Federal Trade Commission

Fiscal Year 2009

Congressional Budget Justification Summary

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Federal Trade Commission
Fiscal Year 2009 Overview Statement

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

Highlights of FY 2007 Accomplishments

In fiscal year (FY) 2007, the FTC took action on a wide variety of significant consumer protection and competition matters. The highlighted actions, detailed below, helped ensure that businesses and consumers alike reaped the full benefits of market competition and product innovation.

CONSUMER PROTECTION

Data Security and Identity Theft

Data security breaches have continued to make headlines, and identify theft remains on top of the FTC's list of consumer complaints, accounting for more than 34 percent of the 728,765 complaints (not including Do Not Call Registry complaints) filed in FY 2007. The FTC has continued to focus on combating identity theft primarily through law enforcement, education, and, most recently, participation in the President's Identity Theft Task Force.

- **Identify Theft Task Force:** FTC Chairman Majoras served as co-chair, and Consumer Protection Director Lydia Parnes served as Deputy Executive Director, of the Identify Theft Task Force established by the President last year. In his Executive Order, the President directed the Task Force to submit to him a strategic plan for fighting identity theft. The Task Force released a comprehensive strategic plan and recommendations in April 2007. The plan focuses on ways to improve the effectiveness of criminal prosecutions of identity theft; enhance data protection for sensitive consumer information maintained by the public sector, private sector, and consumers; provide more comprehensive and effective guidance for consumers and the business community; and improve recovery and assistance for consumers. In FY 2007, the FTC took a number of steps to implement these recommendations. For example, the agency developed educational materials on laptop security, developed a tutorial on data security for businesses, developed an Identity Theft Victims Statement of Rights, assisted the Department of Justice (DOJ) in developing materials addressing the needs of identity theft victims, and participated in a training session for identity-theft counselors.

- **Information Security Enforcement Order:** In November 2006, the FTC announced a settlement resolving allegations that Guidance Software failed to implement simple, inexpensive, and readily available security measures to protect consumers' personal information, contravening express claims about security precautions on its Web site. According to the FTC's complaint, hackers were able to exploit the company's security vulnerabilities and access sensitive credit card information for thousands of consumers. The settlement requires a comprehensive information security program and security audits.

- **Workshops:** The FTC has continued to host workshops to stay abreast of privacy developments. In April 2007, it hosted "Proof Positive: New Directions in ID Authentication" to explore methods to reduce identity theft through enhanced authentication. The workshop brought government, private-sector, and consumer representatives together to focus on technological and policy requirements for developing better authentication processes, including the incorporation of privacy standards and consideration of consumer usability issues. The staff is preparing a report on the workshop.

- **Education:** The FTC has continued to educate consumers on how to avoid becoming victims of identity theft. In FY 2007, consumers accessed 9.6 million FTC consumer education messages, online or in print, related to identity theft. In March 2007, the FTC released a new data security business education guide, which should prove to be a useful tool in alerting businesses to the importance of data security issues and give them a solid foundation on how to address them.

Pretexting

The FTC's privacy efforts also were focused on the use of pretexting and other illegal practices to obtain and sell consumers' telephone and financial records. In February 2007, the FTC announced a case against Action Research Group, an alleged pretexter that deceptively obtained and sold consumers' confidential phone records without their knowledge or consent. The agency has asked the court to stop the conduct and to order the defendants to give up their ill-gotten gains. The FTC also filed settlements with two additional companies in FY 2007 that allegedly engaged in pretexting and other illegal practices to obtain and sell consumers' personal information. The defendants in these cases agreed to permanent injunctions halting the sale of phone records and to disgorge their ill-gotten gains.

Children's Online Privacy

In a report issued to Congress in February 2007, the FTC concluded that the Children's Online Privacy Protection Act (COPPA) and the FTC's COPPA Rule have been effective in protecting the privacy and security of young children online without unduly burdening Web site operators. It noted that, because widespread age verification technology is not available, age falsification remains a risk on general audience Web sites that collect and disclose personal information. The report also identified social networking sites and mobile Internet access as new and emerging issues in children's online privacy.

Spam

The FTC continues to enforce the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act), settling two cases with violations of the Act in FY 2007. For example, in December 2006, a federal court approved a settlement in an agency case alleging that the defendant's affiliates sent sexually explicit e-mails that violated the Act and the FTC's Adult Labeling Rule. The FTC obtained $465,000 in civil penalties, and the defendant is required to monitor closely any affiliates (or e-mail "button pushers") who it hires to send commercial e-mail messages. The FTC also filed a complaint in August 2007 requesting that the court order spammers to stop sending unwanted and illegal e-mail messages about hoodia weight-loss products and human growth hormone anti-aging products the FTC alleges do not work. The court entered a stipulated permanent injunction. Also, the FTC hosted a two-day public event, "Spam Summit: The Next Generation of Threats and Solutions," in July 2007. The summit brought together experts from the business, government, and technology sectors, consumer advocates, and academics to explore consumer protection issues surrounding spam, phishing, and malware.

Spyware

The FTC obtained final orders in six spyware/adware enforcement actions in FY 2007. In November 2006 and February 2007, the FTC settled charges against major adware distributors Zango and DirectRevenue. In these settlements, the two companies agreed to disgorge a total of $4.5 million to settle FTC allegations that they installed their adware (ad distributing software) on consumers' computers without adequate notice or consent, and deliberately made the programs difficult for consumers to remove. The consent orders reaffirm basic ground rules regarding software downloads. First, a consumer's computer belongs to him or her, not to the software distributor. Second, buried disclosures of material information necessary to correct an otherwise misleading impression do not work, just as they have never worked in more traditional areas of commerce. Third, if a distributor puts a program on a consumer's computer that the consumer does not want, the consumer must be able to uninstall or disable it.

Protecting Consumers in the Next Tech-Ade

The FTC has remained committed to understanding the implications of the development of technology on privacy and consumer protection as, or even before, these developments happen. In November 2006, the FTC convened public hearings on the subject of "Protecting Consumers in the Next Tech-Ade." During these hearings, the FTC heard from more than 100 of the best and brightest people in the tech world about new technologies on the horizon and their potential effect on consumers. Staff is preparing a report on the hearings, and the FTC already has incorporated what staff learned from the hearings in developing its future consumer protection agenda.

Mortgage Lending

Agency law enforcement actions have continued to target deceptive and other illegal practices in the mortgage market, with a focus on the subprime market. FTC actions have targeted deceptive or unfair practices by mortgage brokers, lenders, and loan servicers in all stages of mortgage lending, from advertising and marketing through loan servicing. In August 2007, the FTC announced it reached an agreement with Select Portfolio Servicing, a major subprime mortgage servicer, to modify certain terms of a 2003 court settlement. This provided substantial benefits to consumers beyond those in the original settlement, including account adjustments and reimbursements or refunds of fees paid in certain circumstances. In September 2007, in warning letters, the FTC advised more than 200 advertisers and media outlets that some mortgage ads are potentially deceptive under the FTC Act or in violation of the Truth in Lending Act. Also, to help consumers recognize deceptive mortgage ads, the FTC created a Consumer Alert, "Deceptive Mortgage Ads: What They Say; What They Leave Out."

Also, in June 2007, the FTC released a study of consumer understanding of current federal mortgage disclosures. The study found that current disclosures fail to convey key mortgage costs to many consumers and that improved disclosures designed for the study significantly improved consumer recognition of loan costs for both prime and subprime consumers.

Debt Collection

In January 2007, the FTC charged a collection agency, Rawlins & Rivera, Inc., and its principals with falsely threatening and illegally harassing consumers to pay their debts. The FTC also alleged the defendants had improper communications with third parties about consumers' debts, used abusive and obscene language in calls, and continued collection activities after receiving timely dispute letters from the consumers. A federal court issued a preliminary injunction to halt the unlawful and abusive practices.

Credit-Related Deception

In January 2007, the FTC filed a complaint against Select Management Solutions and its director alleging that the defendants falsely promised they could lower consumers' credit card rates thereby saving them thousands of dollars, and in February 2007 obtained a preliminary injunction against the defendants. The agency worked jointly with its Canadian partners to halt this unlawful scheme. In May 2007, a group of telemarketers agreed to settle FTC charges that their "debt elimination program" violated federal and state laws by falsely promising consumers substantially reduced interest rates and thousands of dollars in savings. Under the proposed settlement, two business owners are permanently barred from engaging in any debt negotiation or debt elimination business.

Health Fraud

The FTC has continued to combat the deceptive marketing of health products, particularly products making disease prevention or weight-loss claims, and products targeted to children.

As part of its law enforcement efforts, in January 2007, the FTC announced separate cases against the marketers of four extensively advertised products: Xenadrine EFX, CortiSlim, TrimSpa, and One-A-Day WeightSmart. Marketers for these products settled charges that they had made false or unsubstantiated weight-loss or weight-control claims. In settling, the marketers surrendered cash and other assets collectively worth at least $25 million and agreed to limit their future advertising claims. In May 2007, two operations that marketed oral sprays that were supposed to help users lose weight, reverse the aging process, and prevent or treat diseases settled FTC charges that their claims were bogus. One group of defendants will pay $172,500 for consumer injury. In August 2007, a company and its owner were banned from selling weight-loss patches in the future and ordered to pay $180,000 to settle FTC charges that advertising claims for their weight-loss patches were false and unsubstantiated. In November 2007, a U.S. District Court judge ruled in favor of the FTC and found Kevin Trudeau in contempt of court for violating a court order by allegedly misrepresenting the contents of his book, "The Weight Loss Cure 'They' Don't Want You to Know About," in several infomercials.

In October 2006, the FTC posted a teaser Web site for "Glucobate," a purported all-natural diabetes remedy. When consumers click any link on the page for more information, they are taken to the FTC's "Be Smart. Be Skeptical" Web site with tips on evaluating online health claims. Numerous blogs, bulletin boards, and news-groups have used the Glucobate story to warn about deceptive product claims.

Childhood Obesity

An important issue on the FTC's health agenda is childhood obesity. In July 2007, the FTC and the Department of Health and Human Services hosted a forum, "Weighing In: A Check-Up on Marketing, Self-Regulation, and Childhood Obesity," to review progress in implementing self-regulatory and educational initiatives to combat childhood obesity, and to consider what steps should be taken next. Speakers discussed public education efforts addressing healthy eating and physical activity and presented new research on the amount and types of advertising children see on television. In particular, leading food manufacturers released details of their pledges to voluntarily restrict their advertising to children under 12 and committed to limiting their advertising directed to children to food products that meet certain nutritional criteria, or to refrain from advertising to children. Also, the companies committed to restricting their use of third-party licensed characters to products that meet these nutritional criteria and to websites promoting healthy lifestyles. The FTC also reported its study results that concluded that today's children see more promotional advertisements for other programming, but fewer paid ads and fewer minutes of advertising on television. The study also found that children are not exposed to more food ads on television than they were in the past.

Do Not Call

The National Do Not Call (DNC) Registry has been an unqualified success, and included more than 145 million active telephone number registrations at the end of FY 2007. Most entities covered by the DNC Rule comply, but for those who do not, tough enforcement is a high priority for the FTC. In FY 2007, the agency received more than 1.2 million consumer complaints alleging DNC violations. In February 2007, the FTC announced that a "voice broadcaster," The Broadcast Team, Inc., charged with making tens of millions of illegal automated telemarketing calls agreed to pay a $1 million civil penalty under a settlement reached with the agency and the DOJ.

Telemarketing Fraud

In October 2006, the FTC filed an action in federal district court against the National Prize Information Group Corp. and its owner, alleging that they bilked consumers upwards of $9 million through misleading claims that consumers had won large sweepstakes prizes that could be collected for a small fee. The court found the defendants' disclaimers inadequate and issued a preliminary injunction and an asset freeze. In April 2007, a sweepstakes operation that enticed consumers to send money in order to win cash prizes agreed to pay almost $1.4 million to settle FTC charges that it violated federal laws. The funds collected by the FTC will be used to provide refunds to consumers. In July 2007, the FTC, with assistance from local police and the U.S. Postal Inspection Service, halted the operations of a massive telemarketing scheme operated by Suntasia Marketing, Inc. The FTC alleged that Suntasia used at least fifteen different business names to defraud consumers across the U.S. out of approximately $200 million since 1999, with approximately $54 million of consumer injury since June 2006.

Negative Option Marketing

In January 2007, the FTC hosted a workshop analyzing the marketing of goods and services through offers with negative option features, i.e., offers where sellers interpret a consumer's failure to take an affirmative action to reject goods or services, or to cancel a sales agreement, as acceptance of the offers. Participants discussed the costs and benefits of such offers, the online marketing of such offers, and ways to make effective disclosures when such offers are made online.

Rebates

In related law enforcement actions, the FTC settled charges against two companies for unfair and deceptive practices in rebate fulfillment. The agency's complaint against Soyo, Inc. alleges that most of the company's rebates were delivered late; in some cases, consumers had to wait a year or longer for their checks to arrive. The agency's complaint against InPhonic, Inc. alleges that, in connection with its advertised rebate offers, among other things, the company failed to provide promised documents needed to obtain rebates, to send out rebate checks in the time promised, and to disclose adequately certain material terms and conditions prior to purchase. The settlements bar the companies from similar violations in the future and require them to pay outstanding rebates to affected consumers. In April 2007, the FTC hosted a public workshop, "Rebate Debate," to discuss the issues surrounding the use of mail-in rebates by manufacturers and retailers. One goal of the workshop was to explore best practices in the offering and fulfillment of rebates.

Business Opportunities and Franchises

The FTC has continued to spearhead a federal-state partnership, "Project FAL$E HOPE$," aimed at combating business opportunity and work-at-home frauds, and educating the public on how to detect and avoid these scams. In December 2006, the FTC announced that the initiative had resulted in more than 100 law enforcement actions brought by the FTC, DOJ, Postal Inspection Service, and enforcers in 11 states. In each of its nine cases, the FTC obtained temporary relief to halt the fraud alleged in the complaints. In addition, in January 2007, following extensive input from the public, the Commission approved final amendments to the FTC Franchise Rule, which regulates these areas. The modifications harmonize federal and state franchise pre-sale disclosure laws; address changes in the marketing and sale of franchises, including online activities; and reduce unnecessary compliance costs by, among other things, creating exemptions for sophisticated prospective franchisees. The revised Rule went into effect in July 2007.

Media Violence

In April 2007, the FTC released its sixth report analyzing the marketing to children of violent entertainment products by the motion picture, music recording, and video game industries. The report encourages enforceable self-regulatory restrictions on the advertising of violent R-rated movies, explicit content recordings, and M-rated games. It notes the substantial improvement of video game retailers in restricting the sale of M-rated games to unaccompanied children, as opposed to retailers of R-rated DVDs and explicit content recordings who failed to improve significantly. It also reports that an FTC survey shows that most parents are familiar with the video game ratings system and use it regularly, although a significant minority believes it could provide better information.

Hispanic Law Enforcement and Outreach

The FTC has continued to aggressively combat consumer fraud against Hispanics. In September 2007, the FTC held a press conference to discuss several important victories in the fight against fraud targeting Hispanics. The FTC announced that it had charged telemarketers with deceiving more than 30,000 Spanish-speaking consumers through their marketing of pre-approved, advance fee MasterCards, free ATM and phone cards, and a free-trial membership in a discount health plan. A court order banned the company and its principals from telemarketing. The FTC also announced a $3 million judgment against a company that used national, Spanish language infomercials to make claims for treatments and prevention that could not be proven. It also announced the filing of a complaint involving an alleged envelope stuffing scheme targeting Hispanic consumers. In January 2007, the FTC released “Read Up! How to be an Informed Consumer” (“Ent rate! C mo ser un consumidor informado”) - a new bilingual compendium of information for Spanish-speakers and Hispanic organizations on consumer rights, managing finances, making major purchases, avoiding scams and rip-offs, and being safe and secure online. This publication is intended to help organizations incorporate consumer information into their outreach programs.

Order Enforcement

The FTC has continued to focus on individuals and companies that already are subject to FTC and federal court orders as a result of prior FTC law enforcement actions. The FTC places a high priority on enforcing orders against repeat offenders, as well as against those who act in concert with them. In September 2007, the operators of an invention promotion business, which a judge called "one grand con game to take money away from consumers," were ordered to pay $60 million for violating a 1998 court order. In November 2007, a U.S. District Court judge ruled in favor of the FTC and found Kevin Trudeau in contempt of court for violating a court order by allegedly misrepresenting the contents of his book, "The Weight Loss Cure 'They' Don't Want You to Know About," in several infomercials.

Aiding Criminal Enforcement

The FTC's Criminal Liaison Unit (CLU) has increased cooperation with criminal authorities to bring the collective powers of different government agencies to bear upon serious misconduct in many consumer protection areas. In FY 2007, federal and state criminal authorities charged 68 FTC defendants and their associates with crimes arising from acts investigated or prosecuted by the FTC. During this period, 49 such FTC defendants and their associates were convicted or pled guilty. Sentences imposed totaled 194 years and 5 months (2,333 months) in prison, with an average sentence of 3 years and 11 months' imprisonment.

Globalization and Cross-Border Enforcement

During FY 2007, the FTC made major advances in addressing new and emerging global consumer protection challenges through its comprehensive international program of enforcement, networking, and policy initiatives. In particular, the FTC focused on implementing the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers Across Borders Act (U.S. SAFE WEB Act), which Congress enacted in December 2006 to give the FTC new tools to tackle cases with an international component. The FTC already has used the powers conferred by the Act to share information with foreign agencies in several investigations. The increasing use of these new tools will remove some of the key roadblocks to more effective cooperation in international enforcement efforts.

The FTC also has been active in international policy efforts to develop flexible, market-oriented standards, backed by aggressive enforcement, to address emerging consumer protection issues. During FY 2007, the

FTC, working with its foreign partners through the Organization for Economic Cooperation and Development (OECD), developed a framework for privacy regulators and law enforcement authorities to facilitate cross-border privacy law enforcement cooperation and provide greater protection for consumers' personal information. Most recently, in July 2007, the FTC, again working through the OECD, agreed with its partners on a set of principles to address the practical and legal obstacles that many consumers face when trying to resolve disputes with businesses, in their own country or abroad, particularly in cross-border e-commerce transactions.

Advocacy

The agency has continued to use advocacy to advance consumers' interests. The FTC has provided comments to legislatures and government agencies on the effects of proposed laws and regulations.

- In June 2007, the FTC released staff comments to the Department of Defense (DOD) on its proposed regulation implementing limitations on terms of credit extended to service members and dependents. The comments support DOD's proposal to focus on the regulation on products that can cause service members the most harm (payday, title, and refund anticipation loans) and to apply the regulation to all types of lenders of these products.

- In April 2007, the FTC approved a staff comment letter to the Electronic Payments Association supporting stronger self-regulatory measures to prevent payment processing fraud.

- The FTC testified before Congress eight times on such issues as data security, identity theft, phone pretexting, and credit reports and consumers' ability to dispute and change inaccurate information.

MAINTAINING COMPETITION

Merger Enforcement Actions

During FY 2007, the FTC brought 22 merger enforcement challenges (fourteen consent agreements, five withdrawn transactions after the second request was issued, and three preliminary injunctions/administrative litigation actions authorized). This is approximately a 38 percent increase over the number of merger enforcement actions during the same period last year. These include actions that attempt to preserve competition that would have been adversely affected in several markets, including pharmacies (*Rite Aid/Eckerd*); natural gas distribution (*Equitable/Dominion*); retail gasoline (*Western/Giant*); funeral homes (*SCI/Alderwoods*); energy transportation, storage, and distribution (*Kinder Morgan*); and generic drugs (*Barr/Pliva, Watson/Andrx, Hospira/Mayne*, and *Actavis/Abrika*). The Commission voted to dismiss the administrative complaint against Western and Giant on October 3, 2007 after a U.S. district court denied a preliminary injunction that would have blocked the merger.

Administrative Litigation

During FY 2007, the FTC filed three new administrative complaints and continued to pursue five other administrative cases that have reached various stages of adjudication and appeal. In June, the Commission authorized an administrative complaint against the Whole Foods/ Wild Oats merger. In August 2007, the U.S. district court denied a preliminary injunction to block the merger; the Commission is appealing this decision. In April, the Commission authorized administrative proceedings against two energy mergers: *Western Refining/Giant Industries* and *Equitable Resources/Dominion Resources*. As mentioned above, the Commission dismissed the complaint against Western Refining and Giant Industries after the federal district court denied the cited preliminary injunction. The *Equitable Resources* matter is currently before the Third Circuit Court of Appeals, which issued an injunction against the merger pending resolution of the appeal. In October, the Commission issued administrative complaints against two real estate associations (the *RealComp* and *MiRealSource* matters), charging that the associations limited competition from discount brokers by blocking access to some multiple listing services. The *RealComp* administrative trial was held in June and the *MiRealSource* matter settled in February. With an initial decision filed on December 13, 2007 the ALJ dismissed the Commission's complaint, concluding that the Complaint Counsel had not shown that the group's policies resulted in actionable consumer harm. The FTC staff has filed a notice of appeal to the Commission.

In August, the Commission released its opinion in the *Evanston Northwestern Healthcare Corporation* matter, upholding the Administrative Law Judges's (ALJ) initial decision finding that Evanston Northwestern's acquisition of Highland Park Hospital was anticompetitive. In *Rambus Inc.*, the Commission issued opinions on remedy and petitions for reconsideration; the matter is on appeal to the Court of Appeals for the DC Circuit. In March, the Fifth Circuit Court of Appeals heard oral arguments on *North Texas Specialty Physicians*, and in May, the Fifth Circuit Court of Appeals heard oral arguments on *Chicago Bridge and Iron Co. N.V*. Finally, in June, the Commission accepted a consent order resolving the issues in *South Carolina State Board of Dentistry*.

Merger Filings

The number of reported transactions has continued to increase; in FY 2007 there was a 20 percent increase in HSR filings. During this same period the FTC issued 31 second requests, which represent an increase of 11 percent over FY 2006.

Merger Process Improvements

Building on the merger process improvements adopted in FY2006 to facilitate rapid identification of relevant issues, preparation of focused second requests, and the use of consistent investigation timetables to lower the costs of merger investigations for the FTC and outside parties, the agency continued its efforts to reduce the volume of materials that parties must submit to respond to a second request. Consistent application of these measures to the second request process has allowed staff and the parties to focus more quickly and effectively on relevant documents and data. The FTC has continued to improve its internal processes to reduce delay and to implement solutions for electronic production issues, including increased resources for litigation support.

In 2006, the FTC and DOJ launched the HSR Electronic Filing System, which allows parties to submit HSR Notification and Report Forms electronically via the Internet. Once the Form has been processed, it is accessible by the reviewing agencies via a shared database and can be reviewed quickly by the agencies' merger review staff. Electronic filing provides faster processing time, improved data entry, and the elimination of expensive and time-consuming duplication of documents. The HSR Electronic Filing System is available at www.hsr.gov.

Nonmerger Actions and Litigation

In FY 2007, the FTC brought eleven nonmerger enforcement actions, nearly twice the number brought in FY 2006. The FTC filed complaints against seven real estate associations in the Bureau of Competition's first ever law enforcement sweep to stop real estate multiple listing services from limiting competition from discount brokers. This included five consents and two administrative complaints; of these one was subsequently settled by consent order while the other, as mentioned above, was later dismissed by the ALJ in December 2007. Staff has appealed to the Commission. The FTC also settled charges that the American Petroleum Company, Inc. was illegally conspiring with its competitors to restrict the importation and sale of motor oil lubricants in Puerto Rico. In a separate matter, the Commission settled charges that a group representing all optometrists in Puerto Rico was refusing to accept vision and health care contracts except on collectively agreed-upon terms. Finally, the FTC issued a proposed consent agreement settling charges that the Missouri State Board of Embalmers and Funeral Directors was illegally restraining competition by prohibiting the sale or rental of caskets by persons not licensed as funeral directors.

Finally, in the Ovcon litigation, the FTC charged that Barr Laboratories and Warner Chilcott entered an agreement that eliminated generic competition for Warner Chilcott's oral contraceptive, Ovcon. The Commission's charges were settled with Warner Chilcott in October 2006 and Barr Laboratories in November 2007. As a result of the Commission's litigation and settlements, the defendants have eliminated the restrictions on generic entry, and consumers now have access to a lower-cost generic Ovcon years earlier than would have occurred absent the litigation.

Energy Markets in the 21st Century: Competition Policy in Perspective

In April 2007, the FTC held a conference to explore a range of energy issues of importance to American consumers and the U.S. and global economies. The three-day conference, "Energy Markets in the 21st Century: Competition Policy in Perspective," brought together leading experts from the government, the energy industry, consumer groups, and the academic community. These experts participated in panels that examined such topics as the relationship between market forces and government policy in energy markets, the dependence of the U.S. transportation sector on petroleum, the effects of electric power industry restructuring on competition and consumers; what energy producers and consumers may expect in the way of technological developments in the industry, the security of U.S. energy supplies, and the government's role in maintaining competition and protecting energy consumers.

Ethanol Market Concentration Report

As mandated by the Energy Policy Act of 2005, the FTC issued the "Report on Ethanol Market Concentration" in December 2006. The report examines the current state of ethanol production in the United States and measures market concentration using capacity and production data. It also considers the possible effect on market concentration of marketing agreements between ethanol producers and ethanol marketers.

FTC/DOJ Report to President on Gasoline Price Increases During Spring and Summer of 2006

In August 2007, the FTC and the Antitrust Division reported to the President that market factors explain increases in the national average retail price for gasoline during the spring and summer of 2006. In April 2006, while the FTC was completing its intensive investigation of petroleum industry conduct and gasoline pricing following Hurricane Katrina, President Bush directed DOJ to work with the FTC and the Department of Energy to conduct inquiries into rising gasoline prices. The "Report on Spring/Summer 2006 Nationwide Gasoline Price Increases," which builds on the investigative work done in connection with the post-Katrina report, describes staff's factual findings and economic analysis that price increases during the spring and summer of 2006 were attributable to several factors, and that the increases did not stem from violations of the antitrust laws.

Grocery Store Antitrust

In May 2007, the FTC held a conference on antitrust analysis of the grocery industry including both historical analysis and analysis of current methods. The presentations included recent academic work related to competition in the grocery store industry, and panel discussions on the historical review of the FTC's actions in this industry, current economic analysis of grocery and retail competition, and recent work on new methods for analyzing grocery and retail competition.

Hearings on Section 2 of the Sherman Antitrust Act

In the third quarter of FY 2007, the FTC and the DOJ concluded the series of hearings on how best to identify anticompetitive exclusionary conduct for purposes of antitrust enforcement under Section 2 of the Sherman Antitrust Act. The hearings covered topics such as exclusive dealings and loyalty discounts, tying arrangements, business testimony and misleading and deceptive conduct. Staff is preparing a report on the matters raised at the hearings.

Broadband Connectivity Competition Issues, Including Network Neutrality and Municipal Provision of Wireless Internet

In October 2006, the FTC's Internet Access Task Force issued a report describing the various wireless Internet technologies currently in use or under development, identifying a range of operating models that have been used to provide or facilitate wireless Internet service, and summarizing the major arguments for and against municipal participation. The report describes and analyzes the various types of legislative proposals related to municipal Internet service. The Task Force also invited interested parties to a workshop held in February 2007 to gather a wide variety of views on the subjects of broadband Internet access in general, and network neutrality in particular. In June 2007, the Task Force issued a report summarizing the Task Force's findings in the area of broadband Internet connectivity and, in particular, network neutrality regulation. Based on these findings, and FTC staff's experience with the operation of myriad markets throughout the economy, the report identifies guiding principles that policy makers should consider in evaluating proposed regulations or legislation relating to broadband Internet access and network neutrality.

Roundtable on the Economics of the Pharmaceutical Industry

In October 2006, the FTC held a roundtable on the economics of the pharmaceutical industry, which brought together leading academic economists, government economists, and industry professionals to better understand this important industry. Topics included the economic impact of direct-to-consumer advertising, spillovers and mergers in pharmaceutical R&D, and the economic incentives for new drug development.

Enforcement Perspectives on the Noerr-Pennington Doctrine

In November 2006, the FTC issued a staff report providing an enforcement perspective on how best to apply the *Noerr-Pennington* doctrine to conduct that imposes great risk to competition, but does not further the First Amendment and government decision-making principles that underlie the doctrine. The views presented are based on recent FTC enforcement experience and the staff's assessment of the type of issues that the FTC is likely to encounter in the future.

Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition

The FTC and the DOJ issued a joint report in April 2007 to inform consumers, businesses, and intellectual property rights holders about the agencies' competition views with respect to a wide range of activities involving intellectual property. The report discusses issues including: refusals to license patents, collaborative standard setting, patent pooling, intellectual property licensing, the tying and bundling of intellectual property rights, and methods of extending market power conferred by a patent beyond the patent's expiration. The FTC and DOJ endeavor to adopt policies that permit competition and innovation to thrive, and the report sets out the agencies' current policy thinking on the issues that arise when the antitrust laws are applied to IP.

Real Estate Industry

In May 2007, the FTC and the DOJ issued a joint report titled "Competition Policy and the Real Estate Industry," informing consumers and others involved in the industry about important competition issues involving residential real estate, including the impact of the Internet, the competitive structure of the real estate brokerage industry, and obstacles to a more competitive environment. As discussed in the report, the review by the FTC and the DOJ suggests that, although the real estate industry has undergone a number of substantial changes in recent years – particularly as a result of technological advances such as the Internet – competition in the industry has been hindered as a result of actions taken by some real estate brokers acting through multiple listing services and the National Association of Realtors, state legislatures, and state real estate commissions. In addition, consumers likely would benefit significantly from additional knowledge about the range of options available in brokerage services and fees. Based on their review, the FTC and the DOJ will continue to monitor the cooperative conduct of private associations of real estate brokers and bring enforcement actions in appropriate circumstances. The FTC and the DOJ will also continue to provide state legislators and industry regulators with information concerning the competitive consequences of state legislation and regulations that threaten to or already do restrict competition and consumer choice in the real estate brokerage industry.

During the first three quarters of FY 2007, the FTC also continued to maintain and update the real estate competition Web page (www.ftc.gov/bc/realestate) that provides important consumer educational materials on competition in the industry. Through the website, issuance of the report, and the FTC's continued enforcement, educational, and advocacy activities, the FTC strives to protect and promote competition in the real estate industry.

International Antitrust

During the past fiscal year, the FTC has continued to build a strong network of cooperative relationships with foreign competition agencies and has played a lead role in key multilateral fora that seek convergent approaches to antitrust issues across borders. We cooperated with counterpart agencies on cases of mutual interest, such as *Google/DoubleClick* and *Owens Corning/Saint Gobain*. Working with its partners in the International Competition Network, the FTC co-chairs the Unilateral Conduct Working Group, which seeks to increase convergence on approaches to issues of monopolization and dominance, and chairs the ICN's subgroup on the Merger Notification and Review Procedures and co-chairs its subgroup on technical assistance. We also are working with officials in China and India on issues related to the implementation of their new competition laws, and participate in the U.S.-China Strategic Economic Dialogue.

Consumer Outreach

In an increased effort to disseminate the message of why competition matters to a broad audience of consumers and businesses, the FTC released a brochure titled "Competition Counts: How Consumers Win When Businesses Compete." This publication aims to educate consumers and business people on the important role of competition in providing them the most valuable mix of price, choice, and innovation. During the first three quarters of FY 2007 the FTC also released a BC User's Guide, which introduces the staff of the Bureau of Competition and provides a description of each Division within the Bureau, and Internet minisites on health care, real estate, oil and gas, and technology.

Amicus Briefs

The FTC has achieved significant advances in antitrust law through the filing of amicus curiae briefs in conjunction with the Solicitor General, often in cooperation with the DOJ Antitrust Division.

In the past year, the Supreme Court has adopted the FTC's position in a major case, clarifying an important area of antitrust law, to the benefit of consumers and the American economy. In *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, the FTC and DOJ urged the Court to overturn the only remaining per se prohibition against vertical restraints, *Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U.S. 373 (1911)*. The Court accepted the FTC's argument that minimum resale price maintenance (RPM) agreements have potentially mixed competitive effects, and that under modern antitrust analysis, RPM agreements should be analyzed under the rule of reason, an argument which overturns *Dr. Miles*.

Competition Advocacy

Throughout the first three quarters of FY 2007, the FTC filed comments on an array of competition-related subjects to various state and federal bodies. The variety of competition issues that FTC advocacy addresses is demonstrated by the following examples:

- In October 2006, FTC staff responded to a request for comments on a Virginia bill that would regulate the contractual relationship between pharmacy benefit managers and health benefit plans. The comments argued that such regulation would limit the ability of the parties to enter into efficient, mutually advantageous contracts and might increase pharmaceutical prices.

- In May 2007, FTC staff submitted a comment to the Federal Energy Regulatory Commission (FERC) concerning FERC's standards of conduct for electric power and natural gas transmission providers. The comment was filed in response to FERC's Notice of Proposed Rulemaking regarding dealings between transmission providers and their affiliated energy companies in both the electric power and natural gas industries. The FTC comment stated that the proposal to narrow the scope of standards of conduct in both electricity and natural gas may fail to recognize certain incentives that are likely to cause inefficient resource allocations by both natural gas transmission providers and electric transmission providers, and would affect both their marketing and non-marketing affiliates.

- In June 2007, FTC staff and DOJ staff filed a joint comment on a Michigan bill that would require real estate professionals to provide specified services but would allow consumers to waive the broker's help in acceptance, presentation, development, and communication of offers and counter-offers, negotiations; and closings. The agencies' comments state that there is no evidence that any form of minimum-service law is needed to protect the state's consumers.

Planned Activities in FY 2008 and Beyond

Over the next few years, the FTC will devote resources to significant law enforcement and policy initiatives designed to protect consumers and the competitive process.

CONSUMER PROTECTION

Through its consumer protection goal, the FTC focuses broad efforts to fight consumer fraud, deception, and unfair practices, and to protect consumer data and privacy.

Privacy and Data Security

The FTC will advance its efforts to protect consumers' private information by enforcing relevant laws that require companies to maintain reasonable safeguards to protect sensitive consumer information, and by continuing to educate consumers about how to protect their important data. Additional resources will be used for increased law enforcement, implementing any new data security laws that may be enacted, and implementing the recommendations of the President's Identity Theft Task Force. Some of these recommendations include developing training for local law enforcement and victim assistance counselors; holding seminars for businesses on safeguarding information; drafting a report on the authentication workshop; studying credit freezes; and studying the use of Social Security numbers by the private sector. The FTC also hosted a workshop in December 2007 on the issue of Social Security number use.

Spam, Spyware, and Other High-Tech Problems.

The FTC will enforce laws prohibiting deceptive spam email, and work to stop spyware and other high-tech problems that plague consumers. The FTC will continue to bring cases against those who abuse technology and to oversee initiatives to educate consumers on how to avoid these problems. The FTC will invest in high-tech tools to analyze new problems, collect and review evidence, and protect consumers from becoming victimized by viruses or other security and infrastructure threats. The FTC will continue to host workshops to learn more about emerging issues affecting consumers, such as the workshop on behavioral advertising hosted in November 2007.

Globalization and Cross-Border Enforcement

The FTC will continue its law enforcement against cross-border fraud and its policy development efforts in the international arena. Using the tools provided by the U.S. SAFE WEB Act, the FTC will continue to create and sustain international partnerships and networks to pursue matters involving foreign defendants, evidence, and assets. For example, the FTC intends to use the authority conferred by the U.S. SAFE WEB Act to work towards concluding formal international agreements, under the State Department's oversight, with Canada and the European Union. As the FTC develops new initiatives relating to cross-border fraud, the agency will report on its activities in this area.

On the policy side, the FTC will continue to promote international development of market-oriented consumer protection policies that effectively address consumer harm. To that end, the FTC will continue to highlight the importance of enforcement as a key component of privacy protection (including data security, spam, and malware) in the OECD, the Asia Pacific Economic Cooperation (APEC), the London Action Plan (LAP), and other multilateral organizations. The FTC also will continue to participate actively in several OECD committees, in the International Consumer Protection Enforcement Network (ICPEN), and in APEC's Electronic Commerce Steering Group. Through cooperation with foreign consumer protection agencies and participation in international organizations, the FTC can engage in cooperative foreign law enforcement actions and develop policies that promote effective consumer choice in the international marketplace.

Financial Services

Protecting consumers in the financial services marketplace will remain a critical part of the FTC's consumer protection goal. The agency will focus its activities on mortgage lending, debt collection, and credit-related deception. The agency will expand its law enforcement work in the subprime lending market. FTC actions will target deceptive or unfair practices by mortgage brokers, lenders, and loan servicers in all stages of mortgage lending - from advertising and marketing through loan servicing. In October 2007, the agency held a workshop on debt collection.

Health Fraud

The deceptive marketing of products that may affect consumer health and safety will continue to be an FTC priority. The FTC will focus on health care products, including dietary supplements. Consumer demand for such products is increasing, and fraudulent or deceptive claims about these products can pose risks to consumers' well-being. Going forward, the FTC will continue its aggressive program by focusing its law enforcement on violations that create the greatest risks to consumer health.

Hispanic Law Enforcement and Outreach

To focus on frauds aimed at Hispanic consumers, the FTC will continue to use the findings of the staff's 2004 fraud survey, ideas generated at the Hispanic Outreach Forum and Law Enforcement Workshops, and partnerships developed as part of the Hispanic Initiative. The FTC will continue to expand dedicated space on its Web site devoted to Spanish-language information and to promote the Spanish-language complaint form. The FTC also will continue to produce consumer and business education pieces in Spanish. The agency will bring enforcement actions, including sweeps with its law enforcement partners, against scams aimed at vulnerable groups, including other minority groups identified in staff's fraud survey.

Order Enforcement

The FTC will promote the work of its Criminal Liaison Unit (CLU), dedicated to encouraging criminal prosecution of consumer fraud by coordinating with criminal law enforcement authorities. CLU identifies law enforcement agencies and case agents for referral of specific types of consumer fraud cases, educates criminal law enforcement authorities about the FTC and its mission, and coordinates training of FTC staff by criminal law enforcement to help staff prepare cases for referral and ensure smooth progress of parallel prosecutions. The FTC will also continue to focus on individuals and companies that already are subject to FTC and federal court orders as a result of prior FTC law enforcement actions, and will place a high priority on enforcing orders against repeat offenders as well as against those who act in concert with them. The agency's new enforcement database will put searchable information about FTC orders and potential recidivists at the fingertips of enforcement attorneys and investigators, so that they can ensure compliance with FTC orders and instigate necessary enforcement actions.

Protecting Children in the Marketplace

The FTC maintains an active program to monitor, report on, and provide educational materials about marketing to children, including advertising and marketing of violent entertainment products, online gambling, and alcohol, as well as food marketing and childhood obesity. In particular, the FTC analyzes complaints that deal with law violations relating to media violence. The FTC also focuses on children's interests through its administration of the Children's Online Privacy Protection Act. The FTC will continue to monitor the entertainment industry's marketing practices. Additionally, the FTC will work with video game publishers and retailers to promote the marketing and selling of Teen- and Mature-rated games in accord with the rating's age guidelines, and will educate parents about video game content. Finally, the FTC will conduct a follow-up study on the marketing of food to children.

"Green" Marketing

The FTC will conduct research and begin the process of educating consumers and businesses on "green" marketing. To learn more about this subject, the FTC will host roundtables with industry, consumer groups, and other government entities. After obtaining a better understanding of the marketplace, the relevant science, and the interaction of various "green" claims, the FTC will launch a campaign involving claims from carbon offsets and other climate-related issues to recycling, energy savings, and landfill reduction. The agency will also take appropriate enforcement action involving deceptive claims in this area.

Mobile Marketing

The FTC will direct resources to tackling deceptive and unfair practices in mobile marketing, including advertising sent to mobile devices such as cell phones and personal digital assistants (PDAs). The agency will continue to research this issue and take action as appropriate.

Using Consumer Data

The agency will continue to target its efforts based on the analysis of consumer complaint data that it gathers. FTC databases, including Consumer Sentinel, Identity Theft Data Clearinghouse, Consumer Information System, and the spam database, enable the agency and its law enforcement partners to detect trends and problems that involve fraud as they occur. The FTC's prospective challenges include maintaining a rich array of data, ensuring that its systems and the information collected are fully usable and used by the agency and its law enforcement partners. The FTC also strives to identify new methods of analyzing this data and sharing the results in innovative ways to assist its law enforcement partners. These efforts bear fruit in the cases brought by the FTC and other law enforcement agencies that have access to this data. The agency will update and enhance Consumer Sentinel, Consumer Response, and the National Do Not Call Registry in the transition to a new contract that will allow for a better user experience.

MAINTAINING COMPETITION

The work of the FTC's competition goal is critical to protect and strengthen the free and open markets that are the cornerstones of a vibrant economy. Robust competition promotes lower prices, higher quality products and services, and greater innovation, all of which benefit consumers.

Reviewing a High Number of Mergers

Identifying anticompetitive mergers remains one of the top priorities of the Maintaining Competition goal. The premerger notification requirements of the Hart-Scott-Rodino (HSR) Act provide the FTC with an effective starting point for identifying anticompetitive mergers before they are consummated. Additionally, since 2001, when amendments to the HSR Act changed the criteria governing which mergers must be reported under the Act, the FTC has devoted more attention to the identification of unreported, usually consummated, mergers that could harm consumers. The FTC has been facing a demanding merger review workload as merger volume has increased significantly since FY 2004. Based on current patterns, the high volume of merger work projected for FY 2008 should continue into FY 2009 and beyond.

Preventing Anticompetitive Activity in Energy Industries

The price of gasoline continues to be a concern for consumers, and is a commensurately high priority for the FTC. The FTC continues to focus closely on gasoline markets and will move quickly to address any anticompetitive activity, whether merger or nonmerger activity. The FTC is working on a report based on the energy markets workshop held in FY 2007. The report will focus on topics such as the relationship between market forces and government policy in energy markets, the dependence of the U.S. transportation sector on petroleum, the effects of electric power industry restructuring on competition and consumers, what energy producers and consumers may expect in the way of technological developments in the industry, the security of U.S. energy supplies, and the Government's role in maintaining competition and protecting energy consumers. Also, the FTC will update its most recent report on the ethanol industry, issued in FY 2007, which examines the state of ethanol production in the United States and measures market concentration using capacity and production data.

In addition, under its Gasoline and Diesel Price Monitoring Project, the FTC continues to track retail gasoline and diesel fuel prices in 360 cities nationwide and wholesale prices in 20 major urban centers to identify unusual changes in gasoline prices; if any such changes are detected, the FTC staff will promptly investigate the cause. FTC staff is also examining bulk supply and demand conditions and practices for gasoline and diesel in the Pacific Northwest to follow up on observations of anomalous pricing patterns affecting multiple cities in the region over the past year, including the summer of 2006. Finally, the FTC will continue to update and enhance its Oil and Gas Industry Initiatives Web site, which provides consumers with important information on the FTC's oversight of the petroleum industry.

Promoting Competition in Health Care and Prescription Drugs

The rapidly rising cost of health care is a matter of concern for consumers, employers, insurers, and the nation as a whole. Health-related products and services now account for more than 15 percent of GDP, and that share has grown by more than 20 percent since 1990. Preventing anticompetitive pharmaceutical mergers and eliminating agreements that delay generic entry continues to be an important priority for the FTC and a vital way to protect consumers from rising drug prices. In addition, the FTC will continue to stop anticompetitive agreements among health care providers and monitor hospital and other mergers that may raise the costs of health care.

Increasing Emphasis on High Technology

The growing importance of technology is placing increasing demands on the FTC's antitrust enforcement mission in both the merger and nonmerger segments. FTC antitrust investigations more and more often involve high-technology sectors of the economy, such as computer hardware and pharmaceutical products. Furthermore, issues in antitrust matters increasingly intersect with intellectual property concerns, raising difficult questions about how these two bodies of law can best work together to further their common goal of promoting innovation. As these trends continue, the FTC requires more and more specialized technical knowledge and expertise. In FY 2007 and beyond, the FTC will enhance its ability to investigate and litigate complex matters involving high-tech segments of the economy by increasing both its in-house knowledge and the technical support it receives from independent experts and consultants.

Studying Authorized Generics

The FTC will continue a study on authorized generics. An authorized generic is chemically identical to a particular brand-name drug, but the brand-name manufacturer authorizes it to be marketed as a generic version. The study is intended to help the agency understand the circumstances under which innovator companies launch authorized generics, collect and analyze data on how competition between generics and authorized generics during the 180-day exclusivity period has affected short-run price competition and long-run prospects for generic entry, and build on the economic literature about the effect of generic drug entry on prescription drug prices.

Increasing Consumer and Business Outreach

The FTC will continue its efforts to educate consumers and businesses on the important role of competition in providing them the most valuable mix of price, choice, and innovation. In addition to having developed specialized Web pages like those for health care, oil and gas, and real estate, the FTC will look for opportunities to speak on general competition issues and submit articles in consumer-oriented publications. The FTC also reaches out to businesses subject to antitrust laws. The FTC's Premerger Notification Office responds to thousands of calls each year about premerger filing requirements. The FTC and its staff also provide advisory opinions to businesses on proposed conduct. These letters provide a detailed antitrust analysis of the particular conduct that the requester may wish to pursue.

Preventing Misuse of Government Processes

An important part of the FTC's competition agenda includes efforts to identify, investigate, and, where appropriate, prosecute the misuse of government processes. In FY 2007 and beyond, the FTC will remain vigilant in seeking out and scrutinizing competitors' misuse of government processes to hamper rivals. Such misuse can take a variety of forms, including abusing government regulatory processes, making misrepresentations to government agencies or enforcing intellectual property rights in bad faith.

Promoting Global Competition

The FTC will continue to work with competition agencies worldwide to promote best practices and to minimize policy divergences to ease burdens on firms that operate on a global basis, consistent with the needs of competition enforcers to collect sufficient information to conduct their investigations. The FTC plays a lead role in pursuing convergence toward best practices through participation in international bodies, such as the OECD and the ICN. The FTC also helps newer agencies learn about and conform to international best practices in competition policy and enforcement through our technical assistance program and, along with consumer protection, through the U.S. SAFE WEB Fellows Program.

Pursuing Ongoing Administrative Litigation

Administrative litigation provides an opportunity for the FTC to apply its institutional expertise to the development of antitrust jurisprudence. Currently, the FTC has several competition matters in the appellate stages of administrative litigation, and this litigation workload is expected to continue. Antitrust litigation, whether in an administrative proceeding or in federal court, requires significant staff time, as well as major expenditures for travel, stenographic reporting, and expert witnesses.

Advocating for Competition Before the Courts and Other Government Agencies

The FTC works to eliminate government-imposed impediments to a competitive marketplace by advising other government policy-makers to apply sound competition principles as they make decisions affecting consumer welfare. Among its activities, the FTC will continue to file comments on proposed government action (legislation, regulation, and other rules) affecting competition across many industries, including the provision of legal services, real estate brokerage, the direct shipment of wine to consumers, and contractual relationships between product suppliers and distributors. The FTC staff also will continue to examine issues addressed in the FTC's reports on competition policy in the real estate industry and broadband connectivity. In addition to these activities, FTC staff will continue to provide guidance on important competition policy issues, through issuing reports and filing amicus briefs to help courts resolve important competition issues.

Enforcing FTC Orders

The FTC must maintain an effective compliance program so that consumers receive the benefits of competition obtained through FTC orders issued after the culmination of investigation and litigation. The FTC focuses on devising and drafting effective orders for each individual matter, a highly fact-specific process. In addition, the agency conducts general and historical analyses on the effectiveness of various kinds of merger and nonmerger remedies, such as divestiture orders. The FTC also must litigate, when necessary, to vindicate its authority to order relief to protect competition.

Needed Resources FY 2009

The FTC's FY 2009 budget request for $256,200,000 supports 1,102 FTE. The increase of $12,336,000 and 18 FTE over the FTC's FY 2008 enacted level consists of:

Mandatory Salary and Contract Expenses

Mandatory Salary and Contract Expenses [$7,989,000]:

- The annualized three-month cost of the January 2008 pay increase, and the nine-month cost of a January 2009 pay raise [$4,390,000].

- Upward grade classifications pursuant to 5 C.F.R. 531.401 et seq. [$1,498,000].

- Contract and other non-pay inflation [$2,658,000].

- One less work day than in FY 2008 [savings $557,000].

FTE

18 New FTE [$2,847,000]:

Includes 10 FTE for Consumer Protection:

- 6 FTE to contribute directly to the FTC's strategic goal to prevent fraud, deception, and unfair business practices in the marketplace. More specifically, these staff will be used in high-priority areas to protect consumers from unfair and deceptive practices in the financial services marketplace (including mortgage lending and debt collection), protect consumers' privacy (including combating identity theft), and improve compliance with FTC orders.

- 3 FTE in the Office of the Executive Director to support agency-wide initiatives in the areas of information technology management, financial management, facilities planning, equal employment opportunities, and records management. These FTE are essential to support the program staff at an appropriate level. While the FTC's overall FTE level has increased by 12 percent since FY 1998, the Executive Director's staff level has remained flat. These FTE are essential so that the Executive Director's staff can continue to support the agency's mission.

- 1 FTE for international issues. First, to assist with the implementation of the U. S. SAFE WEB Act to enable us to pursue foreign-located evidence of fraud perpetrated against U.S. consumers, particularly online, as well as to respond to reciprocal requests for assistance by the FTC's foreign partners. Second, to advocate the adoption of foreign data privacy laws and procedures that are compatible with American law so that the personal data of American consumers who participate in international electronic commerce will be protected to the same extent as when they participate in domestic e-commerce.

Includes 8 FTE for Maintaining Competition:

- 5 FTE to challenge anticompetitive mergers, to assure that the marketplace is free from anticompetitive business practices, to educate consumers and businesses about the importance of competition, and to educate businesses subject to antitrust laws about premerger filing requirements and proposed conduct. These FTE are needed to meet the increased workload generated by the increased number of cases in litigation and the activity in the health care, pharmaceutical, energy, and technology sectors. Identifying anticompetitive mergers remains one of the top priorities of the Maintaining Competition Goal. The premerger notification requirement of the HSR Act provides the FTC with an effective starting point for identifying anticompetitive mergers before they are consummated. Since FY 2004, HSR filings have been increasing. As the demanding merger review continues to grow, the FTC will require more FTE to review and investigate mergers. Likewise, identifying anticompetitive conduct is also a priority. The FTC has implemented a case generation plan for its nonmerger enforcement activity that is expected to increase the volume of anticompetitive conduct investigations and litigation and associated economics support.

- 2 FTE in the Office of the Executive Director to support agency-wide initiatives in the areas of information technology management, financial management, facilities planning, equal employment opportunities, and records management. These FTE are essential to support the program staff at an appropriate level. While the FTC's overall FTE level has increased by 12 percent since FY 1998, the Executive Director's staff level has remained flat. To ensure that the Executive Director's staff can continue to support the agency's mission, we must have additional resources.

- 1 FTE for international efforts to promote convergence in competition policy so that foreign enforcement practices that are not informed by sound economic reasoning do not unfairly burden global commerce in which U.S. businesses and consumers participate. This need is becoming more evident as nations like China and India adopt competition legislation.

Consumer Protection [$1,100,000]:

Consumer Protection

- "Green" marketing research, education campaign, and enforcement [$500,000]. The FTC requests funds to conduct research, take appropriate enforcement action, and launch a consumer and business education campaign on "green" marketing. From ads that claim tire technology that can increase fuel efficiency to ads that promote environmentally friendly lifestyle choices to reduce carbon emissions that contribute to climate change, consumers are inundated with "green" claims. These claims can be extremely useful; however, the complexity of the issues involved creates the potential for confusing, misleading, and fraudulent claims in the marketplace. Given this potential, consumer and business outreach, in addition to enforcement, is essential. The FTC requests funds for two purposes. First, to hire experts and conduct research about "green" claims to obtain a better understanding of the marketplace, the relevant science, and the interaction of various "green" claims. Second, to launch a new "green"-related consumer and business education campaign. The campaign would involve claims ranging from carbon offsets and other climate-related issues to recycling, energy-savings, and landfill reduction. Also, the FTC plans to take appropriate enforcement action involving deceptive claims in this area as well.

- High-tech tools to stop fraudsters [$250,000]. Fraudsters exploit new technologies to harm consumers. Currently, the FTC can anticipate some of these trends (e.g., spam and spyware) but may not be able to foresee others. The FTC needs high-tech tools to ensure that it can react in a timely manner to emerging issues, analyze new problems, and collect and review evidence.

- Marketing and advertising of food to children [$250,000]. The FTC is currently engaged in a congressionally requested study of food marketing to children and adolescents. Concurrently, there are some industry efforts underway to adopt self regulatory measures in this area. In two or three years, the FTC will undertake a follow-up food marketing study to assess changes that are expected to result from industry self-regulation and will need to purchase data again in FY 2009. A follow-up study will enable us to make meaningful comparisons with the data presented in the first study and respond to Congress.

- Privacy and identity theft and deceptive and unfair practices in mobile marketing [$100,000]. The FTC requests funds to work on an identity theft survey as recommended by the President's Identity Theft Task Force. The FTC also requests funds to hire consultants and invest in new data-capturing tools to assist us with law enforcement initiatives to tackle deceptive and unfair practices in mobile marketing.

Maintaining Competition

Maintaining Competition [$400,000]:

- Increased enforcement agenda. The FTC needs additional funds to support its increased competition enforcement agenda. This increased enforcement will lead to more litigation that will require more use of advisory contracts, stenographic services, and travel. The Maintaining Competition Goal relies heavily on the use of economic, intellectual property, and other industry experts in the investigation, preparation, and litigation of its cases. The cost of expert witnesses has risen dramatically and is expected to continue to rise.

Appropriations Language Provisions

Federal Deposit Insurance Corporation Improvement Act: The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) amended the Federal Deposit Insurance Act. As originally enacted, the FDICIA imposed various statutory responsibilities on the FTC that the agency did not have the resources or expertise to perform effectively. Accordingly, since 1992, Congress, with Administration support, has prohibited the FTC from spending funds on some or all of the responsibilities assigned to it under section 151 of the Act.

The requested appropriations language for FY 2009 continues the revised spending restriction, reflecting legislation enacted in October 2006, which maintains an appropriately narrow role for the FTC under section 151. This role enables the FTC to continue to enforce the provisions requiring non-federally-insured depository institutions to disclose that they do not have federal insurance and that the federal government does not guarantee the depositor will get back his or her money, but reinstates the implementation ban with respect to "look-alike" provisions.

Other Provisions: The requested appropriations language continues in effect provisions in prior-year appropriation acts that (1) allow for the purchase of uniforms and hire of motor vehicles; (2) allow services as authorized by 5 U.S.C. 3109; (3) limit to $300,000 the amount available for contracts for collection services in accordance with 31 U.S.C. 3718; (4) allow up to $2,000 for official reception and representation expenses; (5) allow for the collection of offsetting fees; (6) allow for the gross sum appropriated to be reduced as offsetting fees are collected; and (7) allow all funding to be available until expended.

Offsetting Fee Collections

This submission assumes that total offsetting collections from HSR filing fees and Do Not Call fees will provide the FTC $189,800,000 in FY 2009. The FTC assumes the $66,400,000 difference between offsetting collections and the $256,200,000 request will be funded through a direct appropriation.

HSR Premerger Filing Fees: This submission assumes offsetting HSR fee collections will provide the FTC $170,500,000 in FY 2009. These fees are authorized by section 605 of Public Law 101-162, as amended effective February 1, 2001, in the FY 2001 Commerce-Justice-State Appropriations Act (Section 630, Public Law 106-553).

Do Not Call Fees: This submission assumes offsetting collections of $19,300,000 from Do Not Call fees. These fees, first collected in FY 2003, will be used to maintain and enforce a national database of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers and to carry out other Telemarketing Sales Rule activities.

Government Performance And Results Act (GPRA)

The FY 2009 budget request is based on the FTC's GPRA Strategic Plan for FYs 2006 to 2011 and supported by the FY 2008 and FY 2009 Performance Plans included in this submission. The FTC updated and revised its Strategic Plan in FY 2006 and will continue to work closely with Congress, the Office of Management and Budget, and its stakeholders to ensure that its strategic goals, objectives, and measures continue to provide relevant information.

President's Management Agenda

The FTC is committed to managing its resources effectively and achieving immediate, concrete, and measurable results in each of the five management initiatives: human capital; competitive sourcing; e-government; financial management; and integration of budget and performance. Over the past decade, the agency has found new ways to meet growing demands and to reach out to more consumers and businesses by engaging in long-term, concerted efforts to work better and smarter. These efforts dovetail with the President's Management Agenda. To date, the agency has established an outstanding record of assessment, realignment, innovation, and improvement. Also, there are several continuing efforts underway to address, among other areas, financial systems and associated reporting, program performance and associated costs, efficiency and e-government, recruitment and training, and diversity and opportunity. The resources requested for FY 2009 will permit the agency to improve its strong management initiatives. This in turn will permit the agency to continue to fulfill its mission at the highest levels of effectiveness and efficiency. The FTC demonstrated its commitment to the PMA principles by achieving an “effective” rating, the highest rating given, on its first OMB Program Assessment Rating Tool (PART) evaluation in FY 2006.

Budget Request Summary
($ in thousands)

	Fiscal Year 2008		Fiscal Year 2009		Change	
	FTE	Dollars	FTE	Dollars	FTE	Dollars
Budget by Goal:						
Consumer Protection	581	$139,946	591	$148,430	10	$8,484
Maintaining Competition	503	103,918	511	107,770	8	3,852
Total	**1,084**	**$243,864**	**1,102**	**$256,200**	**18**	**$12,336**

	Fiscal Year 2008 Dollars	Fiscal Year 2009 Dollars	Change Dollars
Budget by Funding Source:			
Offsetting Collections			
HSR Filing Fees	$139,000	$170,500	$31,500
Do Not Call Fees	23,000	19,300	-3,700
Subtotal Offsetting Collections	$162,000	$189,800	$27,800
General Fund	81,864	66,400	-15,464
Total	**$243,864**	**$256,200**	**$12,336**

Summary of Changes
($ in thousands)

	FY 2008	FY 2009	Change
Budget Authority	$243,864	$256,200	$12,336
Full-time Equivalents	1,084	1,102	18

	FTE	Dollars
Explanation of Change		
A. Mandatory Salary and Contract Expenses:		
Annualized three-month cost of January 2008 pay increase, and nine-month cost of the January 2009 pay increase.	- - -	+$4,390
With-in grade increases pursuant to 5 C.F.R. 531.401 et seq.	- - -	+$1,498
Contract and other non-pay inflation.		+$2,658
One less work day than in FY 2008.	- - -	-$557
Subtotal	**- - -**	**+$7,989**
B. FTE Program Needs:		
An additional 10 FTE to protect consumers from unfair and deceptive practices in the financial services marketplace, protect consumers' privacy, and improve compliance with FTC orders.	+10	+$1,582
An additional 8 FTE to meet the increased workload required to challenge anticompetitive mergers and assure that the marketplace is free from anti-competitive business practices in the health care, pharmaceutical, energy, and technology sectors.	+8	+$1,265
Subtotal	**+18**	**+$2,847**
C. Non-FTE Program Needs:		
Consumer Protection: "Green" marketing research, education campaign, and enforcement; high-tech tools to stop fraudsters; marketing and advertising of food to children; privacy and identity theft and deceptive and unfair practices in mobile marketing.	- - -	+$1,100
Maintaining Competition: Increased enforcement agenda, litigation support, and outreach.	- - -	+$400
Subtotal	**- - -**	**+$1,500**
Total Change	**+ 18**	**+$12,336**

Budgeted Resources by Objective
($ in thousands)

Consumer Protection

Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace	FY 2008 FTE	FY 2008 Amount	FY 2009 FTE	FY 2009 Amount
Objective 1.1 Identify fraud, deception, and unfair practices that cause the greatest consumer injury	94	$27,400	94	$28,560
Objective 1.2 Stop fraud, deception and unfair practices through law enforcement	403	$90,523	411	$95,021
Objective 1.3 Prevent consumer injury through education	49	$14,420	49	$15,945
Objective 1.4 Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange	35	$7,603	37	$8,904
Total:	**581**	**$139,946**	**591**	**$148,430**

Maintaining Competition

Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace	FY 2008 FTE	FY 2008 Amount	FY 2009 FTE	FY 2009 Amount
Objective 2.1 Identify anticompetitive mergers and practices that cause the greatest consumer injury	54	$10,824	55	$11,749
Objective 2.2 Stop anticompetitive mergers and practices through law enforcement	399	$82,790	405	$85,156
Objective 2.3 Prevent consumer injury through education	31	$6,374	32	$6,878
Objective 2.4 Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange	19	$3,930	19	$3,987
Total:	**503**	**$103,918**	**511**	**$107,770**

Annual Performance Measures
Fiscal Years 2008 to 2009

Note: The Performance Measures for Fiscal Years 2008 and 2009 reflect the updates contained in the Federal Trade Commission's GPRA Strategic Plan for Fiscal Years 2007-2012. These measures continue to use the numbering schema from previous years to maintain historical integrity. The Performance Measures for Fiscal Years 2008 and 2009 appear in the sequence in which they are presented in the Federal Trade Commission's GPRA Strategic Plan for Fiscal Years 2007-2012.

	FY 2008 Target	FY 2009 Target
Consumer Protection **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:		
Measure 1.1.1: Collect and enter complaints and inquiries into the consumer database.	1.75 million*	1.75 million
Measure 1.1.3: Determine the percent of agency's consumer protection law enforcement actions that are responsive to the consumer complaint information gathered by the agency.	65%	65%
Objective 1.2–Stop fraud, deception, and unfair practices through law enforcement:		
Measure 1.2.5: Stop fraudulent and deceptive practices by obtaining orders or conducting other direct interventions with businesses.	130	130
Measure 1.2.1: Stop economic injury to consumers through law enforcement.	$400 million	$400 million
Objective 1.3–Prevent consumer injury through education:		
Measure 1.3.1: Track consumer protection messages accessed online or in print.	50 million	55 million
Measure 1.3.2: Track consumer protection messages, related to identity theft, accessed online or in print.	9 million	10 million
Measure 1.3.3: Track consumer protection messages, in Spanish, accessed online or in print.	3.0 million	3.8 million
Measure 1.3.4: Track a) the number of times print media publish articles that refer to FTC consumer protection activities and b) the circulation of the media that publish those articles.	a) 2,500 b) 675 million	a) 2,750 b) 750 million
Objective 1.4–Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange:		
Measure 1.4.1: Convene or participate substantially in workshops and conferences on novel or challenging consumer protection problems or issues.	6	6
Measure 1.4.2: Issue reports on novel or challenging consumer protection problems or issues.	8	8
Measure 1.4.3: File public and advocacy comments with other federal and state government agencies.	6	6
Measure 1.4.4: Cooperate with foreign government agencies on enforcement matters with cross-border components.	20	20
Measure 1.4.5: Provide policy or technical input to foreign government agencies or international organizations on consumer protection issues.	20	20

*The FTC will include complaints about Do Not Call violations for the first time in FY 2008.

	FY 2008 Target	FY 2009 Target
Maintaining Competition **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:		
Measure 2.1.1: Achieve positive outcomes in matters in which HSR requests for additional information are issued.	90%	90%
Measure 2.1.3: Achieve positive outcomes in significant nonmerger investigations.	90%	90%
Measure 2.1.4: Track the number of enforcement actions for the total mission, and separately for the merger and nonmerger programs. (informative measure)	report number of cases	report number of cases
Measure 2.1.5 Report the number of second requests, reportable transactions for which premerger notifications were received, HSR investigations that resulted in enforcement action, transactions in which antitrust issues were resolved through voluntary abandonment or restructuring because of FTC concerns, and investigations closed because the evidence indicated that a competitive problem was unlikely. (informative measure)	report number of cases	report number of cases
Measure 2.1.6: Track the number of significant nonmerger investigations closed each year, with or without enforcement action. (informative measures)	report number of cases	report number of cases
Objective 2.2–Stop anticompetitive mergers and practices through law enforcement:		
Measure 2.2.1: Achieve positive results in cases in which the FTC takes enforcement actions.	80%	80%
Measure 2.2.3: Take action against mergers likely to harm competition in markets with annual sales that meet the target.	$25 billion	$25 billion
Measure 2.2.2: Achieve savings for consumers through merger enforcement.	$500 million	$500 million
Measure 2.2.6 Save consumers more than the amount of agency resources allocated to merger programs.	600%	600%
Measure 2.2.5: Take action against anticompetitive conduct in markets with annual sales that meet the target.	$8 billion	$8 billion
Measure 2.2.4: Achieve savings for consumers through nonmerger enforcement.	$80 million	$80 million
Measure 2.2.7: Save consumers more than the amount of agency resources allocated to nonmerger enforcement activities.	400%	400%
Objective 2.3–Prevent consumer injury through education:		
Measure 2.3.2: Track the volume of traffic on the ftc.gov antitrust related pages that are relevant to policymakers, the business and legal communities, and the public at large.	15 million	15 million
Measure 2.3.5: Track the number of times print media publish articles that refer to FTC competition activities and the circulation of the media that publish those articles.	2,700 articles	2,700 articles
Objective 2.4–Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange:		
Measure 2.4.6: Track the volume of traffic on ftc.gov relating to competition research, reports, advocacy, and international cooperation and exchange.	700,000	700,000
Measure 2.4.1: Convene or participate substantially in workshops, conferences, seminars, and hearings involving significant competition-related issues.	4	4
Measure 2.4.2: Issue studies, reports, working papers, and issue papers on significant competition-related issues.	8	8
Measure 2.4.3: Make advocacy filings with other federal and state government agencies urging them to assess the competitive ramifications and costs and benefits to consumers of their policies.	6	6
Measure 2.4.4: Issue advisory opinions to persons seeking agency review of proposed business actions.	2 to 3	2 to 3
Measure 2.4.5: File amicus briefs with courts addressing competition-related issues.	2 to 3	2 to 3
Measure 2.4.7: Track the: a) number of cases on which the FTC cooperated with a foreign competition authority, b) number of consultations with or comments to foreign competition authorities, c) number of written submissions on international fora, d) number of international events attended, and e) number of leadership positions held by FTC staff in international competition organizations.	a) 30 b) 25 c) 7 d) 8 e) 5	a) 30 b) 25 c) 7 d) 8 e) 5

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; and not to exceed $2,000 for official reception and representation expenses, [$243,864,000] *$256,200,000*, to remain available until expended: *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: *Provided further*, That, notwithstanding any other provision of law, not to exceed [$139,000,000] *$170,500,000* 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. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation: *Provided further*, That, notwithstanding any other provision of law, not to exceed [$23,000,000] *$19,300,000* in offsetting collections derived from fees sufficient to implement and enforce the Telemarketing Sales Rule, promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.), shall be credited to this account, and be retained and used for necessary expenses in this appropriation: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year [2008] *2009*, so as to result in a final fiscal year [2008] *2009* appropriation from the general fund estimated at not more than [$81,864,000] *$66,400,000: Provided further*, That none of the funds made available to the Federal Trade Commission may be used to implement subsection (e)(2)(B) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).