the FTC toll-free help line 1-877-FTC-HELP.

To expand our outreach, we will need to increase our partner base by building a database of consumer organizations, professional and trade associations, media, local and state consumer agencies and corporations. These organizations will help us disseminate our consumer and business education messages to their constituencies. We will build a mechanism that will allow us to communicate with the partner in our database. The real-time e-communication will mean that we can share consumer and business education materials with partners immediately. Additionally, we will be able to alert consumers, media, and law enforcement in a specific part of the country to a particular scam in their region. This enhanced partner database and e-communication will help us maintain and expand our dialogue with stakeholders. We will be able

to better hear the consumer and business education challenges our partners face and may, in turn, be better able to work with the partners to develop strategies to address those challenges.

Electronic communication will be supported with “old-fashioned” networking and an expanded program of community outreach using conferences, meetings, traveling exhibits and town hall-type events to present our products and messages.

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

## **1. GPRA Five-Year Strategies**

- a. Focus consumer and business education efforts on areas where fraud, deception, unfair practices, and information gaps cause the greatest injury.
- b. Extend the reach of consumer and business education through private and public partnerships and the use of new media such as the Internet.
- c. Improve the timeliness of responses to consumer and business inquiries.
- d. Increase public awareness of consumer protection problems and solutions by conducting and publishing studies on changes in the marketplace and the impact of business and government actions on consumers.

## **2. FY 2001 Implementation Plan**

- ! Create an electronic newsroom for the media, which can subscribe to email updates about news affecting consumers, businesses and commerce.
- ! Offer a free subscription service designed for consumers and consumer-oriented agencies that provides new information/education, targeted information on subjects consumers choose, or both.
- ! Offer a free subscription service for companies, trade associations and others which provides information about consumer education partnership opportunities, legal/policy updates, etc.
- ! Create an information service for law enforcement officials nationwide to alert them about emerging frauds and law enforcement efforts they might join; offer online training opportunities.
- ! Continue a consumer education/outreach program as a component of all major law enforcement initiatives, using new and traditional media and public and private partnerships.
- ! Expand the reach of consumer education messages by targeting new population groups.

- ! Develop new consumer and business education content and marketing plans for the FTC's website and the inter-agency **consumer.gov** website.
- ! Continue to enhance the agency's capacity and technology for handling telephone, mail, and e-mail inquiries from consumers and businesses, and increase the timeliness of responses to such inquiries.
- ! Publish and distribute reports on significant consumer protection issues.

### **3. FY 2001 Performance Measures**

#### **In FY 2001, the agency will:**

- ! Ensure that at least 10 million consumers are reached through education messages.

Education programs benefit consumers by alerting them to their rights under various consumer protection laws and providing practical tips on how to recognize and avoid scams and rip-offs. To reach the broadest possible audience, we make maximum use of the national media, the FTC's **ftc.gov** website, and the inter-agency **consumer.gov** website. Our messages also reach the public through the Consumer Response Center, and hundreds of partners who distribute our materials, link to our web site, or post our messages on their web sites.

### **4. Program Evaluations**

- ! Assess whether the agency is using the appropriate mix of media to communicate its consumer education messages and whether the agency is making the best use of the available media.
- ! Determine whether the FTC should reach new audiences, in light of any changes in demographics and marketing practices.
- ! Encourage consumer behavioral research within and outside the Commission that will help the agency to evaluate the effectiveness of its education messages.
- ! Review the focus of FTC education efforts and adjust based on changing consumer and business needs.



## Maintaining Competition Mission

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

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

**FY 2001 Budgeted Resources:** 50 FTE            \$6,628,100

**Change from Prior Year:** 0 FTE            \$309,900

### Additional Resources

During fiscal year 1998, a record-setting total of 4,728 proposed transactions were submitted in compliance with the notification and filing requirements of the *HSR Act*, more than triple the number filed in 1991. While fiscal year 1999 brought approximately 2% fewer filings for the year, the dollar value of transactions continues to rise steadily. Premerger review for large transactions is typically much more complex and time-consuming than for smaller transactions, as the number of markets and amount of commerce affected is typically greater. Processing this increasing workload, which we have kept up with through increased productivity and streamlining efforts, requires the use of all FTE allocated this objective.

#### **1. GPRA Five-Year Strategies**

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

#### **2. FY 2001 Implementation Plan**

##### **A. All Programs**

- ! Timeliness of review. Monitor the time and resources needed to conduct preliminary investigations. Review the progress of all ongoing investigations on at least a monthly basis. For mergers filed under the HSR program, maintain statistics for the average time for clearing transactions that do not require further review and the average time for completing all HSR investigations. Review the statistics on a semi-annual basis. If the average time to complete HSR investigations during the preceding 12 months exceeds 20 days, review the efficiency of merger reviews during the initial 30-day period under HSR and make any necessary adjustments.
- ! *Resource management.* Monitor resource needs and consumption of merger and nonmerger programs and make adjustments as appropriate.
- ! Identifying anticompetitive practices. Use speeches, electronic media and other publications to inform potential aggrieved parties that they can lodge complaints with us.
- ! Analysis of competition issues. Evaluate the need for in-depth study of a major competition issue, such as the 1996 study of competition in the global economy and the 1997 study of joint ventures and other collaborative arrangements.
- ! Training. Conduct training programs in investigative skills and antitrust analysis, including a competition overview program given twice-yearly for new attorneys, summer interns and paralegals, and supplemental programs offered periodically on various skills such as witness interviewing, taking and defending depositions and legal writing. Conduct monthly luncheon programs featuring speakers from within and outside the agency on substantive or procedural topics. In addition, provide career enhancement training for support staff in subjects such as paralegal skills and effective writing, and computer training for all staff. Ensure that lead attorneys and managers collect any important lessons learned at the close of each significant investigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.

## **B. Mergers Filed Under HSR**

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

## **C. HSR Compliance Enforcement**

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

#### **D. Mergers Not Subject to HSR**

- ! Not all mergers are subject to HSR requirements but can still be potentially anticompetitive. With these mergers, we will use other techniques to identify those that are potentially anticompetitive, such as (1) monitoring the trade press; (2) responding to and following up on case leads by Congressional offices, other Executive branch agencies, state and local government; and (3) following up on complaints from consumers, businesses, the bar and the general public. After identification, we seek investigational clearance through the inter-agency liaison process. If initial review indicates a need for further investigation, prepare a recommendation to the Merger Screening Committee for the opening of an initial phase investigation or, if appropriate, a full phase investigation with a request that the Commission authorize the use of compulsory process. If appropriate, seek an agreement from the merging entities to postpone the merger (if not already completed) or to hold competing businesses separate pending further review.
- ! Initial phase investigation. Employ appropriate investigative techniques to obtain other relevant information, including documents, declarations or testimony, from the merging parties and third parties. If the evidence indicates a potential for competitive harm, prepare a recommendation to the Merger Screening Committee for the opening of a full phase investigation with a request that the Commission authorize the use of compulsory process.

#### **E. Nonmerger Practices**

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

### **3. FY 2001 Performance Measures**

#### **In FY 2001, the agency will:**

- ! Complete the review of all HSR-reported transactions, on average, within 20 days.

- ! Maintain the number of new nonmerger investigations opened during fiscal years 1991-1996 (from 45 to 70 new investigations per year), if that number of nonmerger investigations continues to be appropriate in light of marketplace conduct and the need to deter anticompetitive business practices.

#### **4. Program Evaluations**

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

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

***FY 2001 Budgeted Resources:***    455 FTE        \$64,778,900

***Change from Prior Year:***        69 FTE        \$15,601,000

**Additional Resources**

We are requesting 69 additional FTE for this objective. Maintaining competitive markets through effective antitrust law enforcement is integral to a healthy U.S. economy. The FTC plays a vital role in this effort by bringing cases to enjoin anticompetitive mergers and to halt anticompetitive business practices.

The merger wave has continued unabated for a decade, seriously straining the FTC's resources. To keep up with the merger wave, the Maintaining Competition Mission has been shifting its available resources from nonmerger activities to the merger arena. Between 1991 and 1999, HSR merger filings increased three-fold from 1,529 to 4,642. Dollar values of the markets affected by such transactions have increased eleven-fold, from \$169 billion in 1991 to over \$1.9 trillion in 1999. Nonmerger business practices that need antitrust scrutiny continue to require additional resources for law enforcement as well. During these years the FTC's competition resources have remained relatively constant. The Commission's request for additional resources is in response to the expected increased level of merger, nonmerger and joint venture activity during fiscal year 2001.

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

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

We continue to absorb some of this ever-increasing workload through more efficient use of resources. However, the demands of the Merger Enforcement Program and the Merger Compliance Program continue to drain substantial resources from our nonmerger activities, resulting in the nonmerger programs operations at a less than optimal level. The addition of resources as requested for this category will reverse this trend and allow the mission to more effectively protect consumers from harm due to anticompetitive activities.

In addition to costs associated with the increase of 69 FTE, we are requesting program increases for program contracts, stenographic services, and travel. These required increases more accurately reflect the resources required to meet the complex demands currently being undertaken by the Mission.

## **1. GPRA Five-Year Strategies**

- a. Continue to save consumers millions of dollars a year by challenging anticompetitive mergers by negotiating consent orders and winning litigated orders.
- b. Negotiate merger and nonmerger consent orders and win litigated orders that have significant remedial, precedential, and deterrent effects.
- c. Improve negotiation, litigation and economic skills through continuous learning.
- d. Maintain the progress made in FY 1995-96 in ensuring the effectiveness of remedies in Commission orders.
- e. Ensure that administrative litigation and adjudication reach a timely resolution.

## **2. FY 2001 Implementation Plan**

### **A. All Programs**

- ! Review ongoing investigations. Review the progress of all ongoing investigations on at least a monthly basis. Monitor time and resource expenditures. Review substantive issues and assess results of the investigation and the likelihood of serious competitive and consumer injury from the practice under investigation.
- ! Training. Continue and improve the training programs begun in 1995 and revised in each of the following years, including courses in taking and defending depositions, litigation skills, negotiation skills and competition analysis. Ensure that lead attorneys, economists and managers collect any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.
- ! Trial administration. Monitor the timeliness of administrative adjudication, including by issuing to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.

### **B. Merger Enforcement**

- ! HSR "second request" investigations. For those merger transactions found during the initial HSR review period to raise potentially significant competitive concerns, employ HSR "second requests" and other appropriate investigative techniques during the extended HSR waiting period to obtain additional information relevant to determining the legality of the transaction, including documents, declarations or testimony, from the merging parties and third parties. Prior to the expiration of the extended waiting period (20 days from the parties' substantial compliance with the second requests, or 10 days for cash tender offers), complete the analysis of likely competitive effects of the transaction and prepare recommendations to Bureau management and the Commission on whether enforcement action is warranted.
- ! Non-HSR investigations. Employ appropriate investigative techniques to obtain other relevant information, including documents, declarations or testimony, from the merging parties and

third parties. Upon completion of the investigation, prepare recommendations to Bureau management and the Commission on whether enforcement action is warranted.

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

### **C. Merger Compliance**

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

### **D. Nonmerger Enforcement**

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

## **E. Nonmerger Compliance**

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

### **3. FY 2001 Performance Measures**

#### **In FY 2001, the agency will:**

- ! Achieve a positive result in at least 80% of the cases in which the Commission finds reason to believe a violation has been committed (including consent orders, litigation victories, and, for mergers, transactions abandoned after recommendation of a complaint).
- ! Maintain pace to save consumers at least \$500 million during fiscal year 2001 by taking action against anticompetitive mergers that would otherwise increase prices.

Measurement and validation. Estimates of consumer savings from the Maintaining Competition Mission take into account three principal factors: (1) the volume of commerce in the markets affected by a merger or other anticompetitive practice, (2) the percentage increase in price that likely would have resulted from the merger or other anticompetitive practice absent enforcement action, and (3) the likely



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

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

Case-specific estimates of consumer savings, if available, will be used to validate the reasonableness of the one percent, two-year default parameters. These default parameters may significantly underestimate the likely consumer savings in some cases. For example, in the *Staples/Office Depot* merger case, agency staff estimated, based on company data, that the merger would result in consumer

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

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

<sup>7</sup> See *id.* § 3.0. This is because the prospect of rapid entry is likely to deter anticompetitive pricing.

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

losses totaling approximately \$1.1 billion over a five-year period. The conservative default estimate would have been \$24.75 million over two years.

- ! Maintain an average time from proposed consent order to divestiture of no more than 9 months. The agency seeks to achieve prompt divestiture of the assets needed to restore competition to the market. Experience shows that most respondents can achieve divestiture within 9 months or less.

#### **4. Program Evaluations**

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

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

***FY 2001 Budgeted Resources:***    29 FTE            \$4,336,700

***Change from Prior Year:***            0 FTE            \$595,800

**Additional Resources**

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

**1. GPRA Five-Year Strategies**

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

**2. FY 2001 Implementation Plan**

- ! Guidelines—Consider whether further revisions are needed to the Horizontal Merger Guidelines or other guidelines; consider whether to issue additional guidelines, as appropriate.
- ! Advisory opinions—Continue to provide Commission and staff advisory opinions on competition issues; continue to provide guidance in informal telephone requests, particularly concerning HSR matters.
- ! Advocacy comments—File advocacy comments to inform other governmental entities about competition issues, upon their request.
- ! Amicus briefs—File amicus briefs in appropriate competition matters.
- ! Written releases—Monitor the content of complaints, press releases, and analyses to aid public comment to ensure they are “transparent,” i.e., that they explain in sufficient detail and with sufficient clarity the evidence and theory of a case, within the constraints of confidentiality.
- ! Other materials—Make available prepared texts of speeches; as appropriate, develop other materials that explain Commission policies and procedures; circulate economic papers on competition issues.
- ! Public speaking—Continue to have Commissioners and staff speak at and participate in seminars, panel discussions and conferences to explain how the Commission analyzes mergers and business practices.
- ! International efforts—Continue to support outreach efforts to international bodies to explain U.S. competition perspectives; continue to aid the development of antitrust laws and programs in developing nations by participating in technical missions.
- ! Consumer/business inquiries—Respond to communications from consumers, businesses and others regarding potentially anticompetitive practices.

- ! Disseminating information through the Internet—To the extent feasible, make competition-related information, including guidelines, written releases, advisory opinions, advocacy comments, speeches and other informative documents, available on the Internet.
- ! Assessment—Assess whether education and outreach efforts target the right audiences and address the issues that have the most impact on the marketplace. Seek input from consumer groups, business groups, bar groups and other FTC “customers” and “stakeholders” on the effectiveness of FTC educational efforts. Assess methods of measuring success of educational efforts on a consistent, reliable basis.

### **3. FY 2001 Performance Measures**

#### **In FY 2001, the agency will:**

- ! Quantify and compare with previous years the number of education and outreach efforts, including the number of speeches and public speaking opportunities/participations by Commission personnel on competition issues, the number of advisory opinions issued, the number of advocacy comments filed, the number of amicus briefs filed, and the number of international outreach efforts.
- ! Pursuant to the Health Care policy statements, issue advisory opinions in the health care area within 90 days from the receipt of all necessary information from the requesting party.

### **4. Program Evaluations**

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