



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Chairman

April 9, 2001

The Honorable Frank R. Wolf
Chairman
Subcommittee on Commerce, Justice, and State,
the Judiciary, and Related Agencies
U.S. House of Representatives
Washington, DC 20515

The Honorable Judd Gregg
Chairman
Subcommittee on Commerce, Justice, and State,
the Judiciary, and Related Agencies
United States Senate
Washington, DC 20510

Dear Chairmen Wolf and Gregg,

This transmits the budget justification for the Federal Trade Commission (FTC) in support of the President's fiscal year 2002 budget request.

The FTC's fiscal year 2002 budget request amounts to a program level of \$156,270,000 and 1,074 full-time equivalent (FTE) positions. It provides for an increase of \$9,116,000 and 25 FTE over the fiscal year 2001 appropriated level. As the justification materials describe, this budget will permit the FTC to continue to meet the increasing challenges of its Consumer Protection and Maintaining Competition Missions.

By direction of the Commission.

Robert Pitofsky
Chairman

**Federal Trade Commission
Fiscal Year 2002 Congressional Budget Justification**

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**FEDERAL TRADE COMMISSION
FISCAL YEAR 2002 OVERVIEW STATEMENT
AND BUDGET REQUEST**

BACKGROUND

The FTC is the only federal agency with both consumer protection and competition jurisdiction over broad sectors of the economy. The FTC enhances consumer welfare by eliminating unfair or deceptive acts or practices in the marketing of goods and services and by ensuring that markets function competitively. The FTC's mission -- putting accurate information in the hands of consumers and promoting competition among producers -- brings the best products and lowest prices to the marketplace, spurs innovation, and strengthens the economy.

FY 2000 was a busy and productive year for the FTC. Among other accomplishments, the FTC-

- Saved consumers an estimated \$3.2 billion from law enforcement actions to stop anticompetitive mergers and fraud -- a savings of \$26 for each \$1 spent on FTC operations.
- Issued "Marketing Violent Entertainment to Children," a report finding pervasive and aggressive marketing of violent movies, music and electronic games to children. The FTC found that such marketing undermines the credibility of industry parental advisory labels and ratings and frustrates parents' attempts to make informed decisions about their children's exposure to violent content. The report urges reforms to industry self-regulatory systems.
- Reviewed increasingly large and complex Hart-Scott-Rodino merger filings. The dollar value of reported mergers in FY 2000 was nearly \$3 trillion, a 63% increase over the previous year, and a 1,769% increase since 1991. The FTC took corrective action against the anticompetitive effects of large oil mergers, resulting in the largest divestitures in FTC history.
- Brought 49 Internet-related enforcement actions, a total of 149 since 1994. These actions, targeting corporate and individual defendants, have stopped new high-tech frauds as well as more traditional types of fraud.
- Proceeded with litigation in *Mylan Laboratories*, a case involving alleged overcharges to consumers for prescription drugs, leading to a settlement, early in FY 2001, in which the defendant agreed to pay \$100 million in consumer redress - a direct, tangible return to consumers that substantially exceeds the entire annual cost of the Maintaining Competition Mission.

- Protected consumers against identity theft by deploying a new toll-free number (1-877-ID-THEFT), establishing a central clearinghouse for identity theft complaints, and making data available to law enforcement partners through a secure online Web site. Calls per week to the new number have increased from 400 a year ago to more than 2,200 today.
- Built on the success of *Consumer Sentinel*, a secure online complaint database shared with 1,200 other law enforcers across the country and in Canada, to develop *Soldier Sentinel*, a similar database capturing complaints from members of the military, and *Public Sentinel*, to give the public access to statistics and trends on consumer fraud.

CURRENT CHALLENGES

The FTC's FY 2001 appropriation provides the agency with additional staff to meet the challenges presented by the 21st Century marketplace in both its Consumer Protection and Competition Missions. The additional resources already have yielded benefits.

Consumer Protection Mission

In the Consumer Protection Mission, the added resources have been focused on high-priority areas – Internet fraud, identity theft, privacy, international law enforcement, and the marketing of violent entertainment products.

Internet Fraud. Stopping Internet fraud continues to absorb considerable resources. In FY 2001, the FTC led the first and largest global law enforcement sweep in its history, targeting the top 10 Internet scams, based on information from *Consumer Sentinel*. The sweep led to 250 law enforcement actions brought by five U.S. agencies and consumer protection organizations from nine countries and 23 states. The FTC also brought four cases in which consumers were cheated and overcharged in a high-tech scheme involving modem dialer software – the software was used to disconnect a computer modem from the local Internet service provider, dial an international telephone number, and then reconnect the modem to the Internet from some overseas location. Two other cases brought by the FTC involved the practice of placing unauthorized charges for Internet-related services on consumers' telephone or credit card bills. Finally, as part of "Project Safebid," the FTC charged defendants in three cases with failing to deliver merchandise to consumers whose bids "won" auctions. The FTC also trained hundreds of state and local law enforcement personnel on how to prosecute auction fraud as part of this project.

Identity Theft. In October 2000, the FTC hosted an Identity Theft Victim Assistance Workshop, bringing together more than 170 representatives – victims, consumer advocates, representatives of the financial services industry and credit bureaus, and law enforcement agencies – to discuss the problems encountered in trying to restore a good name and financial record after identity theft has occurred. The FTC is currently leading an effort, along with public and private sector partners, to streamline the process for victims to report ID theft and restore their credit histories.

Privacy. In December 2000, the FTC hosted a workshop, “The Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Issues,” to examine the privacy, security and consumer protection issues raised by emerging wireless Internet and data technologies. In March 2001, the FTC hosted a workshop, “The Information Marketplace: Merger and Exchange of Consumer Information,” to address issues raised by the creation of detailed consumer profiles through the merger or exchange of data, whether online or offline.

International Law Enforcement. The FTC continues to play a key role in meeting the law enforcement challenges posed by the global electronic marketplace. In its capacity as president of the International Marketing Supervision Network (an organization of consumer protection agencies from 29 countries), the FTC has made strides in overcoming hurdles in cross-border law enforcement cases. The FTC also entered into bilateral consumer protection cooperation and information sharing agreements with the United Kingdom and Australia.

The FTC has also hosted public meetings to explore cutting-edge international issues. Most recently, the agency followed up on efforts begun last year with the Department of Commerce and held a roundtable to explore dispute resolution for cross-border online transactions. The FTC is also participating in forums considering e-commerce issues: the Organization for Economic Cooperation and Development, the Hague Conference on Private International Law, the Transatlantic Consumer Dialogue, the Transatlantic Business Dialogue, the Free Trade Area of the Americas, the International Marketing Supervision Network, and others. Last fall, the FTC issued “Consumer Protection in the Global Electronic Marketplace,” a report that focuses on issues explored in these international forums.

Marketing Violent Entertainment Products. In response to congressional requests, the FTC is preparing to follow up its September 2000 report “Marketing Violent Entertainment to Children” with two additional reports determining whether violent movies, explicit-content labeled music, and electronic games continue to be marketed to children under the age designated in the rating or label.

Maintaining Competition Mission

The Maintaining Competition Mission has made effective use of the additional resources provided it in FY 2001 to investigate increasingly large and complex merger transactions and to renew an agency emphasis on anticompetitive nonmerger activity.

Resolution of Merger Investigations. So far in FY 2001, the FTC has resolved major mergers in industries with significant consumer impact, including *AOL/Time Warner* in communications, *SmithKline Beecham/Glaxo Wellcome* and *Novartis/AstraZeneca* involving pharmaceuticals, and *Philip Morris/Nabisco* in the food industry.

Hart-Scott-Rodino Act (HSR) Reforms. Recent HSR reforms raised the merger filing threshold from \$15 million to \$50 million, which will result in fewer filings for the FTC to review. With fewer filings to review, the FTC is shifting some competition resources to drafting implementing regulations and conducting outreach to members of the bar and

business communities on the new provisions. The reduction in the number of filed transactions, however, is not likely to reduce the overall burden on the FTC's merger program. Significant resources still need to be devoted to the increasingly large and complex merger transactions that involve numerous product and geographic market combinations. Further, the change in the filing threshold will not affect the substantive criteria used to determine which transactions may be anticompetitive and warrant investigation. Although only one enforcement action over the past two years has involved a transaction below the new, higher filing threshold, we are mindful that smaller anticompetitive mergers can still have a significant negative impact on consumers and communities. To ensure consumers are protected from problematic transactions below the new filing threshold, we will devote resources to develop enhanced ways to identify mergers that are not subject to filing but may still pose competitive harm.

Efficient Merger Investigations. In FY 2001, the FTC is continuing efforts to make the merger investigation process more efficient. Agency staff worked closely during FY 2000 with business groups, members of the bar, and key legislators to develop ways to improve merger investigations that enhance the efficiency of the process while preserving the agency's ability to obtain the information needed to identify and prevent anticompetitive mergers. Based on these efforts, the FTC has taken steps to improve the process, including requiring high-level management review of requests for additional information ("second requests") before issuance, meeting with merger parties to discuss competitive issues soon after issuance of a second request, responding promptly to requests for modification of second requests, and establishing an appeal procedure for unresolved issues relating to the scope of second requests.

Non-merger Investigations. In addition to settling the historic *Mylan Laboratories* matter, the FTC's non-merger program is also engaged in other important investigative efforts. These "other" efforts focus on merging technologies, standard setting, industries that are converging (such as electricity and energy), and the Internet. The FTC will also examine possibly illegal patent extension strategies and standard setting practices in rapidly-developing industries, such as the computer technology field. Finally, the FTC is watching the emerging Business-to-Business (B2B) marketplace, making use of information gathered in a related hearing held last summer.

FISCAL YEAR 2002 REQUEST

The FTC's ability to continue to perform its mandated functions in today's economy requires adequate staffing and technical support. This request for \$156,270,000 and 1,074 full time equivalent staff years (FTE) provides the baseline resources needed in FY 2002 to fund the performance levels supported by the FTC's FY 2001 appropriation. The \$9,116,000 increase over the agency's FY 2001 appropriation includes-

- \$5,666,000 to fund mandatory pay and inflation costs.
- \$2,773,000 for 25 FTE to fully annualize the 70 new FTE provided in FY 2001.

- \$677,000 to provide temporary office space. A General Services Administration held lease for existing satellite office space expires February 2002. Congress has authorized the GSA in September of FY 2000 to obtain a new lease on the FTC's behalf. GSA estimates that the time needed for a full and fair competition will not permit the FTC to occupy space under a new lease until early in FY 2003.

HART-SCOTT-RODINO PREMERGER FILING FEES

As presented, the FTC's FY 2002 request will be fully funded by fees assessed on Hart-Scott-Rodino Act (HSR) premerger notification filings by section 605 of Public Law 101-162, as amended effective February 1, 2001, in Section 630 of Public Law 106-553, the FY-2001 Commerce-Justice-State Appropriations Act. This amendment raised the HSR pre-merger filing threshold from \$15 million to \$50 million, and replaced a single filing fee of \$45,000 with a three tiered structure. Tier one requires, for all transactions above \$50 million but less than \$100 million, a \$45,000 fee. Tier two requires, for all transactions at or above \$100 million but less than \$500 million, a \$125,000 fee. And, tier three requires, for all filings at or above \$500 million, a \$280,000 fee.

GOVERNMENT PERFORMANCE AND RESULTS ACT ("GPRA") STRATEGIC AND PERFORMANCE PLANNING

This FY 2002 budget request is based on, and is an integral part of, the FTC's GPRA strategic and performance process. The performance plans and measures, located in a subsequent section of this submission, have been updated to, among other changes, provide a more accurate assessment of the dollar savings to consumers that are expected from FTC actions. As in the past, the FTC will work closely with its stakeholders to ensure that its strategic and performance plans and reports continue to assist the FTC in protecting consumers and meeting the evolving demands of the marketplace.

FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT

The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") amends the Federal Deposit Insurance Act to impose certain disclosure requirements on non-federally insured depository institutions and to require that the FTC prescribe the manner and content of those disclosures. The FDICIA also authorizes the FTC, in consultation with the Federal Deposit Insurance Corporation, to exempt depository institutions from a prohibition that bars them from taking or facilitating the taking of deposits, unless the state supervisor where the institution is chartered has determined that the institution meets all eligibility requirements for federal deposit insurance.

In communications with Congress and the Office of Management and Budget, the Commission has consistently opposed the FDICIA's assignment of these responsibilities to the FTC. Consistent with prior year appropriation language, the proposed appropriation

language for FY 2002 continues to prohibit the FTC from spending funds on enforcement responsibilities imposed on it by FDICIA.

Budget Justification Summary

(\$ in thousands)

Budget by Mission:	Fiscal Year 2001		Fiscal Year 2002		Change	
	<u>FTE</u>	<u>Dollars</u>	<u>FTE</u>	<u>Dollars</u>	<u>FTE</u>	<u>Dollars</u>
Consumer Protection	557	\$77,790	570	\$82,772	13	\$4,982
Maintaining Competition	492	69,364	504	73,498	12	4,134
Total	<u>1,049</u>	<u>\$147,154</u>	<u>1,074</u>	<u>\$156,270</u>	<u>25</u>	<u>\$9,116</u>

Budget by Organization:

Headquarters	903	\$132,213	928	\$140,648	25	\$8,435
Regions	146	14,941	146	15,622	0	681
Total	<u>1,049</u>	<u>\$147,154</u>	<u>1,074</u>	<u>\$156,270</u>	<u>25</u>	<u>\$9,116</u>

Budget by Funding Source:

Filing Fees Current Year	\$145,254	\$156,270	\$11,016
Filing Fees Prior Year	1,900	0	-1,900
Total	<u>\$147,154</u>	<u>\$156,270</u>	<u>\$9,116</u>

Summary of Changes
(\$ in thousands)

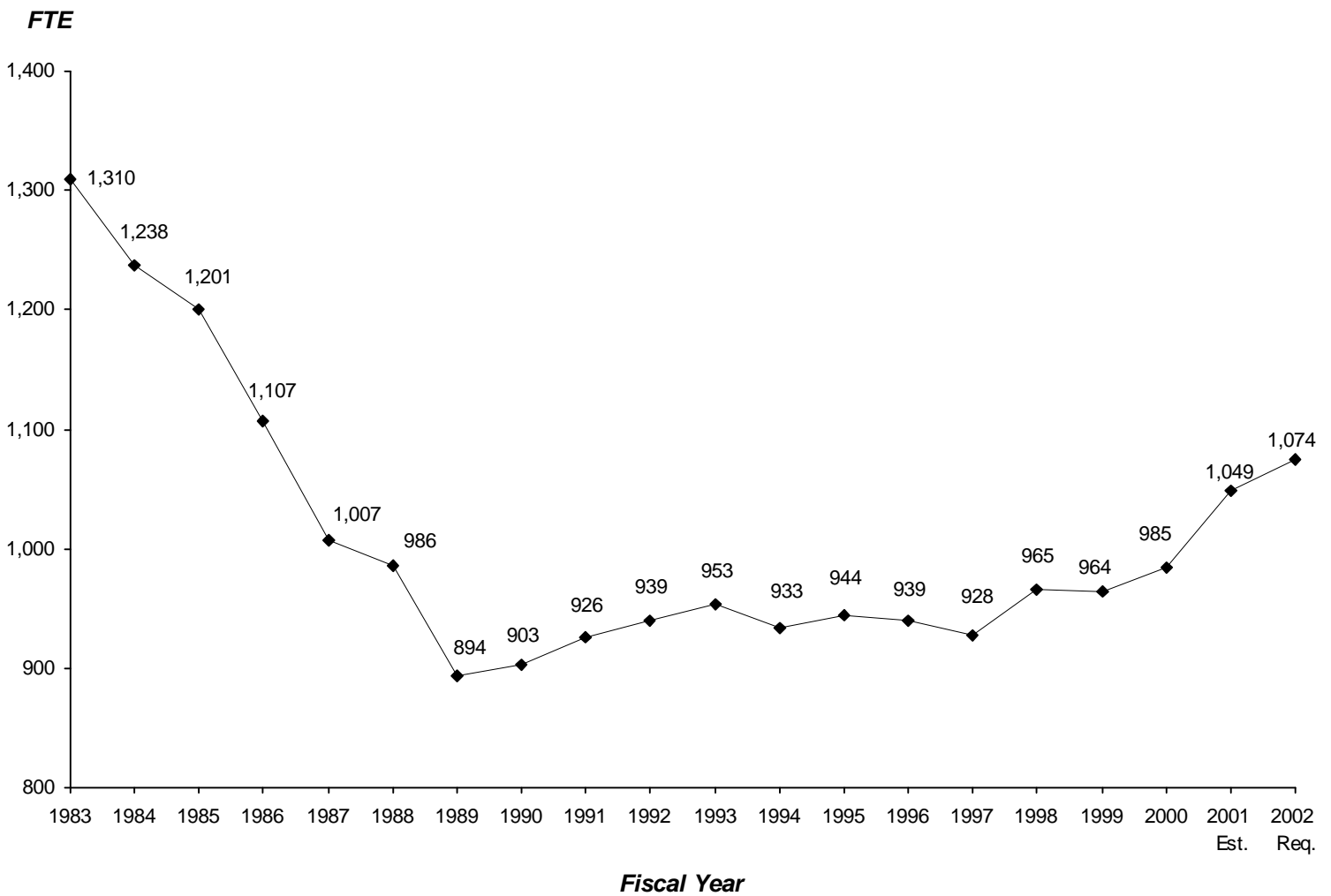
	<u>FY 2001</u> <u>Estimate</u>	<u>FY 2002</u> <u>Estimate</u>	<u>Net Change</u>
Budget Authority	\$147,154	\$156,270	+\$9,116
Full-time Equivalents.	1,049	1,074	+25

Explanation of Change:	<u>FTE</u>	<u>Dollars</u>
Base Adjustments:		
To provide for annualization of the FY 2001 pay raise	---	+\$1,094
To provide for a pay increase effective January 2002.	---	+2,589
To provide for increases in benefits, within-grades, and promotions. . . .	---	+1,007
To provide for increased costs in other non-personnel services.	---	+976
To provide for annualization of additional FTE received in FY 2001.	+25	+2,773
To provide for temporary space and increased rental costs	---	+677
Total Change	<u>+25</u>	<u>+\$9,116</u>

Full-time Equivalent History

Federal Trade Commission

Fiscal Years 1983 - 2002



Annual Performance Plan Objectives by Program FTE

Consumer Protection Mission

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

Maintaining Competition Mission

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

Performance Measures

	FY 2000 Actual	FY 2001 Target	FY 2002 Target
Consumer Protection Mission			
Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.			
<i>Objective 1.1—Identify fraud, deception, and unfair practices that cause the greatest consumer injury:</i>			
Measure 1.1.1: Cumulative number of consumer complaints and inquiries entered into database. ¹	833,659	--	--
Measure 1.1.1: Annual number of consumer complaints and inquiries entered into database. ²	--	350,000	400,000
<i>Objective 1.2—Stop fraud, deception and unfair practices through law enforcement:</i>			
Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud.	\$265 million	\$400 million	\$400 million
Measure 1.2.2: (FY 1999-2000) Percentage of targeted industry brought into compliance through law enforcement and self regulation. ¹	83%	--	--
Measure 1.2.3: (FY 2001-2002) Total expenditures of deceptive or unfair advertising campaigns stopped. ²	--	\$300 million	\$300 million
<i>Objective 1.3—Prevent consumer injury through education:</i>			
Measure 1.3.1: Number of education publications distributed to or accessed electronically by consumers.	11.0 million	10.0 million	10.5 million
Maintaining Competition Mission			
Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.			
<i>Objective 2.1—Identify anticompetitive mergers and practices that cause the greatest consumer injury:</i>			
Measure 2.1.1: (FY 1999-2000) Average number of days for review of HSR-reported transactions. ¹	18	--	--
Measure 2.1.2: Number of nonmerger investigations opened per year.	25	45-70	45-70
Measure 2.1.3: (FY 2001-2002) Percent of HSR second requests resulting in enforcement action. ²	--	50%	50%
<i>Objective 2.2—Stop anticompetitive mergers and practices through law enforcement:</i>			
Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.	95%	80%	80%
Measure 2.2.2: Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.	\$2.98 billion	\$800 million	\$800 million

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

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

Consumer Protection Mission

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

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

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

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

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

The Commission is systematically collecting consumer complaints about identity theft, as required by the recently enacted Identity Theft and Assumption Deterrence Act. The database of these complaints is expected to grow significantly, as the new toll-free number -- 1-877-ID-THEFT -- is more widely publicized. The Commission not only will receive and record complaints from consumers, it will refer individual cases to appropriate agencies, undertake consumer education about the identity theft problem, and regularly analyze the complaint data to identify trends.

1. GPRA Five-Year Strategies

- Expand the FTC's comprehensive information system (consumer complaint databases) to keep pace with the global marketplace.
- Strengthen capabilities to analyze the increasing volume of complaint data.

- Continuously upgrade *Consumer Sentinel's* services to assist law enforcement partners. *Consumer Sentinel* is a secure Web site containing consumer complaint data that can be accessed by law enforcement agencies.
- Ensure the privacy and security of database information.
- Search for better methods of collecting information to keep abreast of new consumer protection problems in traditional markets and emerging markets such as the Internet.

2. FY 2001 Implementation Plan

C Recruit new partners in the United States and abroad to contribute complaint data to *Consumer Sentinel*.

- Improve the capacity to receive and integrate complaints from international sources.
- Add to the group of state, local, federal, and international law enforcement agencies accessing information in *Consumer Sentinel*; train new partners in how to take full advantage of its features.
- Facilitate the exchange of data with law enforcement officials in other countries through *Consumer Sentinel* or other means.

C Monitor the marketplace to identify illegal practices that may not be fully captured by the database, for example through the Internet Lab and Web surfs.

C Increase the number of Identity Theft complaints in the database and refer trend data and complaints to public and private sector partners such as credit bureaus and law enforcement partners.

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

3. FY 2001 Performance Measures

In FY 2001, the agency will:

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

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

4. Program Evaluations

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

Objective 1.2: Stop fraud, deception, and unfair practices through law enforcement.**FY 2001 Budgeted Resources:** 404 FTE \$56,357,000The Internet

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

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

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

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

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

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

Telecommunications

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

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

Subprime Lending and "Fringe" Banking

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

day lenders, title loan companies, and others. We will target those practices that violate existing consumer protection statutes, and propose law reform if there are regulatory gaps.

A. Stopping Fraud

1. GPRA Five-Year Strategies

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

2. FY 2001 Implementation Plan

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

3. FY 2001 Performance Measures

In FY 2001, the agency will:

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

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

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

4. Program Evaluations

- C 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.
- C Assess the litigation success rate for obtaining preliminary relief in fraud cases.
 - Determine the success of leveraging resources through coordinated joint law enforcement initiatives.

B. Ensuring Broad-Based Protections for Consumers

1. GPRA 5-Year Strategies

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

2. FY 2001 Implementation Plan

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

3. FY 2001 Performance Measures**In FY 2001, the agency will:**

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

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

4. Program Evaluations

- C Assess whether the mix of resources allocated to fraud and non-fraud programs is appropriate in light of changes in the marketplace.

- C Evaluate the success of self-regulatory programs.
- C Determine whether there are new industries or areas of marketing that require law enforcement or that may be appropriate for self-regulation.

Objective 1.3: Prevent consumer injury through education.**FY 2001 Budgeted Resources:** 41 FTE \$5,725,000

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

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

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

1. GPRA Five-Year Strategies

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

2. FY 2001 Implementation Plan

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

3. FY 2001 Performance Measures

In FY 2001, the agency will:

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

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

4. Program Evaluations

- C Determine the number of publications distributed or accessed online.

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

Maintaining Competition Mission

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

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

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

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

1. GPRA Five-Year Strategies

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

- Refine the investigative and decisional tools used in both merger and nonmerger investigations through continuous learning.
- Maintain and improve the timeliness, efficiency, and effectiveness of nonmerger investigations by returning resources to the nonmerger program to the extent the level of merger activity permits.

2. FY 2001 Implementation Plan

A. All Programs

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

B. Mergers Filed Under HSR

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

C. HSR Compliance Enforcement

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

D. Mergers Not Subject to HSR

- In light of the statutory increase in the HRS filing threshold effective early in FY 2001, increase efforts to identify mergers that are not subject to HSR requirements but that are potentially anticompetitive, using techniques such as (1) monitoring the trade

press; (2) responding to and following up on case leads by Congressional offices, other Federal agencies, state and local government; and (3) following up on complaints from consumers, businesses, the bar, and the general public. After identification, seek investigational clearance through the inter-agency liaison process. If initial review indicates a need for further investigation, prepare a recommendation to the Merger Screening Committee for the opening of an initial phase investigation or, if appropriate, a full phase investigation with a request that the Commission authorize the use of compulsory process. If appropriate, seek an agreement from the merging entities to postpone the merger (if not already completed) or to hold competing businesses separate pending further review.

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

E. Nonmerger Practices

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

3. FY 2001 Performance Measures

In FY 2001, the agency will:

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

investigations continues to be appropriate in light of marketplace conduct and the need to deter anticompetitive business practices.

4. Program Evaluations

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

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

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

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

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

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

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

1. GPRA Five-Year Strategies

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

2. FY 2001 Implementation Plan**A. All Programs**

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

B. Merger Enforcement

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

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

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

C. Merger Compliance

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

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

D. Nonmerger Enforcement

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

- Evaluate techniques for estimating the savings to consumers from stopping anticompetitive nonmerger business practices.

E. Nonmerger Compliance

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

3. FY 2001 Performance Measures**In FY 2001, the agency will:**

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

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

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

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

the 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.³ Therefore, we can safely assume that the benefits of merger enforcement persist for at least two years. In some cases, the facts may indicate that anticompetitive prices could be maintained for more than two years.⁴

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

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

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

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

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

savings resulting from antitrust enforcement action amount to at least 1% of the amount of commerce in the market(s) affected by the anticompetitive conduct.

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

4. Program Evaluations

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

Objective 2.3: Prevent consumer injury through education.**FY 2001 Budgeted Resources:** 45 FTE \$6,292,000

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

1. GPRA Five-Year Strategies

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

2. FY 2001 Implementation Plan

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

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

3. FY 2001 Performance Measures

In FY 2001, the agency will:

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

4. Program Evaluations

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

Consumer Protection Mission

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

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

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

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

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

1. GPRA Five-Year Strategies

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

2. FY 2002 Implementation Plan

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

3. FY 2002 Performance Measures

In FY 2002, the agency will:

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

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

4. Program Evaluations

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

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

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

E-commerce

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

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

Globalization

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

New Statutory Changes

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

A. Stopping Fraud**1. GPRA Five-Year Strategies**

- Lead and coordinate the nationwide attack on telemarketing fraud.

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

2. FY 2002 Implementation Plan

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

3. FY 2002 Performance Measures

In FY 2002, the agency will:

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

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

Consumer savings are calculated by adding together the estimated annual fraudulent sales of defendants in the 12 months prior to filing a complaint. The calculation may actually underestimate the agency’s impact because it assumes that the fraud would

have continued for only one more year; however, it provides a uniform method for calculating savings and minimizes speculation about the likely duration of the fraud.

4. Program Evaluations

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

B. Ensuring Broad-Based Protections for Consumers**1. GPRA 5-Year Strategies**

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

2. FY 2002 Implementation Plan

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

- Implement new congressionally mandated regulations governing financial privacy and online children's privacy, and recently updated regulations governing franchising, telemarketing sales, and telephone billing services.
- Address cutting-edge consumer protection issues in emerging areas – e-commerce, globalization, and the marketing of new digital products and services and newly deregulated services.

3. FY 2002 Performance Measures

In FY 2002, the agency will:

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

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

4. Program Evaluations

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

Objective 1.3: Prevent consumer injury through education.**FY 2002 Budgeted Resources:** 41 FTE \$5,963,000

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

1. GPRA Five-Year Strategies

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

2. FY 2002 Implementation Plan

- C Deliver information to more consumers, industry members, and law enforcement partners faster and more efficiently.
- Focus education on high-profile and emerging issues where consumer information gaps are greatest, for example, globalization, Internet scams, online privacy, and identity theft.
- C Increase education efforts about frauds that cause consumers the greatest financial injury.
- C Through greater outreach, lead more consumers to the FTC's Web site (www.ftc.gov) and the "one-stop" government Web site for consumer information (www.consumer.gov).

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- C Expand coverage of FTC messages, including the toll-free helpline, through marketing, new products, technology, a speakers bureau, etc.
 - Continue efforts to identify and reach under-served audiences, businesses, and law enforcement offices.

3. FY 2002 Performance Measures

In FY 2002, the agency will:

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

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

4. Program Evaluations

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

Maintaining Competition Mission

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

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

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

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

1. GPRA Five-Year Strategies

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

- Maintain and improve the timeliness, efficiency, and effectiveness of nonmerger investigations by returning resources to the nonmerger program to the extent the level of merger activity permits.

2. FY 2002 Implementation Plan

A. All Programs

- Ensure timeliness of review. Monitor the time and resources needed to conduct preliminary investigations. Review the progress of all ongoing investigations on at least a monthly basis. For mergers filed under the HSR program, maintain statistics for the average time for clearing transactions that do not require further review and the average time for completing all HSR investigations. Review the statistics on a semi-annual basis. If the average time to complete HSR investigations during the preceding 12 months exceeds 20 days, review the efficiency of merger reviews during the initial 30-day period under HSR and make any necessary adjustments.
- Monitor resource needs and consumption of merger and nonmerger programs, and make adjustments as appropriate.
- Identify anticompetitive practices by using speeches, electronic media, and other publications to inform potential aggrieved parties that they can lodge complaints with the FTC.
- Analyze competition issues. Continue ongoing studies relating to areas of current activity. Evaluate the need for in-depth study of one or more competition issues, such as the 1996 study of competition in the global economy, the 1997 study of joint ventures, and the 2000-2001 studies of business-to-business electronic marketplaces and electric power restructuring and deregulation.
- Conduct training programs in investigative skills and antitrust analysis, including a competition overview program given twice yearly for new attorneys, summer interns, and paralegals, and supplemental programs offered periodically on various skills such as witness interviewing, taking and defending depositions, motions practice, trial advocacy, and legal writing. Conduct monthly luncheon programs featuring speakers from within and outside the agency on substantive or procedural topics. In addition, provide career enhancement training for support staff in subjects such as paralegal skills and effective writing, and computer training for all staff. Ensure that lead attorneys and managers collect any important lessons learned at the close of each significant investigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.

B. Mergers Filed Under HSR

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

C. HSR Compliance Enforcement

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

D. Mergers Not Subject to HSR

- In light of the statutory increase in HRS filing thresholds effective early in FY 2001, increase efforts to identify mergers that are not subject to HSR requirements but that are potentially anticompetitive, using techniques such as (1) monitoring the trade press; (2) responding to and following up on case leads by Congressional offices, other Executive branch agencies, state and local government; and (3) following up on

complaints from consumers, businesses, the bar and the general public. After identification, seek investigational clearance through the inter-agency liaison process. If initial review indicates a need for further investigation, prepare a recommendation to the Merger Screening Committee for the opening of an initial phase investigation or, if appropriate, a full phase investigation with a request that the Commission authorize the use of compulsory process. If appropriate, seek an agreement from the merging entities to postpone the merger (if not already completed) or to hold competing businesses separate pending further review.

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

E. Nonmerger Practices

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

3. FY 2002 Performance Measures

In FY 2002, the agency will:

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

4. Program Evaluations

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

Objective 2.2: Stop anticompetitive mergers and practices through law enforcement.**FY 2002 Budgeted Resources:** 406 FTE \$59,242,000

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

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

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

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

1. GPRA Five-Year Strategies

- Continue to save consumers millions of dollars a year by challenging anticompetitive mergers by negotiating consent orders and winning litigated orders.

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

2. FY 2002 Implementation Plan

A. All Programs

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

B. Merger Enforcement

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

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

C. Merger Compliance

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

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

D. Nonmerger Enforcement

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

E. Nonmerger Compliance

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

3. FY 2002 Performance Measures**In FY 2002, the agency will:**

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

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

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

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

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

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

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

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

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

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

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

4. Program Evaluations

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

Objective 2.3: Prevent consumer injury through education.**FY 2002 Budgeted Resources:** 45 FTE \$6,544,000

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

1. GPRA Five-Year Strategies

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

2. FY 2002 Implementation Plan

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

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

3. FY 2002 Performance Measures

In FY 2002, the agency will:

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

4. Program Evaluations

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

Management Initiatives

To improve the efficiency of agency operations, the Government Performance and Results Act of 1993 (GPRA) requires a brief description of the technology and human capital support needed to meet agency goals. The Administration recently reinforced this objective by asking agencies to incorporate complementary management initiatives into their performance plans.

The FTC has a strong record of success in enhancing the human and technology systems and procedures needed to accomplish the agency's goals. In many instances, described below, these successes and our current plans mirror the intent of the GPRA and the Administration's performance initiatives.

Streamlining Efforts

Throughout the last decade, the FTC faced significant demands on its resources. The economy became increasingly global, the size and scope of merger transactions reviewed under the Hart-Scott-Rodino Act rose significantly, and, most recently, consumer protection responsibilities have increased because of rapidly expanding technology -- most notably, the Internet. And, until FY 1999, FTC funding increases primarily covered only mandatory pay and price increases. Responding to these demands, the FTC has undergone, and continues to undergo, significant streamlining efforts.

- Established a Consumer Response Center drawing investigators and contact representatives from five Consumer Protection divisions and eight regional offices to effectively answer public inquiries and capture complaint information in a central database.
- Employed more paralegal staff to assist attorneys, particularly in document-intensive merger, non-merger and consumer protection investigation and litigation activities.
- Reduced staff support positions in the Office of the Executive Director by 24%, thereby allowing the transfer of FTE to mission-critical law enforcement programs.
- Reconfigured regional office operations to improve the nationwide delivery of consumer protection services, including to under served communities, and to create "competition centers" in selected regions with a staff size sufficient to investigate large and complex competition cases.
- Leveraged program efforts through cooperative arrangements with international, state, and other federal law enforcement agencies and private sector organizations in order to obtain the greatest consumer benefit for each

dollar spent on both law enforcement and education efforts.

- Made greater use of technology across the agency to leverage human capital and other resources.

Human Capital

The FTC is currently addressing the management of its human capital to ensure it has the staff needed to fulfill its mission to protect consumers and maintain competition in the marketplace. While the FTC historically has had an enthusiastic and highly capable professional staff, it currently faces significant competitive pressures from the private sector, particularly for attorneys, economists, and information technology professionals with experience in mergers and Internet-related issues. For example, the compensation for first-year attorneys in the private sector is often three times higher than that available to most Government agencies.

To continue to attract and retain talented professionals, the FTC has formed a human resource task force consisting of professional staff from across the agency. The task force's overall purpose is to maintain and enhance the agency's high-quality workforce by evaluating the impact on FTC staff of a variety of human resource issues. Currently, the task force is focusing on attorney and economist recruitment, development, and retention. Included among the monetary solutions under review are higher starting salaries, recruitment and retention bonuses, student loan repayments, and increasing the performance awards budget. Non-monetary solutions under review include enhancing training and professional development, creating an even more family-friendly work environment, and exploring non-traditional recognition programs.

As solutions are identified and approved, they will be integrated into the FTC's human resource management, budgeting, and strategic planning processes. In FYs 2001 and 2002, the FTC will provide needed training to staff to keep pace with the broadening technological and international scope of the agency's law enforcement and other program activities. Further, the Commission will continue to evaluate whether the mix of staff resources it allocates to various programs is appropriate in light of changes in the marketplace, and to identify and, where appropriate, use "best practices" adopted by other government agencies and the private bar in training new FTC staff.

Performance-based Contracts

Performance-based contracting is a relatively new way of doing business in the Federal government and focuses on the results rather than the process by which those results are achieved. During FY 2001, the FTC awarded its first performance-based contract -- a Help Desk contract for computer-based hardware and software services. For this contract we developed specific standards to measure the contractor's performance in meeting selected results. As this contract is implemented and administered, our process will be further refined. The lessons learned will be applied to future performance-based contracts. As a small federal agency, our opportunity for expanding the use of performance-based contracts

is limited. However, as other agency-wide support service requirements become eligible for re-competition, we will assess each to determine if a performance-based contract is the best option.

On-line Procurement

The FTC is currently using several online procurement mechanisms and is in the process of reviewing others.

Current Online Procurement Mechanisms:

- Using *GSA Advantage*, a government-wide procurement tool that allows customers to purchase supplies online from approved providers using purchase cards.
- Publishing solicitations of requirements on the Internet. Recently, the FTC used the Internet to announce the solicitation for its performance-based Help Desk requirement.

Future Plans:

- Converting, by October 1, 2001, to *FedBizOpps*, a single point of entry on the Internet for vendors where all government procurement requirements will be announced.
- Assessing the current capability of the FTC's systems to receive and process electronic invoices. We currently receive our purchase card invoices electronically and are in the process of reviewing this option with one of our vendors.
- Exploring the possibility of electronic receiving reports, which would require the use of electronic signatures.

Technology Initiatives

The FTC's Information and Technology Management Office's (ITMO) efforts in FYs 2001 and 2002 will continue to focus on providing the support and technology initiatives needed by the Commission's bureaus and offices and administrative processes to efficiently accomplish the agency's goals.

Planned enhancements to existing services and products:

- Electronic Filing of Premerger Notification Forms-bringing an existing paper-based process into compliance with the Government Paperwork Elimination Act (GPEA). This will lay the groundwork for bringing other agency processes into GPEA compliance.
- "Orders" Database-creating a database of defendants subject to Commission orders. This database will be easily accessible to the public through the FTC

Web site.

- Electronic Records Project - developing a computer application designed to better house and enhance staff use of electronic versions of agency documents.
- Consumer Outreach - improving the effectiveness of interactions between the Commission and the public as well as the mechanisms for disseminating information.
- Electronic Courtroom - Outfitting selected agency hearing rooms with current technologically to aid staff in preparing for and conducting litigation.
- Desktops and Peripherals - Replacing some traditional personal computer (pc) desktop machines with "port replicators" and laptop pc's to facilitate efficient remote connections to agency computers by staff while on travel.

Expanding A-76 Competitions and More Accurate FAIR Act Inventories

As discussed in the Streamlining Efforts section, the FTC has reviewed and evaluated many of its processes and functions to increase efficiencies and realign staffing resources where they are required most. As part of this streamlining effort, the agency has identified functions performed by federal employees that might be performed by commercial entities. Between FYs 1999 and 2000, the FTC reduced its FAIR Act inventory by 21%, from 42 to 33, by contracting for the affected services. While continuing to maximize our efficiencies, we will continue to review our current Fair Act inventory for similar opportunities.

Consumer Protection Mission
Budget by Program
(\$ in thousands)

	Fiscal Year 2001		Fiscal Year 2002	
	FTE	Dollars	FTE	Dollars
Advertising Practices	63	\$6,091	64	\$6,472
Marketing Practices	144	14,361	147	15,339
Financial Practices	52	5,092	55	5,649
Enforcement	54	5,236	55	5,578
Planning & Information	60	1,911	63	2,327
Consumer & Business Education	12	7,584	12	7,915
Economic & Consumer Policy Analysis	6	634	6	663
Program Management	27	2,538	27	2,650
Subtotal Direct Mission	418	\$43,447	429	\$46,593
Mission Support	139	34,343	141	36,179
Mission Total	557	\$77,790	570	\$82,772

The Consumer Protection Mission is advanced by four law enforcement programs -- Advertising Practices, Marketing Practices, Financial Practices, and Enforcement -- augmented by Planning and Information, Consumer and Business Education, Economic and Consumer Policy Analysis, and Program Management. Staff in the Commission's eight regions also support the Mission by bringing a wide variety of consumer protection cases in the various programs and acting as important contacts for state Attorneys General and other state and local consumer protection officials.

Advertising Practices Program

The Advertising Practices Program enforces the nation's "Truth-in-Advertising" laws. Whether ads appear on television or radio, in newspapers or magazines, or on the Internet, these laws require companies to tell the truth and to back up their claims with reliable, objective evidence. The program uses a variety of tools to protect consumers from misleading

claims, including law enforcement actions in federal and administrative courts, liaison and guidance to industries, advocacy for effective self-regulation by the advertising industry and better screening of ads by the media, and consumer education. Working to protect consumers' health, safety and economic interests, the program's efforts span a broad range of products and trade practices.

- **Advertising for foods, over-the-counter drugs, dietary supplements, and medical device:** The Advertising Practices Program devotes substantial resources to ensuring the accuracy of health claims in advertising and has taken action against companies making deceptive representations. The program also works with the dietary supplement industry providing guidance to encourage accuracy in claims for these products. In the past two years, the FTC has paid close attention to the marketing of health care products on the Internet using enforcement actions, e-mail advisories, and other techniques to curb health fraud on this medium. In addition to traditional law enforcement actions, the FTC formulates business education materials to help companies develop the kind of substantiation necessary to support health claims in advertisements for these products and consumer materials to help consumers locate reliable information and spot deceptive claims.
- **Tobacco and alcohol advertising:** The Advertising Practices Program leads the Commission's efforts to stop the deceptive or unfair marketing of tobacco and alcohol. In addition, the program: administers federal laws governing the rotation of health warnings on ads and packaging for cigarettes and smokeless tobacco; publishes annual Reports to Congress monitoring cigarette advertising and marketing as well as biennial Reports on smokeless tobacco advertising and marketing; and enforces the "broadcast ban" on advertising for smokeless tobacco. It monitors self-regulation of the alcohol advertising industry and encourages improved standards and compliance.
- **Children's advertising and consumer privacy:** The Commission has long been a leader in protecting children from unfair or deceptive advertising and marketing practices. In recent years, the program has been an important voice in the ongoing debate about privacy and commerce on the Internet, especially with regard to the collection of information from and marketing directed to children. The Commission is currently engaged in a rulemaking proceeding to implement the Children's Online Privacy Protection Act, which was enacted into law on October 21, 1998. The Act requires that operators of websites directed to children or who knowingly collect personal information from children provide parents with notice of their information practices and obtain verifiable parental consent prior to collecting personal information from children ages 12 and under.
- **Marketing violent entertainment to children:** The Advertising Practices Program conducted a 15-month study of the marketing of violent movies, music, and video games to children, culminating in a September 2000 report, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*. Pursuant to a request

from the Senate Commerce Committee, the program is conducting two follow-up reports, to be issued in the spring and fall of 2001, to determine whether violent R-rated movies, explicit-content labeled music, and M-rated electronic games are advertised in popular teen media and whether ratings information is included in the advertising.

- **Advertising in new media:** New technologies have opened new avenues for companies to communicate useful product information to prospective customers. Although the medium may be innovative, the Commission's cardinal principle of truthful, substantiated advertising remains constant. Thus, the program has taken an active role in recent years in ensuring that the same standards of accuracy apply to advertising claims made on the Internet, in infomercials, in home shopping, and other new forms of commerce. The agency's commitment to staying abreast of developments in new technologies is evidenced by the establishment of an Internet Laboratory capable of monitoring emerging innovations in online advertising.
- **Health care and weight loss:** Each year consumers spend billions of dollars purchasing pills, potions, new technologies, and therapies for health and weight loss. The Commission works with other federal agencies, state Attorneys General, and other partners to combat misleading claims by providers of these products and services. Law enforcement actions are accompanied by innovative initiatives such as those undertaken to identify misleading Internet claims, and to lead a coalition of industry, academic, and government experts to combat the rising threat of obesity through voluntary industry guidelines and education.

Marketing Practices Program

The Marketing Practices Program fights schemes that use high and low technology to defraud consumers. The program studies trends, brings law enforcement actions, conducts regulatory and policy review, and educates consumers in connection with deceptive practices that occur in the sale of consumer goods and services. The priorities of the program keep pace with fraudulent and deceptive schemes causing the greatest harm to consumers.

- **Internet Fraud:** The Marketing Practices Program leads the FTC's law enforcement effort to keep fraud artists from overrunning the Internet. The focus of the program concentrates on staff training to keep pace with the latest Internet schemes; undercover surveillance; and rapid law enforcement response when fraudulent schemes are detected. Marketing for all non-health related goods and services are included in this program.
- **Telemarketing Fraud:** The Marketing Practices Program enforces the FTC's Telemarketing Sales Rule, and uses Section 5 of the FTC Act to take action against deceptive telemarketing schemes. Working closely with the regional offices, state Attorneys General, and other public and private sector partners, the program targets

areas for law enforcement, organizes enforcement sweeps, and helps publicize consumer and business education information to reduce telemarketing fraud.

- **Telecommunications and New Technologies:** The Marketing Practices Program enforces the FTC's Pay-Per-Call Rule and uses Section 5 of the FTC Act to challenge practices that use various components of the telecommunications system to victimize consumers. Studying new communications technologies helps to anticipate opportunities for fraud and stop them when they emerge.
- **Investment Opportunity Fraud:** The Marketing Practices Program enforces the FTC's Franchise Rule and uses Section 5 to combat fraudulent and deceptive practices in the sale of franchises, business opportunities, and other investment opportunities. Efforts are coordinated with the SEC and state authorities to concentrate our resources on frauds and schemes that fall outside of their jurisdiction.
- **Direct Mail Fraud:** Through Project Mailbox, the Marketing Practices Program coordinates a federal and state campaign to systematically analyze complaint data about scams that are pitched to consumers by mail - "snail or e" - and makes sure that companies receiving large numbers of complaints are targeted for enforcement action. The program also works with AARP and 10,000 of its "fraud fighter" volunteers to train consumers to spot deceptive mail solicitations and prevent fraud. Finally, the program works with a private sector coalition to educate industry and consumers about the "bandit in the mailbox" and how to prevent victimization.
- **Warranties and Contracts:** The Marketing Practices Program has the responsibility for enforcement of the Magnusson-Moss Warranty Act and its implementing rules. The Act, Rules, and related commercial contract law are presently being studied to determine whether the growing sale of information and intellectual property to consumers over the Internet requires revisions in any of these laws.

Financial Practices Program

The Financial Practices Program promotes fairness and accuracy in the provision of financial services and in the use of financial information. Financial services, including credit and leasing, play important roles in the daily lives of most Americans, who use credit cards, take out loans, and lease major products. These services also present challenging consumer protection issues, such as protecting the privacy of sensitive personal information. The Financial Practices Program identifies and addresses these issues, so that consumers continue to benefit from the widespread availability of financial services.

- **Discrimination, home equity fraud, and debt collection:** The Financial Practices Program enforces laws against home equity fraud, illegal discrimination, and abusive debt collection practices. The program leads nationwide efforts to enforce laws

against fraudulent home equity practices, which target consumers who are poor, or who already have problems with credit, and can result in the loss of consumers' homes. Discrimination in credit -- charging higher prices or denying credit based on reasons unrelated to creditworthiness, such as race or gender -- can be a serious problem, and the Financial Practices Program seeks to ensure that everyone is able to obtain credit on their own merit. Finally, abusive debt collection practices can contribute to personal bankruptcy, job loss, and other problems, and the program uses enforcement and education to raise the standards in this area.

- **Accuracy and privacy of credit information:** The Financial Practices Program works to ensure the accuracy and privacy of financial information maintained about consumers, which can be used to screen applicants for loans, jobs, and insurance. This effort is pursued through enforcement of the Fair Credit Reporting Act, which holds credit bureaus and furnishers of information responsible for the accuracy of credit information, gives consumers the right to check and correct their credit reports, and limits how financial information can be used.
- **Consumer privacy:** The Financial Practices Program continues to take a leading role in nationwide efforts to protect consumer privacy. Building on expertise gained at a series of FTC online privacy workshops, the Commission has continued to encourage the development of effective self-regulatory approaches to this issue. Since 1998, the Commission has conducted extensive surveys of commercial Web sites' information practices and issued reports to Congress on its findings and recommendations. The Commission has continued to work with industry and consumers to understand and respond to developments, including new technologies such as wireless Internet devices, that affect consumer privacy. It has also continued to educate the public about these developments through workshops, testimony, and reports. In the area of financial privacy, we are implementing the privacy provisions of the Gramm-Leach-Bliley Act.
- **Costs of credit and leasing:** Another major focus of the program is to ensure that consumers have accurate and complete cost information before they enter into credit and leasing transactions - information that allows them to compare offers and make informed purchasing decisions. The Commission pursues this by challenging deceptive advertising and disclosures about significant payments hidden in fine print, thus ensuring that consumers are given accurate and readable cost disclosures before they make purchases.

Enforcement Program

The Enforcement Program protects consumers from deception and fraud in three ways. First, the program protects consumers by stopping deceptive advertising and marketing practices that cause economic losses. A large portion of the practices targeted concern deceptive offering of career placement, scholarships, and products involving credence claims

(such as engine treatments). Second, the program ensures that companies ordered to stop deceptive practices do so and compliance is monitored in traditional as well as new media. The program includes both civil penalty actions for violations of administrative orders and actions for civil and criminal contempt for violations of federal court orders. Third, the program ensures that consumers receive important information required by various laws and rules to help them make accurate comparisons and informed decisions. As an adjunct, the program regularly reviews these rules to keep them current.

- **Practices causing economic injury:** The Enforcement Program files civil actions against firms that cause consumers financial harm through false or misleading ads or practices.
- **Career placement and scholarships:** Fraud artists prey on consumers concerned about finding jobs and financial assistance for college. Recent targets of enforcement have been against firms who advertised nonexistent U.S. Postal Service jobs as a means to sell useless exam materials, and telemarketers who falsely promise “guaranteed” college grants. Consumer education plays an important role in preventing this type of fraud.
- **Compliance with Commission Orders:** Violations of the FTC Act may result in an administrative order, directing the responsible individuals or companies to stop their unlawful practices. The program monitors those under order to ensure they cease their deceptive practices and fulfill any affirmative obligations, such as providing redress to injured consumers. Oversight of companies’ practices is accomplished by reviewing reports that companies must submit soon after the order is entered to show that they have changed their conduct. At other points in time, investigations are conducted to assess whether compliance has been maintained. If a company’s practices violate an order, the Program typically contacts the company to make sure it understands its obligations and this usually results in full compliance. In some instances, because of the egregiousness or willfulness of the violative conduct, formal action and civil penalties are sought to stop and deter additional violations.
- **Project Scofflaw:** Fraudulent practices or especially egregious deceptive practices frequently result in federal court orders that forbid future deceptive practices, provide redress to consumers and impose additional relief as appropriate. Because defendants subject to these orders sometimes engage in serious order violations, strong enforcement measures such as civil or criminal contempt actions can be necessary. The Enforcement Program coordinates “Project Scofflaw,” which systematically tracks defendants under FTC-related federal court orders, identifies violators, pursues civil contempt remedies as appropriate and works with criminal authorities to prosecute violators for criminal contempt.
- **Rule Enforcement:** The Enforcement Program enforces a variety of laws, rules and guidelines that require sellers to provide consumers with important pre-purchase information. For example, the Care Labeling Rule requires clothing to be labeled with cleaning instructions; the Mail or Telephone Order Rule requires sellers to ship

merchandise within the time promised or let consumers know there will be a delay; the Appliance Labeling Rule requires major home appliances to be labeled with energy efficiency information; and the Environmental Marketing Guides tell marketers how to advertise the environmental benefits of their products without misleading consumers. The program helps consumers and businesses to understand their rights and duties through educational efforts and by answering inquiries. If a company's practices significantly violate a rule, the program pursues formal action and civil penalties.

- **Regulatory Reform:** Keeping rules and guides up-to-date so they continue to be meaningful, and repealing outdated, unnecessary ones is an important role of the program, accomplished by reviewing all rules and guides every 10 years. Thus far, the program has reviewed nearly 86 % of the rules and guides; half of those were repealed after review, others were revised or consolidated in some cases to harmonize requirements with international standards to facilitate international trade.

Planning and Information Program

The Planning and Information Program develops, analyzes, and supplies information in order to target law enforcement and educational efforts, measure the impact of Mission activities, and allocate resources. The program is responsible for various projects and functions, including:

- **Consumer Response Center and Consumer Information System:** The Consumer Response Center responds to consumer complaints and inquiries received by the toll free consumer complaint line, 877- FTC-HELP, postal and electronic mail. Information from these complaints is collected in the Consumer Information System and used to target law enforcement and consumer and business education programs. More than 338,000 complaints were added to the FTC's complaint data from these sources in the past fiscal year.
- **Consumer Sentinel:** Consumer Sentinel is a multi-national, multi-state consumer fraud database that provides law enforcement with secure Internet access to over 300,000 consumer complaints. Currently, approximately 250 law enforcement organizations across the U.S., Canada, and Australia have access to this tool. The site provides law enforcement access to telemarketing, direct mail, and Internet complaints from the FTC's Consumer Information System database and from various law enforcement partners. The site also provides other information useful for investigations and prosecutions. Recently, the system has been expanded to provide the public with a view of our efforts. A public view of Consumer Sentinel, located at www.consumer.gov/sentinel, provides the public with consumer fraud trend data, and information on how Consumer Sentinel serves the public.
- **Identity Theft:** The Identity Theft and Assumption Deterrence Act of 1998 charged the FTC with setting up a centralized consumer complaint and education service for victims of identity theft. The FTC's Identity Theft Program is now firmly established as a key player in this area of growing concern. The Mission has established a toll free number, 877- ID THEFT, that provides callers with a way to report incidents of identity theft, and receive information on ways to repair the harm done through this crime. Law enforcement can access these complaints through the Sentinel system. Callers also receive consumer education material, which alerts them to ways of minimize their exposure to identity theft. The toll free number now receives more than 2,000 calls each week. In the past year, the program also convened a widely-attended workshop on Victim Assistance, and distributed more than 200,000 copies

of our ID Theft consumer education materials. The program participates in a network of public and private sector gatherings that address the problem of identity theft.

- **International Coordination:** The program coordinates the international work of the Consumer Protection Mission. A high priority in this area is the creation of legal and technological mechanisms for information sharing among international law enforcers. These efforts were advanced this year when the FTC held the presidency of the International Marketing Supervision Network, an organization of consumer protection agencies from 29 countries. The program also focuses on ways to promote the development of free market policies in E-Commerce. The program participates in public meetings to explore cutting-edge international issues relating to consumer protection and E-commerce, and promotes ways to advance dispute resolution mechanisms for cross-border online transactions.
- **Internet lab:** In order to stay ahead of the technology used to defraud and mislead consumers, the Mission established an Internet Lab. Built outside the agency's security firewall, the lab allows attorneys and investigators to use emerging technology to detect and capture deceptive web activity that harms consumers. The lab is also used to facilitate surf days, support litigation and provide training.
- **Operations:** The program administers the core financial, administrative, and litigation support activities of the Mission. In addition, the program manages the agency's consumer protection redress activities, including the coordination of the Bureau's bankruptcy practice. These efforts seek to maximize recovery of assets for consumer redress. Another important responsibility is the coordination of strategic planning and performance measurement. Strategic planning is integrated with budgeting to provide a roadmap to guide staff activities and accomplish the Mission goal and objectives.

Consumer and Business Education Program

The Consumer and Business Education Program plans, develops, and implements pro-active and creative practical, plain English mission-related campaigns targeted to both broad and segmented consumer and industry audiences. This effort encourages informed consumer choice and competitive business practices in the marketplace, and is viewed by the Commission as a cost-effective way to help minimize consumer injury and obtain compliance with the law. To leverage expertise and limited resources, the program also partners with businesses, trade associations, consumer groups and other government agencies, exhibits at national conferences and conventions and produces public service announcements for radio, print and web. A consumer and/or business education component is included in each major Consumer Protection law enforcement initiative. Specific efforts include:

- **Mission Promotion:** In an effort to brand the FTC as the nation's consumer protection champion, help consumers recognize and avoid fraud and deception and

give them a place to report fraudulent and deceptive practices, the Consumer and Business Education Program engages in an ongoing promotional and marketing program for the agency's toll-free telephone number and online complaint form.

- **Publications program:** Every year, the Consumer and Business Education Program produces from 75 to 100 new or revised publications to alert consumers to their rights and businesses to their responsibilities. These publications, done in a variety of formats, are disseminated through a network of thousands of intermediaries, who order bulk copies for their own constituents. The Program distributes more than 6 million paper copies of its publications each year; consumer information on the agency's website were accessed an additional 6 million times last year. The Program produces feature stories that are released to thousands of broadcast, print and online media, and hosts audio versions of its printed publications on the agency website.
- **Non-traditional education program:** The Consumer and Business Education Program uses a variety of non-traditional methods for disseminating its practical, plain English information. For example, the Program produces:
 - < "teaser" websites that mimic fraudulent sites in an attempt to reach web consumers at "the teachable" moment – when they are searching for a particular product or service. Consumer and Business Education Program creates products and services that are "too good to be true" but that attract consumer attention.
 - < Web "banner" public service messages that are posted on the FTC website and distributed and marketed to partners and news media and available for downloading.
 - < classified ads that are run as public service messages when newspapers and sites have the space.
- **www.consumer.gov:** Consumer and Business Education Program launched this "one stop" site for federal consumer information with four partner agencies (FDA, CPSC, NHTSA and SEC) in December 1997. Today, the site links to information, arranged topically, from more than 170 federal agencies. The site racks up more than 2.5 million hits and 85,000 unique user sessions a month and houses special initiatives. For example, at the request of the President's Council on Y2K Conversion, the FTC established a Y2K consumer information site on consumer.gov; a special site on health care quality was developed at the request of and assistance from the Quality Interagency Coordination Task Force. The five founding agencies received the Hammer Award for their innovative approach to providing consumer information.
- **National Consumer Protection Week:** For the past three years, the Consumer and Business Education Program has taken the lead in organizing National Consumer Protection Week on behalf of the agency. The purpose of NCPW is to help local jurisdictions spotlight consumer protection and education efforts on a particular

subject. Other organizations on the steering committee include AARP, National Consumers League, Department of Justice, Postal Service and Postal Inspection Service, the Council of Better Business Bureaus, National Association of Attorneys General, and National Association of Consumer Agency Administrators.

Economic and Consumer Policy Analysis Program

The Economic and Consumer Policy Analysis Program supports economic research and advocacy activities that foster understanding of consumer good markets and consumer protection policy choices. The program also aims to ensure that consumer interests are represented before various governmental and self-regulatory bodies dealing with consumer-related issues. Among the types of activities supported by the program are:

- **Advertising Research and Data Development:** To advance the development of sound advertising policy this program supports data and research projects on how advertising claims and policies affect consumers' and firms' decisions. One recently released study examined the effects of different types of disclosures on consumer understanding of advertising claims for foods and dietary supplements. The program also supports the development of a historical database of nutrition-related claims in food advertising to allow us to better evaluate longer-term advertising issues.
- **Economic Studies of Markets for Consumer Goods and Services:** The program also supports targeted economic studies of issues in consumer goods markets that are important to improving our understanding of key consumer protection issues. Recent examples include studies of the rent-to-own industry and of the relationship between price and quality in local service industries.
- **Economic Support of Consumer Protection Advocacy:** This program also includes support for Bureau of Economic's staff to provide input for advocacy comments on issues related to the consumer protection mission. For instance, this program recently supported comments to various state agencies and to the Federal Energy Regulatory Commission regarding newly emerging consumer protection issues related to the advent of retail competition in the electric power industry.

Program Management

The goal of the Consumer Protection Mission is to prevent fraud, deception, and unfair business practices in the marketplace. Under CP's strategic plan, resources are devoted to three broad objectives: (a) monitoring the marketplace to educate ourselves about illegal practices and emerging "frontier" issues; (b) stopping fraud, deception and unfair practices through law enforcement, regulation, and guidelines, and by encouraging industry self-regulation; and (c) educating consumers and businesses. This program is responsible for the overall management of the Mission and the accomplishment of its goal and objectives.

Since 1995, the Consumer Protection Mission has engaged in mission-wide strategic planning. The benefits have been striking: clear goals for managers and staff; coordination of efforts across the Bureau and the regional offices, a greater ability to target resources to the most serious problems, the creation of new programs to meet new challenges, and increased efficiency and productivity. In all its activities, CP leverages its resources through

private and public sector partnerships, and the use of new technologies.

Maintaining Competition Mission
Budget by Program
(\$ in thousands)

	Fiscal Year 2001		Fiscal Year 2002	
	FTE	Dollars	FTE	Dollars
Premerger Notification	31	\$2,866	28	\$2,661
Merger & Joint Venture Enforcement	204	21,370	212	23,216
Merger & Joint Venture Compliance	15	1,433	16	1,608
Nonmerger Enforcement	93	10,093	96	10,878
Nonmerger Compliance	5	491	6	624
Antitrust Policy Analysis	6	634	7	774
Other Direct Mission Resources	15	1,583	15	1,654
Subtotal Direct Mission	369	\$38,470	380	\$41,415
Mission Support	123	30,894	124	32,083
Mission Total	492	\$69,364	504	\$73,498

The Maintaining Competition Mission seeks to prevent anticompetitive mergers and to assure that the marketplace is free from anticompetitive business practices. The mission is carried out through six law enforcement-related programs -- the Premerger Notification Program, the Merger and Joint Venture Enforcement Program, the Merger and Joint Venture Compliance Program, the Nonmerger Enforcement Program, the Nonmerger Compliance Program and the Antitrust Policy Analysis Program. In each program, staff seek to protect consumers' interests by preventing anticompetitive conduct or mergers without interfering with businesses' legitimate activities.

Premerger Notification Program

Mergers that are anticompetitive can drive up consumer prices by millions of dollars every year and can significantly diminish output, product quality, innovation, and consumer choice. To identify anticompetitive mergers, the FTC relies primarily on the premerger

notification required by the Hart-Scott-Rodino ("HSR") Act. To distinguish between mergers that threaten free markets and those likely to promote them, the FTC uses sophisticated economic analysis and thorough factual investigation.

- HSR Premerger Notification provides the FTC with an effective starting point for identifying anticompetitive mergers before they are consummated. Prior to enactment of the HSR Act, codified as Section 7A of the Clayton Act, parties often consummated their acquisitions and combined their operations before the antitrust agencies even learned of the transactions, making it difficult, if not impossible, to “unscramble the eggs” and restore to consumers the benefits of competition.
- The HSR Act requires persons meeting certain size requirements who are planning significant acquisitions to file notification with the Commission and the Department of Justice and to wait for a prescribed period of time before consummating the transaction. This notification and waiting period provide the antitrust enforcement agencies with an opportunity to review transactions and take enforcement action against those that would harm competition before they occur. A large majority of the Commission’s merger enforcement actions are initiated through this process.

The Premerger Notification Program meets the objectives of the Maintaining Competition Mission by working to:

- **Educate parties about HSR requirements:** The Premerger Notification Program works to ensure that parties to transactions understand the information that must be supplied under the HSR Act. To improve the level of voluntary compliance, the Premerger Notification Program provides assistance to individuals and organizations subject to the HSR Act.
- **Provide rapid initial HSR review:** Mergers reported under the HSR Act vary tremendously in their complexity and potential anticompetitive effect. In the majority of cases, the agency can make a reasonable judgment about whether a merger has the potential to be anticompetitive or procompetitive within a few days of filing, simply by reviewing materials filed with the notification. To identify potentially anticompetitive transactions, the Premerger Notification Program prepares a summary description and a preliminary antitrust analysis of every transaction reported. Those summaries are then reviewed by the Bureau of Competition’s litigation divisions, the Bureau of Economics, and the Merger Screening Committee, a committee with participants from both Bureaus that convenes regularly to consider which matters call for further action.
- **Coordinate with the Antitrust Division of the Department of Justice:** The FTC administers the HSR Program both for itself and for the Antitrust Division of the Department of Justice, which shares authority to challenge anticompetitive mergers. The summaries of transactions prepared by the Premerger Notification Program are provided to the Antitrust Division. The Office also works with the Antitrust Division to ensure that the Premerger Notification Program is applied consistently and

uniformly by the two agencies. Through an informal “clearance” process, the two agencies avoid duplicative effort and ensure that only one agency investigates and, if necessary, challenges any given transaction. Assignment to one agency or the other takes place after preliminary review of a transaction, which identifies the likely markets, if any, in which anticompetitive effects may occur. The assignment is based principally on expertise with particular markets.

- **Minimize burden on business:** The Program strives to minimize the burden on filing parties, to the extent consistent with enforcement responsibilities of the Commission and the Antitrust Division, recommending improvements in the HSR rules to be carried out through rule changes and formal interpretations.

Merger and Joint Venture Enforcement Program

Mergers and joint ventures (for convenience, “mergers”) often generate efficiencies, and most mergers are either procompetitive or competitively neutral. But mergers that are anticompetitive can raise consumer prices by millions of dollars every year. Such mergers also can reduce product quality and output, consumer choice, and innovation. The Commission has acted to protect consumers against such effects in any market in which the Commission has reason to believe a merger is likely substantially to lessen competition, including high-priority areas for consumers: health care, pharmaceuticals, energy, defense, information and technology, and consumer goods and services. Since 1991, in these six key areas alone, the agency has more than doubled the number of competition actions (e.g., administrative complaints, consent agreements, preliminary injunction actions authorized, staff advisory opinion letters).

The mission of the Merger and Joint Venture Enforcement Program is to prevent consumer harm that may result from anticompetitive mergers. In many instances, it is possible to arrive at narrowly tailored relief, such as required divestiture of certain assets, that prevents injury to competition but allows the overall transaction to proceed. In other instances, however, it is necessary to prevent or reverse the merger entirely to avoid harm to competition.

To determine whether a transaction would harm competition, and what sort of relief would be necessary the Merger Enforcement Program conducts investigations designed to answer fundamental questions about each merger reviewed, with respect to each affected market: Is it likely to result in the lessening of actual or potential competition, increase the market power of the joining firms, and lead to market dominance or a significant increase in the likelihood of collusion? Is it likely to increase barriers to entry or expansion, or foster interdependent conduct among firms? This Program also concerns itself with interlocking directorates among competing firms, which may have effects similar to those of anticompetitive mergers.

The Merger Enforcement Program uses the following process to carry out its mission:

- **Detect Potentially Anticompetitive Mergers:** Staff detects potentially harmful mergers before they occur by monitoring merger activity and screening all significant mergers, in conjunction with the Premerger Notification Program.
- **Investigate Potentially Anticompetitive Mergers:** Staff investigates those mergers that the screening process has targeted for further inquiry, gathering extensive market information about whether a proposed transaction is likely substantially to lessen competition.
- **Prevent Anticompetitive Mergers:** The Commission is often able to negotiate a remedy with the parties to a proposed merger to cure competitive problems posed by the transaction. In such instances, a consent agreement with the parties will ensure the appropriate remedy, such as divestiture of certain assets, is implemented while allowing the underlying transaction to proceed. Where this approach is not possible, the Commission's most effective and cost-efficient strategy is to prevent the anticompetitive merger before it occurs. The Commission implements this strategy primarily through its authority to seek injunctive relief under Section 13(b) of the Federal Trade Commission Act. Where injunctive relief is inappropriate or unavailable, the Commission may rely on its administrative remedial powers to seek to restore competition lost as a result of a merger that could not be prevented. Whether achieved by consent agreement or in an administrative proceeding, the principal remedy is divestiture of assets sufficient to preserve or restore competition, although the Commission has also employed conduct remedies where appropriate.
- **Educate public about anticompetitive transactions:** Public awareness of what factors are likely to be challenged as law violations helps to make the Commission's merger and joint venture enforcement program more effective. The Commission works to explain its actions through public releases of Commission decisions in various media such as press releases, web page publication and speeches in order to provide a basis for companies to evaluate whether contemplated transactions should be avoided based on the likelihood of antitrust challenge.

Merger and Joint Venture Compliance Program

Commission orders issued under the Merger and Joint Venture Enforcement Program, whether the products of negotiation or litigation, can only achieve the intended results of maintaining or restoring competition if they are well-designed, made effective in a timely fashion, and are faithfully complied with once they become effective. The Merger and Joint Venture Compliance Program deals with all three of these interrelated issues, sharing the first two concerns with the Merger Enforcement Program and bearing primary responsibility for the third.

- The design of the order in a particular merger case, while primarily the responsibility of merger enforcement staff, is devised in conjunction with the distilled experience of compliance staff. When divestiture of assets that are the subject of a consent decree is delayed, the competitive viability of the assets often declines. To avoid delay, the Commission seeks either “up-front” purchase and sales agreements or divestiture orders that limit the time in which divestiture relief is accomplished to the minimum necessary.
- The principal functions of the Merger Compliance Program are assuring that order provisions are as effective as possible, and faithfully and timely executed. Compliance staff work with merger enforcement staff, merging parties and buyers to assure that the provisions of the order are properly drafted and that the divestiture package is adequate to achieve the viability and competitiveness necessary to accomplish the purpose of the order.
- Compliance staff closely monitor progress toward divestiture and, where necessary, recommend that fallback order provisions be invoked, such as trustee-managed divestiture, the divestiture of larger asset packages, or, ultimately, civil penalty actions. Civil penalty actions entail investigation and, where necessary, federal court litigation.
- The Merger Compliance Program includes monitoring compliance with conduct order provisions such as bans on the dissemination within a respondent firm of competitively sensitive information or requirements to seek prior approval or give prior notice of plans to carry out specified future mergers or acquisitions. In addition, the Merger Compliance Program also includes reviewing petitions from parties to orders seeking modification or terminations of their orders, and making appropriate recommendations for Commission action.

Nonmerger Enforcement Program

Through its Nonmerger Enforcement Program, the Commission seeks to prevent business practices that enable competitors to collude, or that make it more difficult for new competitors to enter markets. The Program focuses particularly on evolving markets, high-technology industries, and markets that have been deregulated. For competition to thrive in markets in transition, such as health care, competition authorities must be alert to practices designed to entrench market power and deny consumers the benefit of new forms of competition, such as conspiracies among health care providers to resist new forms of lower-cost health care provision. For competition to thrive in innovative, high-technology arenas, competition authorities must evaluate the significance of business conduct in the context of these novel, high-technology settings. The analysis must distinguish between practices that restrict competition and those that simply protect against misappropriation of intellectual property or other efforts of firms to “free ride” on the investments of others, or otherwise promote competition. For competition to thrive in newly deregulated areas, such

as energy, competition authorities must monitor the conduct of firms that never before have had to compete.

The Commission's nonmerger programs encompass all of its enforcement jurisdiction outside of the merger programs. A wide variety of business practices may harm consumers, allowing firms to raise prices beyond competitive levels, or to reduce output, quality, services, innovation, or choice for consumers. The nonmerger actions of the Commission may be divided into three broad categories of antitrust violations: horizontal restraints, distributional restraints, and single firm violations. Identifying and proving these types of violations re-

quires the application of sophisticated economic analysis and thorough factual investigation to distinguish between conduct that threatens the operation of free markets and conduct that promotes and advances their operation.

- **Horizontal Restraints:** The horizontal restraints segment of the Nonmerger Enforcement Program focuses on anticompetitive behavior among competitors. Some horizontal restraints, such as price-fixing and other anticompetitive behavior among competitors, harm consumers by raising prices and reducing the quantity and quality of goods and services. Such restraints may be the products of collusion or of conduct that facilitates collusion. The mission of this program is to detect, investigate, prevent and remedy anticompetitive collusion or facilitation of collusion. While some agreements among competitors, such as standard-setting and promulgation of legitimate ethical codes, can serve functions that are procompetitive and even essential, such agreements can also be abused to exclude entry by new competitors or expansion by existing competitors.
- **Distributional Restraints:** The distributional restraints segment of this Program generally deals with restraints on the distribution of goods from manufacturers to consumers. Such practices can facilitate horizontal collusion, or limit sources of supply or restrict channels of distribution in ways that give a party unilateral power to increase prices or reduce price-adjusted quality. Potentially unlawful conduct includes restrictions on resale prices as well as restrictions on nonprice terms. Such practices may result from agreements between suppliers and purchasers, or from the coercion of purchasers by sellers (or vice-versa). This segment also deals with discrimination in price or other terms that tends to deny competitive opportunities to firms in the distribution chain and that may injure consumers.
- **Single Firm Violations:** A single firm with market power can use various anticompetitive practices to reduce output and increase price above the competitive level, thereby injuring consumers and mis-allocating resources. While neither the existence of such market power nor the attempt to achieve it is unlawful in itself, obtaining, increasing, or maintaining market power by unnecessarily exclusionary means is unlawful. The goal of our enforcement activity against single firm violations is to prevent or remedy instances in which market power is created or maintained, or either is attempted, through conduct that would injure long-run consumer welfare. A principal challenge with this enforcement activity is to distinguish improper conduct from that which merely constitutes vigorous competition. Such activity as tying and price and nonprice predation are typical of unlawful monopolizing conduct.
- The Commission employs strategies of investigation, litigation, voluntary compliance, and negotiation in the Nonmerger Enforcement Program. In addition, to advance the use of free market mechanisms in place of regulatory or private restraints wherever possible, the Commission, where appropriate, shares its expertise on competition issues by providing reports and comments to federal, state, and local government agencies; *amicus curiae* briefs; advisory opinions; and legal and economic analyses.

Nonmerger Compliance Program

As with merger enforcement, the orders obtained through the Commission's nonmerger enforcement efforts must be both well-designed and faithfully observed in order to produce the desired restoration or preservation of competition. The appropriate design of orders calls for close consultation between enforcement and compliance staff. Divestiture relief will seldom be involved for anticompetitive conduct in our nonmerger matters. Instead, the most significant order provisions are generally prohibitory. Thus, while the timeliness of relief is still a significant issue, ensuring it is more often a matter of the speed with which the order was obtained after violations were detected than of post-order processes.

- The provisions of nonmerger orders often present their own difficult enforcement issues, especially that of distinguishing compliance from noncompliance, as where respondents are by order forbidden to take actions by agreement that they are free to take individually.
- Strategies for monitoring compliance include review of periodic compliance reports required by the orders themselves, follow-up interviews with the reporting parties, scrutiny of relevant media, contacts with the original complainants and others in the industry in a position to observe any violations and investigation of suspected violations.
- Nonmerger compliance may entail federal court litigation seeking civil penalties and other relief.
- The Nonmerger Compliance Program also includes reviewing petitions from parties under order seeking modification or termination of their orders, and making appropriate recommendations for Commission action on these petitions.

Antitrust Policy Analysis Program

The Antitrust Policy Analysis Program provides the Commission and other policy makers with information to assess the effects of competition policy. Economic research in this program is designed to improve our understanding of those market situations where antitrust activity would result in a more competitive market. The program also aims to ensure that consumer interests are represented before various governmental and self-regulatory bodies addressing market and competition issues. Among the types of activities supported by the program are:

- **Economic Studies of Competition in Markets:** A key goal of this program is to support studies that help us better understand how competition actually works in different markets. Projects include a recently released descriptive study of the pharmaceutical industry to help us understand the rapid changes taking place in this industry and what these changes might mean for antitrust policy; and a study of the

effects of franchise transfers and mergers in the carbonated soft drink bottling industry; and an ongoing study of how the entry of branded generic drugs has influenced the pricing and sales of branded drugs.

- **Economic Studies of Antitrust Policy Issues:** The program also supports economic studies of antitrust policy issues designed to inform the Commission and others. For instance, current projects include an assessment of the aftermath of hospital mergers that were not challenged, and an examination of the effects of FTC divestiture orders.
- **Economic Support of Competition Advocacy:** This program also includes support for Bureau of Economic's staff to provide input for advocacy comments before other governmental or self-regulatory bodies on issues related to the competition mission. For instance, this program supports advice to state utility commissions and to the Federal Energy Regulatory Commission about alternative ways they could structure the rules that will guide the deregulation of electricity transmission and generation to allow competition in wholesale and retail sales of electric power. Other recent examples of competition advocacy comments include those filed before the North Carolina Legislature regarding restrictions on distribution choices of motor vehicle manufacturers, and comments to the Illinois and North Carolina legislatures regarding the competitive effects of mandating exclusive distributorships for alcoholic beverages.

Other Direct Mission Resources

The Maintaining Competition Mission includes several other functions that directly support the law enforcement, including:

- **Program Planning, Evaluation and Review:** The Program ensures overall consistency of our enforcement program with case law, Commission precedents and policy, antitrust scholarship and efficient use of resources.
- **Budgeting:** The program coordinates with the Commission's Budget Office to propose budgets for future years and works with Commission and Bureau management to monitor resource expenditures.
- **Personnel Management and Evaluation:** The Program has responsibility for coordinating all personnel reviews and personnel actions.
- **Recruiting:** The Bureau of Competition, in cooperation with the Human Resources Management Office and other offices in the Commission, interviews at over a dozen law schools each year to recruit entry-level attorneys. The Program also recruits lateral attorneys and other staff members, as need arise.
- **Employee Development and Training:** Under this Program, the Mission ensures

that attorneys and support personnel receive legal and other necessary training. Hallmarks of the training program are the semi-annual three-day in-house training sessions for summer interns and first-year attorneys and the ongoing programs on substantive and procedural topics aimed at experienced attorneys as well.

- **Correspondence and Inquiries:** The Program ensures that the Commission responds to thousands of letters, e-mails and phone inquiries from members of the public seeking or offering information concerning possible unfair methods of competition in the marketplace, and that Commission staff make appropriate use of any case leads provided by such correspondence.
- **Information Systems Management:** The Program manages the records necessary to track all matters opened under the Maintaining Competition Mission and also coordinates all activity with the Commission's Office of Information and Technology Management, including making full use of the Internet to keep the public informed of mission activities and of the Intranet as an efficient means of internal communication.
- **Records Management:** The Program ensures that Commission records, as well as documents submitted by parties under investigation, are managed properly.
- **Space and Property Management:** The Program is responsible for overseeing efficient use of space and equipment.
- **Procurement and Contracting:** The Program oversees the aspects of procurement in coordination with the Acquisitions Office, particularly obtaining the services of outside economists and other expert witnesses to support investigations and litigation.
- **Clearance Procedures with the Department of Justice:** Under this Program, staff of the Commission and the Antitrust Division of the Department of Justice apply established principles to determine which agency will investigate merger and nonmerger matters that appear to violate the antitrust laws.
- **Liaison with State Officials:** The program coordinates antitrust activities and enforcement with state attorneys' general, including training, joint investigations and consultation.
- **International Liaison:** The international program supports the Mission's investigation and prosecution of cases by notifying, consulting and cooperating with foreign antitrust authorities and by advising Commission staff on foreign law and practice. The program also supports development of international antitrust policy in bilateral relations with foreign enforcement authorities and in multinational forms.

Mission Support
Budget by Office
(\$ in thousands)

	Fiscal Year 2001		Fiscal Year 2002	
	FTE	Dollars	FTE	Dollars
Commissioners	45	\$5,017	45	\$5,250
Office of the General Counsel	48	4,689	49	5,020
Office of the Secretary	20	2,057	20	2,140
Administrative Law Judges	5	493	5	516
Office of the Executive Director	126	51,113	128	53,384
Offices of Congressional and Public Affairs	13	1,212	13	1,267
Office of Inspector General	5	656	5	685
Mission Support Total	262	\$65,237	265	\$68,262

Allocation of Mission Support

Consumer Protection Mission	139	\$34,343	141	\$36,179
Maintaining Competition Mission	123	30,894	124	32,083
Mission Support Total	262	\$65,237	265	\$68,262

Mission Support consists of management and support programs within the Federal Trade Commission (FTC) and addresses the evolving needs of the direct missions' challenges. Mission Support programs develop and implement new, more efficient products and services to meet the FTC's challenges.

Commissioners

The Commissioners are responsible for ensuring that the FTC effectively and efficiently executes its Congressionally mandated responsibilities. They formulate Commission policy which guides and directs the staff's work. They also allocate the resources required to implement courses of action and monitor the Commission's progress in accomplishing stated goals.

To support the Commission in the performance of its duties, the Policy Planning Task Force is responsible for developing recommendations on a wide array of issues. Policy Planning Task Force staff study, obtain public input about, report on, and analyze changes in the economy, the competitive process, consumer and competition issues, and other areas of the

law related to the Commission's enforcement responsibilities. The Policy Planning Task Force also coordinates the Commission's advocacy role with other governmental entities and, upon request, provides assistance in the development of cases that involve novel or complex legal issues. Policy Planning Task Force staff obtain public input from businesses, consumer groups, academics, and other outside sources through a variety of means, such as investigative hearings, fact-gathering workshops, and roundtable policy discussions. Policy Planning Task Force staff research and draft policy recommendations, such as possible guidelines on enforcement policy; coordinate and oversee advocacy comments; and identify, report on, and analyze emerging issues for competition and consumer protection enforcement. Substantive areas include competition policy in connection with innovation and intellectual property, deregulation and markets in transition, and Internet issues, among others. The Policy Planning Task Force researches and explores the most effective and appropriate means by which the Commission may approach competition and consumer protection policy issues, while, at the same time, providing cost-effective services to those subject to the Commission's enforcement orders and policies.

Office of the General Counsel

The General Counsel is the Commission's chief legal officer and adviser. The office's major functions are representing the Commission in court and providing legal counsel to the Commission, the operating bureaus, and other offices.

In its litigating capacity, the Office of General Counsel defends actions seeking judicial review of Commission cease and desist orders and trade regulation rules, handles appeals of Commission actions seeking preliminary and permanent injunctive relief, and assists the bureaus in actions for injunctive relief in district court. The office enforces civil investigative demands and other compulsory processes, and responds to discovery requests directed to the agency or its staff. It cooperates with the Department of Justice in defending cases brought to enjoin agency action, or to obtain monetary damages against the Commission or its personnel. The office also furnishes advice and assistance concerning other litigation activities, and prepares amicus curiae briefs authorized by the Commission.

In its counseling capacity, the Office of General Counsel provides confidential legal guidance to the Commission on a wide range of procedural and substantive issues in adjudicative matters. It also advises the Commission and staff on legal and policy issues, such as agency jurisdiction, statutory authority, administrative procedure, and other matters relating to the agency's enforcement missions. The office counsels Commissioners and staff to ensure compliance with the Ethics in Government Act and to avoid conflicts of interests, reviews and certifies financial disclosure reports, decides whether former employees may appear in Commission proceedings, provides reports to the Office of Government Ethics, and conducts ethics training.

The office also advises agency staff on personnel, labor-management relations, equal employment opportunity, procurement law, and appropriations law matters. It represents the Commission in legal proceedings before such agencies as the Merit Systems Protection

Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and General Services Board of Contract Appeals.

The office prepares responses to formal congressional access requests for documents or information about Commission actions, assists with briefings of congressional committees and subcommittees, assists in preparing testimony for congressional hearings, analyze proposed legislation affecting the agency, and drafts or reviews Commission comments to OMB or the Congress on such legislation. The office also handles a number of matters related to confidentiality and access to information, including administration of the Freedom of Information Act, Privacy Act, and the Government in the Sunshine Act, requests by state federal law enforcement agencies for access to non-public documents, and requests for confidential, rather than public record, treatment of materials submitted to the Commission.

Office of the Secretary

The Office of the Secretary is the custodian of critical Commission documents and records. Its major functions are to implement the Commission's voting procedures and create official records of its decisions; to review, validate, and serve all official documents; to receive and process all filings before the Commission; and to design and implement systems for storing, accessing, and archiving the agency's official records. In addition, the Office provides guidance on procedural issues; maintains and, as necessary, revises the *Operating Manual*; publishes *Federal Register* notices, as appropriate, and volumes of *FTC Decisions*; and provides historical research and analysis to the Commission and to the staff.

The Office is also responsible for the efficient processing -- from receipt to completed response -- of more than 3,000 letters received from Members of Congress each year. In addition, the Office is responsible for analyzing and drafting responses to most of these letters -- including in particular letters that raise marketing practices or financial practices issues -- while forwarding the remaining letters to other organizations for the preparation of responses.

Office of Administrative Law Judges

The Office of Administrative Law Judges is responsible for the initial performance of the Commission's adjudicative fact-finding functions in conformity with applicable statutes, judicial precedent, Commission decisions and the agency's rules of practice. The administrative law judge assigned to handle the complaint issued by the Commission rules on virtually all matters arising in the course of the proceeding, including motions, discovery, and other pretrial questions, procedural questions, and all issues arising during the trial and prepares and files an initial decision. The Office of Administrative Law Judges is also responsible for conducting rulemaking proceedings on behalf of the Commission. A recommended decision is made to the Commission based upon findings and

conclusions as to all relevant and material evidence, taking into account the report of the Commission's staff.

Office of the Executive Director

The Office of the Executive Director serves as the managerial and administrative arm of the Federal Trade Commission with responsibility for the overall operation of the agency. The Office of the Executive Director manages agency-wide projects on a variety of matters, including agency reauthorization and annual appropriations and budgets. The Office of the Executive Director works closely with the bureaus on strategic planning and assessing the management and resource implications of any proposed action. The Equal Employment Opportunity Office is located in the Office of Executive Director as well as the following:

Financial Management Office

The Financial Management Office (FMO) is centrally responsible for agency-wide budget formulation and execution; contract preparation, award and administration; and financial information tracking, reporting and analysis. It performs these critical responsibilities through three branches – Budget, Acquisitions and Finance. The FMO provides management, policy, and technical support for each of its responsibilities to the FTC's Commission, management and staff, as well as to Congress, the Office of Management and Budget (OMB), the Treasury Department, and other Federal agencies having government-wide financial management responsibilities. The FMO directs the FTC's implementation of various budget, acquisition, and financial management regulations and statutes including the Federal Acquisitions Regulation, Federal Travel Regulation, Government Performance and Results Act, the Chief Financial Officer Act, and the Federal Managers' Financial Integrity Act. More specific ongoing activities carried out by the FMO include:

- Providing expert assistance to the Executive Director, Commission and program offices on budget development, preparation, format and submission.
- Coordinating with OMB and Congressional staff to justify FTC budget submissions and prepares related briefing documents and exhibits.
- Analyzing the impact on the FTC of enacted appropriations and related provisions, obtains apportionment authority from OMB and distributes apportioned funds and appropriated staff years to agency organizations and projects.
- Performing budget execution analyses within each fiscal year of actual versus planned spending, provides reprogramming and technical advice to managers and staff, and preparing reprogramming exhibits to the Commission, OMB and Congress.
- Certifying that FTC funds are available for proposed obligations and that any obligations incurred are in conformance with appropriations law and related government-wide and FTC regulations.
- Examining the execution within the FTC of prior fiscal year budget processes and designing and implementing process improvements for future budgets.

- Responding to financial data requests from the public, OMB, Congress, the General Accounting Office and other Federal agencies.
- Administering the FTC's travel and acquisition activities and ensures compliance with related Commission and government-wide statutory, regulatory and administrative requirements.
- Managing and administering the FTC's credit card program for purchasing and travel.
- Maintaining, improving and promoting the reliability and timeliness of accounting data and records through continuous financial review and the improved distribution of financial policy and data to FTC management and staff.
- Developing and preparing the FTC's Audited Financial Statements in full compliance with government-wide concepts and standards.
- Directing the FTC's Government Performance and Results Act activities.

Human Resources Management

The Human Resources Management Office (HRMO) is responsible for the human resource activities of the Commission, including honors program recruitment, attorney and non-attorney hiring, SES hiring, advice and guidance to managers on conduct, performance, and discipline problems, benefits, retirement counseling, administering the awards program, training, position classification, labor relations, administration of performance management, payroll liaison, and electronic time and attendance coordination. More specifically, some on-going activities carried out by HRMO include:

- Assisting and advising Bureaus and Offices in filling high-priority positions.
- Assisting and advising Bureaus and Offices in resolving sensitive human resource issues.
- Working with the Headquarter's Union, Bureaus and Offices to renegotiate the Union contract.

Administrative Services Office

The Administrative Services Office (ASO) is an integral component of the Commission's support service network. The responsibility of the Office is to effectively manage the Commission's headquarters and regional offices space, property, and inventory and to provide day-to-day building-related support in a responsive and timely manner. ASO

effectively maintains a Customer Service Center, a one-stop shop for addressing and fulfilling a wide range of administrative requests. The Reproduction Management Section of ASO maintains in-house copying capability with the goal of meeting highly critical deadlines with quality products. Specific responsibilities carried out by the Administrative Services Office include:

- Negotiating, leasing, and managing of headquarters and regional offices space to include managing infrastructure renovations/repairs.
- Providing building and grounds management, identifying problems and deficiencies to our physical plant, making adjustments and repairs in a timely manner, and overseeing elevator maintenance and custodial contracts for headquarters buildings.
- Managing the agency's physical security and health and safety programs.
- Managing and administering the Reimbursable Work Authorization (RWA) program. FTC is required to reimburse the General Services Administration for building-related services, such as overtime utilities and alterations in buildings where GSA has not given the FTC authority to provide these services.
- Providing administrative assistance and logistical support to eight regional offices.
- Managing agency-wide support functions to include mailroom, printing, supplies, and furniture warehousing.
- Updating and maintaining various publications, such as, the FTC's Administrative Manual and telephone directory, as well as, external directories containing information about the FTC's mission.
- Managing the agency's reproduction program, which includes an in-house copy center and logistical support to FTC staff on FTC work that is printed at the Government Printing Office (GPO).
- Coordinating the Commission's transit subsidy program.
- Providing moving, transportation, and garage services for headquarters buildings.

Information Technology Management Office

The Information and Technology Management Office (ITMO) is responsible for the Commission's technological infrastructure and related office systems. The overall mission of the ITMO program remains to support and improve the productivity and effectiveness of the Commission through the effective use of those information resources.

ITMO's efforts will focus on providing the support needed by the Commission's bureaus and

offices and the administrative processes to accomplish the agency's missions. ITMO's efforts are related to two basic types of services: (1) direct law enforcement, mission-related systems and services; and (2) vital infrastructure that provides the basis for specific FTC activities, each of which are further subdivided.

- **Direct Law Enforcement Systems and Services.** ITMO provides several important information systems and services that have become critical to the FTC's law enforcement activities.
 - < Support for Specific Investigations and Litigations: ITMO provides support and assistance to the Commission's law enforcement staff through the seizure and acquisition of information from targets of investigations, initial analysis of that information, preparation of trial materials, etc.
 - < Support for Overall Law Enforcement Efforts: ITMO's more general direct support to the Commission's missions is provided through library research and reference collection services; services provided by our HelpDesk, including PC installation and repair; training and support in the use of information resources; and various information systems. The law enforcement systems included in our life cycle program are: Premerger Notification System; Department of Justice Clearance System; Consumer Information/Identity Theft/Consumer Sentinel Systems; and the Internet.
- **Vital Infrastructure Systems and Services.** The information resources used directly by Commission staff are only a portion of the complete package of the technological infrastructure that ITMO must develop and maintain. Commission staff rely heavily upon many of the systems for which ITMO is responsible, including the Local Area Network (LAN), Wide Area Network (WAN), telephone and phonemail systems, e-mail system, central computing facility, facsimile services, desktop PC's and software, local printers, administrative applications, data warehouse, and others. Those systems and services have greatly increased the productivity of the entire agency. However, because the agency relies on those systems, any interruption of service or weaknesses in their operation is dramatically felt by individual staff and the agency as a whole. The vital infrastructure area has two components: (1) the life cycle management products and services; and (2) technology enhancement products and services.
 - < Life Cycle Management Products and Services: Because of the complexity of systems and the fast-paced changes in computer technology, ITMO must periodically assess the technological infrastructure to ensure that it remains sound and that the incremental enhancements made as part of the maintenance program are working together to produce optimal results.

- < Enhancements to Technology Products and Services: Agency needs related to agency-wide and individual mission information technology evolve and ITMO must adapt or enhance individual products and services to ensure that they continue to meet those changing requirements.

Offices of Congressional and Public Affairs

The Office of Legislative and Public Affairs serves as a liaison between the Commission and the Congress and public. It advised the Commission on Congressional policies, procedures, interests and pending legislative initiatives. It serves as the central source of information for individual members of Congress, Committees of Congress, and the Congressional staff who have inquiries regarding proposed legislation, Commission activities, and individual constituent requests.

In the areas of public affairs, the Office of Legislative and Public Affairs is responsible for informing the news media, business and professional interest, as well as the public at large about the activities of the Commission. An additional function is to respond to media inquiries about Commission actions and policy. In serving as liaison between the Commission and the media, the Office of Legislative and Public Affairs:

- Producing news releases announcing official actions of the Commission including decisions by Administrative Law Judges and the Commission.
- Arranging press conferences.
- Providing assistance to media involved in covering Commission activities.
- Preparing daily distribution of Commission's releases and supporting documents to interested media.
- Ensuring that releases, supporting documents and consumer education materials are available to the media and the public on the Internet.
- Producing a regular "News Summary" of clips from newspapers and magazines on Commission activities.
- Producing "News Notes," a weekly document to inform members of the public who have requested to be kept apprized of official Commission actions.
- Producing "Weekly Calendar and Sunshine Notices" report to inform the public and the media of scheduled Commission activities in which they may wish to participate or attend.
- Working with Regional Offices on media coverage of Commission activities in their regions.
- Arranging media appearances for Chairman, Commissioners, and other senior officials.
- Arranging photographic services for Commission.

- Coordinating press coverage for BCP's Consumer Business and Education division brochures.
- Garnering transcripts and videotapes of broadcast coverage of Commission activities.
- Responding to members of the media and the public on inquiries pertaining to whether the FTC is investigating a particular merger.

Office of Inspector General

The Office of Inspector General (OIG) was created in fiscal year 1989 in accordance with the Inspector General's Act of 1978, as amended, for the purpose of preventing and detecting fraud, waste, and abuse in agency programs and operations. The Office of Inspector General meets its mission responsibilities by conducting independent audits and investigations. The Inspector General is charged with keeping both the agency head and Congress fully and currently informed about problems and deficiencies relating to the administration of Commission programs.

The fiscal year 2002 budget request will allow the Office of Inspector General to complete a financial statement audit for fiscal year 2001 along with a number of program related reviews. The program reviews will focus on information technology, GPRA implementation, along with other program activities identified as important by management in the agency's Strategic & Performance Plans. In addition, the OIG will continue to investigate allegations of employee wrongdoing whenever received. The audit and investigative workload is projected to remain constant between fiscal years. Finally, the OIG will continue to participate in community-wide President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency activities, report semiannually to Congress on OIG activities and when necessary provide management with investigative alerts.

Proposed Appropriations Language

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; not to exceed \$2,000 for official reception and representation expenses, [\$145,254,000]: *\$156,270,000 Provided*, That not to exceed \$300,000 shall be available for use to contract with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718, as amended: *Provided further*, That, notwithstanding section 3302(b) of title 31, United States Code, not to exceed [\$145,254,000] *\$156,270,000* of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. [18(a)] *18a*) shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year [2001] *2002*, so as to result in a final fiscal year [2001] *2002* appropriation from the general fund estimated at not more than \$0, to remain available until expended: *Provided further*, That none of the funds made available to the Federal Trade Commission shall be available for obligation for expenses authorized by section 151 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102-242, 105 Stat. 2282-2285). (*Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, as enacted by section 1(a)(2) of (P.L. 106-553).*)

Program and Financing

(\$ in millions)

Identification Code: 29-0100-0-1-376	FY 2000 Actual	FY 2001 CY	FY 2002 BY
Obligations by program activity:			
09.01 Maintaining Competition	59	69	73
09.02 Consumer Protection	66	78	83
09.03 Reimbursable Program .	1	1	1
09.99 Total Reimbursable Program	<u>126</u>	<u>148</u>	<u>157</u>
10.00 Total New Obligations	<u>126</u>	<u>148</u>	<u>157</u>
Budgetary resources available for obligation:			
21.40 Unobligated balance available, start of year	3	4	4
22.00 New budget authority (gross)	126	148	157
22.10 Resources available from recoveries of prior year obligations	1
23.90 Total budgetary resources available for obligation	<u>130</u>	<u>152</u>	<u>161</u>
23.95 Total new obligations	-126	-148	-157
24.40 Unobligated balance available, end of year	4	4	4
New budget authority (gross), detail:			
Permanent:			
Spending authority from offsetting collections			
68.00 Offsetting collections (cash)	107	160	208
68.26 Offsetting collections (unavailable balances)	21	2	...
68.45 Portion not available for obligation (limitation on obligations)	-2	-14	-51
68.90 Spending authority from offsetting collections (total)	<u>126</u>	<u>148</u>	<u>157</u>
70.00 Total new budget authority (gross)	<u>126</u>	<u>148</u>	<u>157</u>
Change in unpaid obligations:			
72.40 Unpaid obligations, start of year: Obligated balance, start of year	17	17	12
73.10 Total new obligations ¹	126	148	157
73.20 Total outlays (gross)	-125	-153	-156
73.45 Adjustments in unexpired accounts	-1
74.40 Unpaid obligations, end of year: Obligated balance, end of year	17	12	13
Outlays (gross) detail:			
86.90 Outlays from new authority	107	136	144
86.93 Outlays from balances	18	17	12
87.00 Total outlays (gross)	<u>125</u>	<u>153</u>	<u>156</u>
Offsets:			
Against gross budget authority and outlays:			
Offsetting collections (cash) from:			
88.00 Federal sources	1	1	1
88.40 Non-Federal sources	106	159	207
88.90 Total offsetting collections (cash)	<u>107</u>	<u>160</u>	<u>208</u>
Net budget authority and outlays:			
89.00 Budget Authority	19	-12	-51
90.00 Outlays (net)	18	-7	-52

¹ Includes \$1 million in each fiscal year for obligation of funds reimbursed by other federal agencies.

Object Classification

(\$ in millions)

Identification Code: 29-0100-0-1-376	FY 2000 Actuals	FY 2001 CY	FY 2002 BY
Reimbursable Obligations			
Personnel Compensation:			
11.1 Full-time permanent	65	74	80
11.3 Other than full-time permanent	7	7	7
11.5 Other personnel compensation	2	2	2
11.9 Total personnel compensation	74	83	89
12.1 Civilian personnel benefits	15	18	20
21.0 Travel and transportation of persons	1	2	2
23.1 Rental payments to GSA	11	12	13
23.2 Rental payments to others	----	1	1
23.3 Comm., utilities & misc. charges	3	3	3
24.0 Printing and reproduction	1	1	1
25.1 Advisory and assistance services	8	11	11
25.2 Other services	2	2	2
25.3 Purchases of goods and services from government accounts	2	2	2
25.4 Operation & maint. of facilities	1	2	2
25.7 Operation & maint. of equipment	1	1	1
26.0 Supplies and materials	1	1	1
31.0 Equipment	6	9	9
99.0 Subtotal, Reimbursable obligations ¹	126	148	157
99.9 Total new obligations	126	148	157

¹ Includes \$1 million in each fiscal year for obligation of funds reimbursed by other federal agencies.

Personnel Summary

Identification Code:	FY 2000	FY 2001	FY 2002
29-0100-0-1-376	actual	estimate	estimate
Reimbursable			
2001 Full-time equivalent employment	989 ¹	1,055 ²	1,080 ²

¹Includes 4 FTE reimbursed by other federal agencies.

²Includes 6 FTE reimbursed by other federal agencies.