The Economics of Consumer Protection, Antitrust, and Policy

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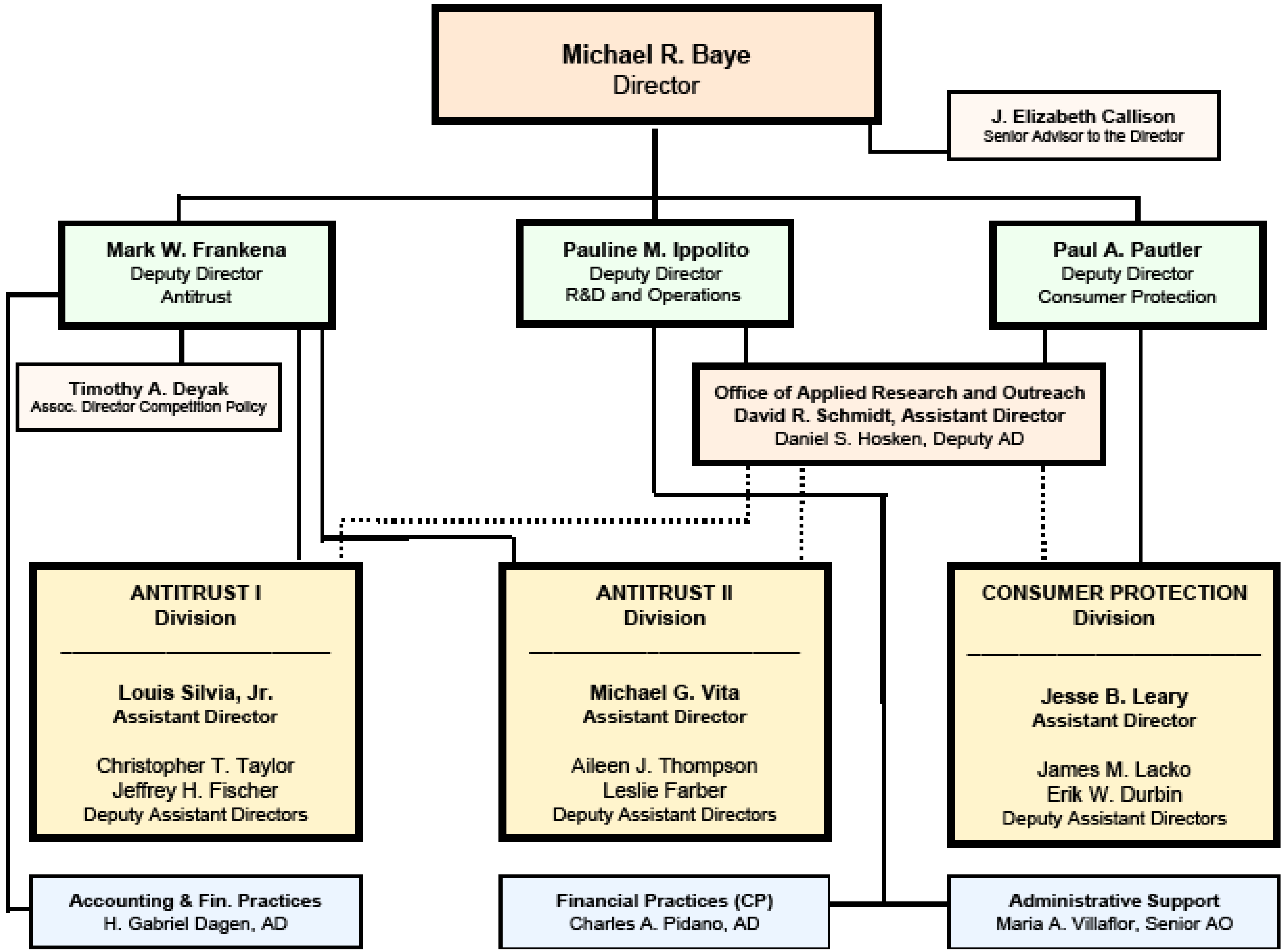
These are my views and do not necessarily represent those of the Federal Trade Commission or any of the Individual Commissioners

The FTC

- Our Goal: Enhance consumer welfare
- Three missions work hand-in-hand to achieve this goal
  - Competition (Antitrust)
  - Consumer Protection
  - Public Policy/Advocacy/R&D

FEDERAL TRADE COMMISSION

BUREAU OF ECONOMICS



Competition

- Competition: The ultimate “consumer protection”
- Competition benefits consumers through
  - Lower prices
  - Improved quality
  - Greater consumer choice
  - Increased innovation

Competition policy in the US

- Protects the competitive process from abuses
  - Stops cartels
  - Stops abuse of dominance
  - Prevents mergers that would lead to price increases
- Advocates for the consumer and the competitive process to other legal bodies, consumers, and businesses

Competition policy in the US (continued)

- Focus is on consumer welfare
  - Competition can, and frequently does, hurt individual competitors as lower prices means lower profits, holding costs constant
  - The FTC does not seek to protect individual competitors
  - The FTC protects the competitive process, thereby protecting the consumer

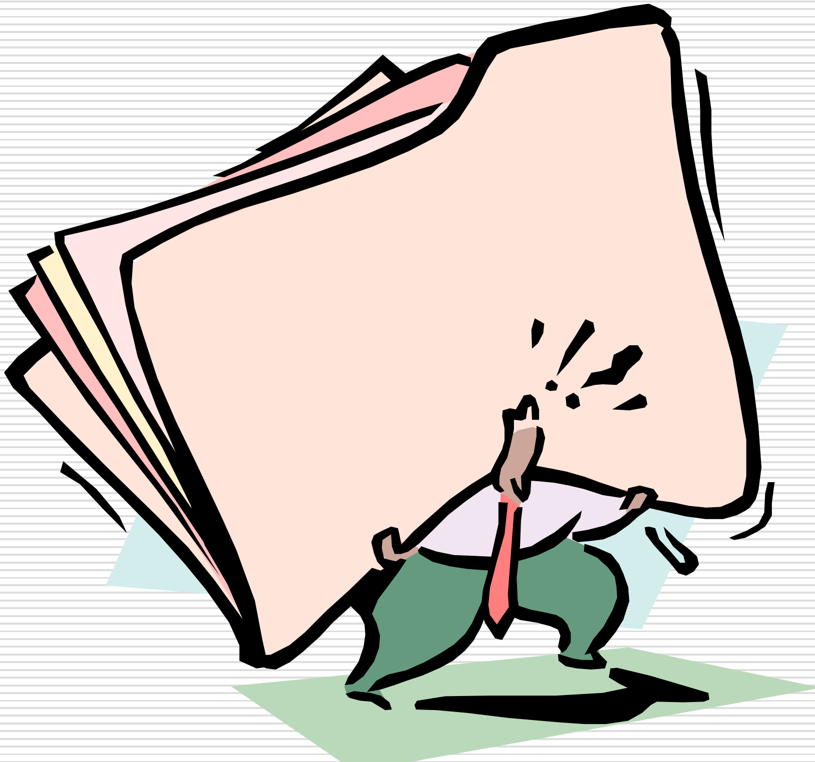
Mergers: How the process works . . .

- Merging parties file with both agencies
  - In FY 2006, 1,768 transactions were reported under the Hart-Scott-Rodino (HSR) Act
- Initial review by staff of pre-merger notification office resolves 70-80% of cases quickly without any investigation.
- Anything they can't handle goes to one of the merger divisions for further review. Quick inquiry resolves most of the rest
- Only a handful need in-depth review
  - In FY 2006, 45 second requests were issued (both DOJ and FTC) or 2.5% of mergers filed

General observations about mergers…

- Most mergers don’t present problems
- Many are pro-competitive or competitively neutral
- Unnecessary delay can impose barriers to efficiency-producing transactions
- Some mergers present competitive concerns
- Objective is to identify the mergers that present concerns, while quickly identifying and disposing of those that do not
- Most competitive concerns are resolved through divestitures rather than litigation

The Details: Pre-merger notification

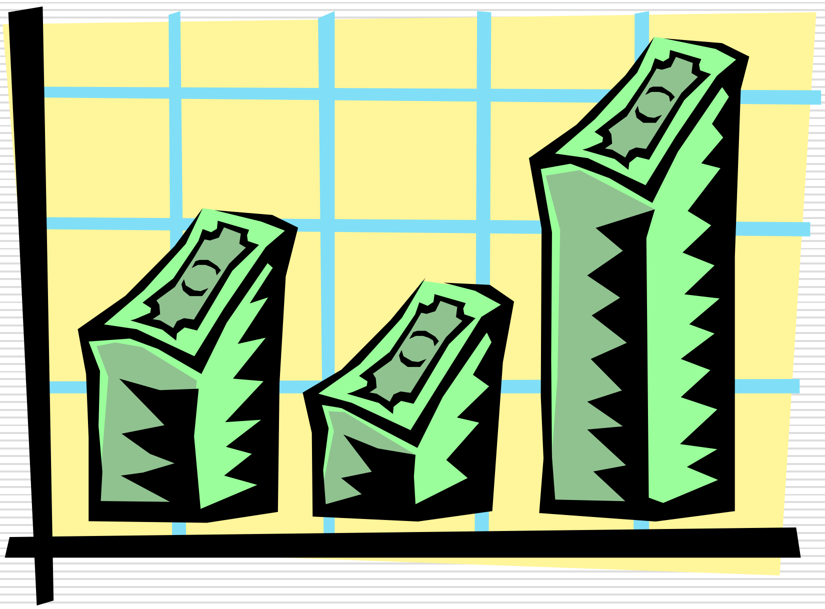


- What transactions are reportable?
- How much does it cost?

What is reportable?

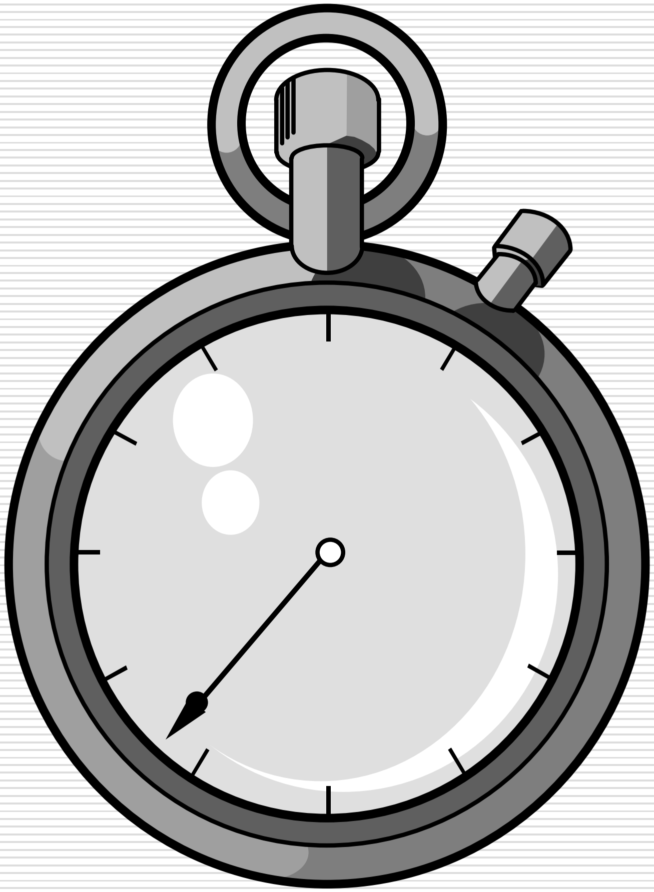
Deals over $252.3 million	Always reportable
Deals between $63.1 and $252.3 million	May be reportable if: One party bigger than $126.2 million Other party bigger than $12.6 million
Deals of less than $63.1 million	NO LONGER reportable

How much does it cost



- New scaled fees
- Deals over $630.8 million: $280,000
- $126.2 and $630.8 million: $125,000
- Between $63.1 and $126.2 million: $45,000
- Fees are indexed

The review process



- 30 day clock begins to run upon filing
- Pre-merger staff conducts preliminary review
- Many cases resolved at this stage

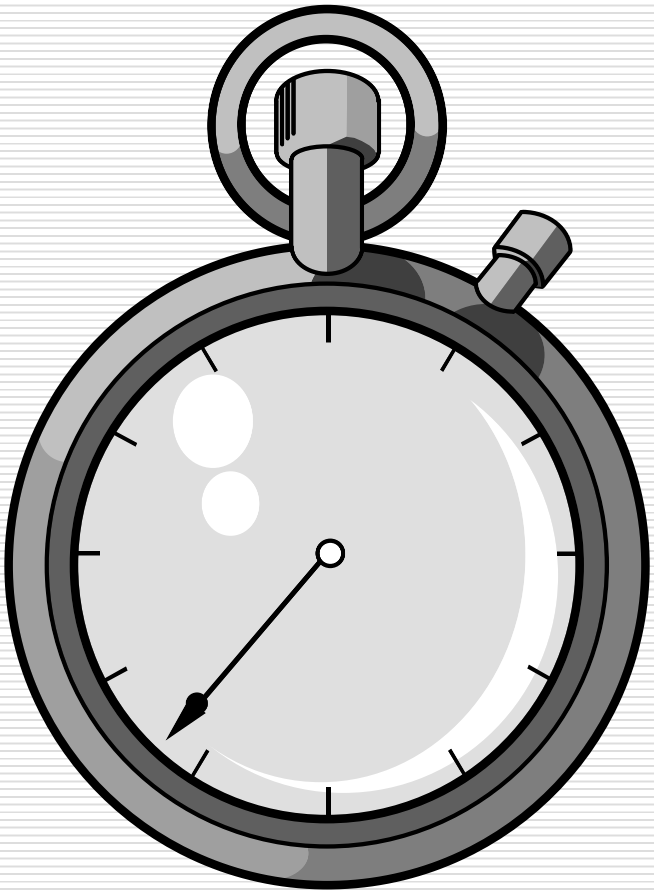
At the end of 30 days . . .

- Two choices:
  - Allow merger to go forward
  - Issue detailed request for more information and documents (“second request”)
- Second request “stops the clock”

After second request made

- Parties have unlimited time to comply, but can’t merge in the meantime
- Formal investigation—with power to compel—proceeds
- Parties and agency negotiate scope of production of documents; internal appeal available
- Negotiations to resolve case continue
  - Typically resolved through divestitures

After parties substantially comply with second request



- New 30 day clock begins to run. At the end of 30 days, either:
  - Agency goes to court to block merger, or
  - Parties are free to merge

Litigation

- Litigated cases (FTC and DOJ) typically resolved at preliminary injunction stage
  - Parties usually abandon transaction if agency win in court
  - Agency usually abandons challenge if parties win in court—but not always (Whole Foods/Wild Oats)
- Court decisions granting or denying injunctions can be appealed to Court of Appeals (and ultimately to Supreme Court)

Role of economics in merger law

- Economic theory and analysis provide the foundations and for evaluating the likely competitive effects of a merger

- Economics provides an organized structure for the information gathered about a merger

Role of economics in merger analysis

- Competitive effects analysis
  - Economic theory and quantitative analysis are tools to determine whether the merger is likely to create or enhance market power (e.g., raise prices or lower quality)
- Other economic considerations are also important, including
  - Entry
  - Efficiencies

Role of economists in merger investigations

- Provide rigorous economic logic and supporting evidentiary analysis that most accurately reflects the possible outcomes from a merger
- Act as complement to the lawyers in conducting the investigation
- Make independent recommendation to Commission

Role of economists in merger litigation

- Support the ongoing investigation
- Work with economic expert:
  - Further analyses
  - Expert reports
  - Prepare for deposition and trial testimony
- Assist in preparation of exhibits and other economic evidence to be used at trial

Recent antitrust work

- Whole Foods/Wild Oats (on Appeal)
- Google/DoubleClick (Closed)
- Cephalon (in Litigation)

Antitrust work in oil and gas markets

- Cases
- Commission reports
- Advocacy
- Research
- Gasoline price monitoring
  - 20 wholesale regions and approximately 360 retail areas nationwide

Consumer protection

- For competition to thrive consumers must receive accurate information about products and services
- Authority under FTC Act to protect consumers against fraud, deception and other “unfair business practices”
  - Truth-in-advertising laws (e.g., claims for food, over-the-counter drugs, dietary supplements, alcohol, and tobacco)
  - Marketing practices (Internet, telecommunications, and direct-mail fraud; deceptive spam; fraudulent business, violations of the Do Not Call provisions of the Telemarketing Sales Rule)

Consumer protection (continued)

- Consumer protection also involves
  - Providing consumers with information in situations where the market is unlikely to provide the information that consumers need in order to make their choices
  - Educating consumers so that they may better protect themselves

Role of FTC in consumer protection

- Encourage provision of truthful information in a form that allows consumers to make their own buying decisions
- Other government agencies focus on controlling product quality directly, as well as providing information:
  - Food and Drug Administration
    - Food safety
    - Drug safety and effectiveness
  - Department of Transportation
    - Automobile safety

Role of economists in consumer protection

- Increased role due to relevance of the development of the “Economics of Information”
- Case development
- Evaluation
- Research
- Advocacy

Recent work by the Bureau of Economics: Consumer protection

- Mortgage Disclosure Study
  - *Truth-in-Lending Act*
  - *Real Estate Settlement Procedures Act*
- Online Behavioral Advertising
- FACTA Scoring Study
  - Do Credit Scores Predict Risk in Insurance Markets, or are they merely used as a "proxy" for race and ethnicity?
- Identity Theft
- Consumer Fraud

Identity theft

- 1998 Congress directed the FTC to:
  - Establish a repository for complaints
  - Provide assistance to victims
  - Conduct consumer education efforts

Prevalence of Identity Theft, 2005
(figures in parentheses are 95 percent confidence intervals)

Victim of:	**Individuals Who Discovered They Were Victims of Identity Theft in 2005**	
	Percent of Population	**Number of Persons (millions)**
Any Type of Identity Theft	3.7% (3.0% - 4.6%)	8.3 (6.6 - 10.3)
Misuse of Existing Credit Card Only	1.4% (1.0% - 2.1%)	3.2 (2.1 - 4.6)
Misuse of Existing Accounts Other Than Credit Card Accounts	1.5% (1.1% - 2.1%)	3.3 (2.4 - 4.6)
New Accounts Opened or Other Frauds Committed	0.8% (0.5% - 1.2%)	1.8 (1.2 - 2.8)

Source: 2006 FTC Identity Theft Survey

Costs of Identity Theft, Misuse Discovered Since 2001

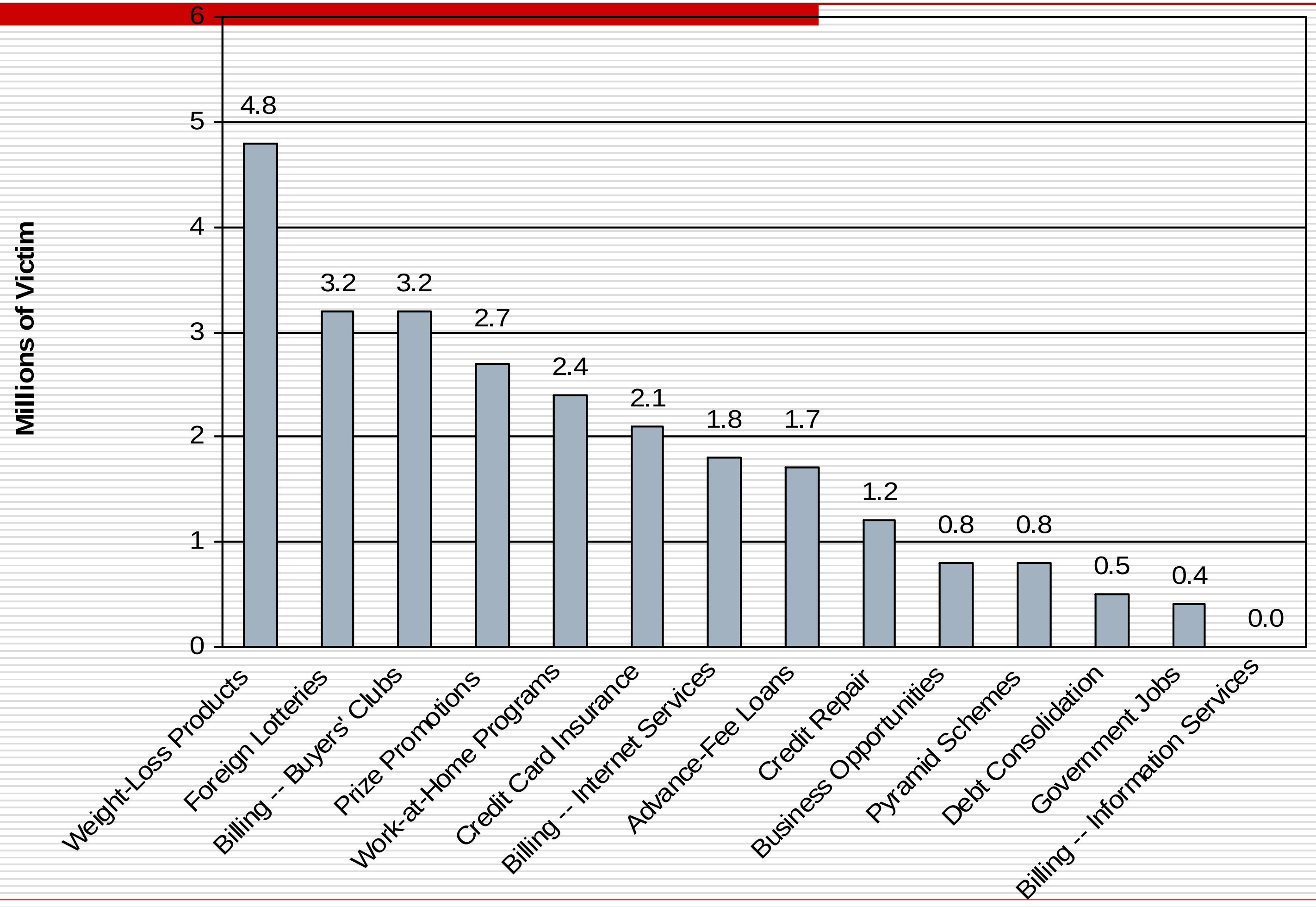
	All Types of Identity Theft	Misuse of Existing Credit Card Only	Misuse of Existing Accounts Other Than Credit Card Accounts	New Accounts Opened or Other Frauds Committed
Gross Value Stolen Using Victim’s Personal Information				
Median	\$500	\$350	\$457	\$1,350
90th Percentile	\$6,000	\$4,000	\$3,800	\$15,000
95th Percentile	\$13,000	\$7,000	\$6,000	\$30,000
Out-of-Pocket Expenses Incurred by Victims				
Median	\$0	\$0	\$0	\$40
90th Percentile	\$1,200	\$132	\$900	\$3,000
95th Percentile	\$2,000	\$400	\$1,200	\$5,000
Hours Victims Spent Resolving Problems Related to Being a Victim of Identity Theft				
Median	4	2	4	10
90th Percentile	55	25	44	100
95th Percentile	130	60	96	1,200

Source: 2006 FTC Identity Theft Survey

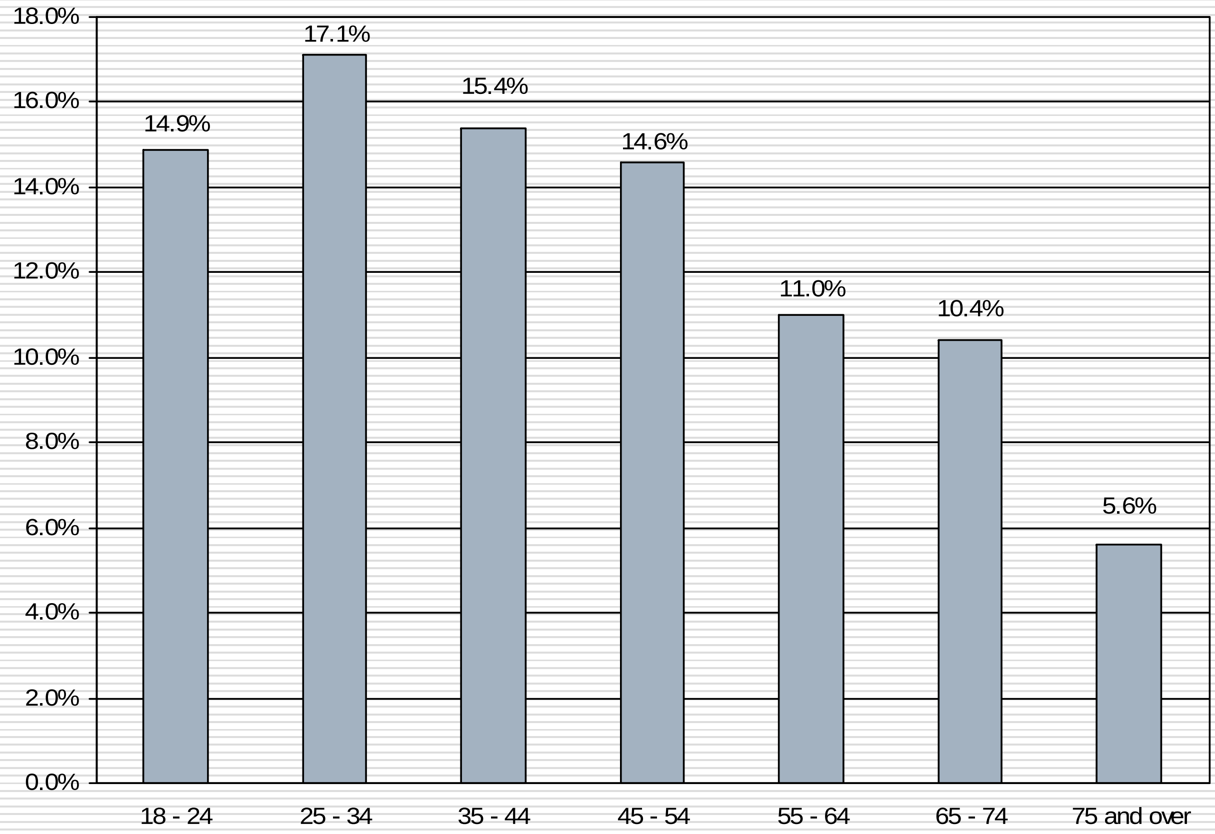
Consumer fraud

- FTC's 2nd Survey of Consumer Fraud in 2005
- An estimated 13.5% of U.S. adults, or 21 million people, experienced 1 or more of the 14 specific frauds covered in the survey
  - Estimated total number of incidents: 48.7 million

Specific Frauds, by Number of Victims



Likelihood of Being a Victim of Fraud, by Age



Concluding Remarks

- FTC and Bureau of Economics work hard to promote interests of consumers
- Bureau of Economics is but one of many checks and balances
- Consumer protection starts with you, and education is key