

FEDERAL TRADE COMMISSION



Performance Plan

Fiscal Year 2003 Through Fiscal 2004
&
President's Management Agenda

Annual Performance Plan Objectives by Program FTE

Consumer Protection Mission

	Fiscal Year 2003				Fiscal Year 2004			
	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	55	2	64	7	55	2	64
Marketing Practices	13	127	5	145	13	127	5	145
Financial Practices	6	46	2	54	6	46	2	54
Enforcement	3	50	2	55	3	50	2	55
Planning & Information	47	2	4	53	47	2	4	53
International Consumer Protection	2	4	1	7	2	4	1	7
Consumer & Business Education	0	0	16	16	0	0	16	16
Economic & Consumer Policy Analysis	0	4	2	6	0	4	2	6
Program Management	6	19	3	28	6	19	3	28
CP Mission Support	28	101	12	141	28	101	12	141
Total Mission	112	408	49	569	112	408	49	569

Maintaining Competition Mission

	Fiscal Year 2003				Fiscal Year 2004			
	MC Obj. 1	MC Obj. 2	MC Obj. 3	Prgm. Total	MC Obj. 1	MC Obj. 2	MC Obj. 3	Prgm. Total
Premerger Notification	17	0	11	28	17	0	11	28
Merger & Joint Venture Enforcement	11	182	12	205	11	182	12	205
Merger & Joint Venture Compliance	1	9	1	11	1	9	1	11
Nonmerger Enforcement	6	95	5	106	6	95	5	106
Nonmerger Compliance	0	7	0	7	0	7	0	7
Antitrust Policy Analysis	2	3	2	7	2	3	2	7
Other Direct Mission Resources	4	9	3	16	4	9	3	16
MC Mission Support	13	101	11	125	13	101	11	125
Total Mission	54	406	45	505	54	406	45	505

**Fiscal Years 1999 - 2004
Annual Performance Measures**

	FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Actual	FY 2003 Target	FY 2004 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: (FY 2001-2004) Annual number of consumer complaints and inquiries entered into database.	----	----	430,000	680,000	450,000	500,000
Measure 1.1.2: (FY 2003-2004) Annual number of consumer complaints and inquiries related to identity theft entered into database.	----	----	----	----	155,000	170,000
<i>Objective 1.2—Stop fraud, deception and unfair practices through law enforcement:</i>						
Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud.	\$454 million	\$265 million	\$487 million	\$561 million	\$400 million	\$400 million
Measure 1.2.2: (FY 2001-2002) Total expenditures of deceptive or unfair advertising campaigns stopped.	----	----	\$86 million	\$40 million	----	----
Measure 1.2.3: (FY 2003-2004) Number of data searches conducted by FTC and other law enforcement personnel of the FTC's Consumer Sentinel.	----	----	----	----	20,000	20,000
Measure 1.2.4: (FY 2003-2004) Number of data searches conducted by law enforcement personnel reviewing the FTC's Identity Theft complaints.	----	----	----	----	1,400	1,500
<i>Objective 1.3—Prevent consumer injury through education:</i>						
Measure 1.3.1: Number of education publications distributed or accessed electronically by consumers.	8.6 million	11.0 million	15.0 million	19.3 million	14.0 million	15.0 million
Measure 1.3.2: (FY 2003-2004) Annual number of education publications related to Identity Theft distributed or accessed electronically.	----	----	----	----	2.5 million	2.5 million
Measure 1.3.3: (FY 2003-2004) Annual number of Spanish-language education publications distributed or accessed electronically.	----	----	----	----	Determine baseline	Compare to baseline

	FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Actual	FY 2003 Target	FY 2004 Target
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 2001-2004) Percent of HSR second requests resulting in enforcement action.	----	----	68%	68%	60-80%	60-80%
Measure 2.1.2: (FY 2001-2003) Number of nonmerger investigations opened per year.	45	25	56	59	45-70	----
Measure 2.1.3: (FY 2004) Percent of nonmerger investigations which result in enforcement action.	----	----	----	----	----	60-80%
<i>Objective 2.2—Stop anticompetitive mergers and practices through law enforcement:</i>						
Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.	80%	95%	94%	100%	80%	80%
Measure 2.2.2: (FY 1999-2003) Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.	\$1,200 million	\$2,980 million	\$2,500 million	\$726 million	\$800 million	----
Measure 2.2.3: (FY 2004) Volume of commerce in markets in which FTC took action to prevent anticompetitive mergers.	----	----	----	----	----	\$40 billion
Measure 2.2.4: (FY 2001-2003) Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.	----	----	\$157 million	\$86 million	\$200 million	----
Measure 2.2.5: (FY 2004) Volume of commerce in markets in which FTC took action to prevent anticompetitive conduct.	----	----	----	----	----	\$20 billion
<i>Objective 2.3—Prevent consumer injury through education:</i>						
Measure 2.3.1: (FY 2001-2003) Quantify number of education and outreach efforts.	----	----	Determine baseline (141)	285	325	----
Measure 2.3.2: (FY 2001-2003) Quantify number of hits on antitrust information on FTC Web site.	----	----	Determine baseline (2.6 million)	4.3 million	3.5 million	----
Measure 2.3.3: (FY 2004) Measure and establish appropriate targets for the number of hits on the FTC antitrust Web site relevant to business and legal communities.	----	----	----	----	----	Determine baseline
Measure 2.3.4: (FY 2004) Measure and establish appropriate targets for the number of hits on the FTC antitrust Web site relevant to policy makers and the general public.	----	----	----	----	----	Determine baseline

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 2003 Budgeted Resources: 112 FTE \$22,328,000

Data Collection and Sharing

To identify the most serious forms of fraud and deception, the FTC relies on its complaint database, which is accessible to an increasing number of law enforcement partners. The FTC's database has grown dramatically in past years, and FTC staff have recruited many new law enforcement partners at home and abroad.

The FTC has created the largest database of consumer complaints in the world. Complaints are collected by the FTC's Consumer Response Center, which responds to calls to its toll-free numbers and to postal and online complaints. The FTC also receives complaint data from a broad array of public and private organizations in the United States and Canada. Through December 2002, more than 2.2 million entries are in the FTC's database.

The FTC shares complaint data through *Consumer Sentinel*, a secure Web site that provides access to fraud and identity theft complaints to more than 610 law enforcement organizations in the United States, Canada, and Australia. *Consumer Sentinel* is a unique and effective enforcement tool that enables law enforcers to access data right at their desks. Although the FTC is not empowered to act on behalf of individual consumers, consumer complaint data accessed through *Consumer Sentinel* enables the FTC and its law enforcement partners to coordinate their enforcement efforts and identify and target the most serious consumer problems. Moreover, with the coordinated international launch in FY 2001 of *econsumer.gov*, a Web site where consumers can file cross-border complaints, the FTC took the *Consumer Sentinel* model to the global marketplace. As of December 2002, partners in 17 countries, including the United States, can access the information contained in *econsumer.gov*.

The FTC will continue to expand the complaint database and increase its use by recruiting and training additional law enforcement partners. The FTC also will make better use of its rich store of data by identifying repeat offenders and sharing this information with other law enforcers. Further, the FTC will increase its capacity to analyze data quickly in order to respond to frauds and identity theft in their incipient stages and help prevent consumer injury. The data will be used to provide more information to the public – giving consumers information to protect themselves from scams and identity theft, and informing public policy discussions about consumer protection issues in the marketplace. The FTC also will continue to collect data on consumers' experiences and general inquiries through focus groups, surveys, copytesting, and other methods of monitoring the marketplace in order to

better target enforcement and education resources. The FTC will continue to enhance its system to track and analyze privacy-related complaints more effectively.

The FTC will establish a new performance measure in FY 2003 under Objective 1.1 to report the annual number of consumer complaints and inquiries entered into the database relating to identity theft. Although Congress established the FTC as the central clearinghouse for identity theft complaints, the Commission – a civil law enforcement agency – has no enforcement over identity theft crimes. The information contained in the FTC’s database, however, directly supports these criminal prosecutions. The Commission has learned from experience that hands-on information and training provided to its customer law enforcement agencies greatly enhances their abilities to mine the information in the complaint database and ultimately prosecute identity theft crimes more successfully. Consequently, the FTC initiated identity theft training for local, state, and federal criminal enforcement groups and, through December 2002, trained approximately 520 law enforcers from more than 165 agencies. Through a new performance measure under Objective 1.2, the FTC will track the number of accesses by law enforcement personnel to monitor the success of these training programs and to determine how such training should be modified to better meet the needs of its partner agencies.

Finally, in FY 2002 the Commission contracted for two surveys of several thousand consumers regarding fraud that they have experienced, including identity theft. Through these surveys, the FTC seeks to learn whether complaints in the database are representative of consumers’ actual experiences. If so, the FTC will explore the possibility of developing a “rule of thumb” to infer how many cases of fraud have occurred for every complaint received. The agency also expects that the survey results will help determine whether certain classes of consumers are not represented in the database, so that it can target those populations with education about filing complaints through *Consumer Sentinel*. After receipt and review of the survey results, the Commission will review its enforcement efforts to better ensure that it is addressing the most costly and prevalent forms of fraud. The survey of identity theft will allow the FTC to better assess the nature and prevalence of identity theft and to judge the effectiveness of agency efforts to assist and educate consumers, identity theft victims, law enforcement officials, and industry representatives. The agency also may seek to revise its GPRA performance measures at that time based on the information received.

Privacy Issues

In FY 2003, the FTC’s Consumer Protection Mission will continue to explore and place great emphasis on privacy issues. The FTC will maintain its scrutiny of the privacy implications of new and emerging technologies. Amendments to the Telemarketing Sales Rule, approved by the Commission in December 2002, will be implemented. The FTC also will devote resources to three important privacy initiatives – identity theft, credit reporting, and the Children’s Online Privacy Protection Act (COPPA). The FTC will continue to use its data mining and analytical skills to develop custom investigative reports that will enable criminal law enforcement agencies to identify and prosecute appropriate identity theft cases. The FTC will keep working with the credit reporting industry to ensure the accuracy of consumers’ credit information. Finally, the FTC will use survey results that it has gathered, industry results, and traditional surveillance methods to identify Web sites that are collecting personal information from children without first obtaining parental consent. Through

education, voluntary compliance efforts, and law enforcement, the FTC will seek to bring these entities into compliance with COPPA.

Unsolicited Commercial E-mails (Spam)

The FTC receives thousands of unsolicited commercial e-mails or spam messages a day, forwarded by groups and individuals worldwide. Since 1998, the FTC has maintained an electronic mailbox (*uce@ftc.gov*) to which Internet customers are encouraged to forward spam. This spam database is searchable, enabling FTC staff to track trends and identify law enforcement targets. For example, FTC attorneys and investigators search the spam database when researching potential cases. In FY 2003, resources will be used to enhance the spam database that stores these messages. Developing the capability to search, manipulate, and analyze the data will help the FTC put it to use for case generation, evidentiary support in litigation, trend analysis, and legislative recommendations.

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* services to assist law enforcement partners.
- 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 2003 Implementation Plan

- Recruit new partners in the United States and abroad to contribute complaint data to *Consumer Sentinel*; add to the group of state, local, federal, and international law enforcement agencies accessing information in *Consumer Sentinel*; and train new partners on how to take full advantage of its features.
- Facilitate the exchange of data with law enforcement officials in other countries; expand the use of *econsumer.gov* by recruiting additional partners, providing more information on the site, and increasing complaint collection and sharing.
- Enhance analysis of data to make it more useful to private and public sector partners.
- Enhance the system's capacity to collect privacy-related complaints in the database.
- Increase the number and utility of identity theft complaints in the database.

- Monitor the marketplace to identify illegal practices that may not be fully captured by the database by, for example, using technology to monitor the Internet and conducting surveys.
- Collect data on consumers' experiences and general inquiries through focus groups, surveys, copytesting, and other methods of monitoring the marketplace in order to better target enforcement and education resources.
- Identify consumer protection issues emerging as a result of changes in the marketplace, for example, the increasing use of new technologies, such as new push technology and digital television and Internet telephony, the use of new payment systems, changes in demographics (the aging population, immigration, etc.), and globalization; explore them through public workshops, hearings, surveys, etc.

3. FY 2003 Performance Measures

In FY 2003, the agency will:

- Increase the number of consumer complaints and inquiries in the FTC's comprehensive information system by at least 450,000, and
- As part of this increase in total consumer complaints and inquiries, enter at least 155,000 consumer complaints and inquiries relating to identity theft.

The FTC continues to focus law enforcement resources on the most serious consumer protection problems identified through its consumer complaint database. The data enable the FTC to rapidly detect and respond to fraud, deception, and other illegal practices, and to help prevent consumer injury in a timely fashion. Furthermore, by broadly sharing its fraud complaints through *Consumer Sentinel* with external partners, the FTC can enhance the effectiveness of law enforcement agencies across the United States, Canada, and Australia. The FTC also continues to focus on identity theft and uses its resources to collect information from identity theft victims and share that information with its law enforcement partners.

4. Program Evaluations

- Use the results of the consumer fraud and identity theft surveys to evaluate the representative value of complaints entered into the database and whether an increase in the number of complaints is due to an increase in the occurrence of fraud or an increase in the reporting of fraud by consumers.
- Assess whether the FTC's law enforcement and education efforts are addressing the leading problem areas identified by the complaint database.
- Determine the extent to which *Consumer Sentinel* services are used by law enforcement partners.
- 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 2003 Budgeted Resources: 408 FTE \$73,136,000

The FTC's programs to help stop fraud, deception, and unfair practices range from protecting consumer privacy, to investigating high-tech fraud, deceptive marketing of health care products and services, to pursuing international law enforcement matters. The FTC will continue to work in these and other areas to help prevent and reduce consumer injury caused by these practices.

Privacy

The FTC plays a vital role in protecting consumers' privacy and will continue to focus its efforts in this area in FY 2003. The FTC's approach on privacy issues encompasses both enforcement and education, and focuses on telemarketing, unsolicited e-mail (spam), identity theft, and pretexting (obtaining consumers' financial information under false pretenses), as well as enforcement of the Children's Online Privacy Protection Act, the Gramm-Leach-Bliley Act, and the Telemarketing Sales Rule (TSR) as amended in December 2002.

The amendments to the TSR include the development of a centralized national "do-not-call" database. Through one simple Web site registration or telephone call, a consumer will be able to register his or her preference not to receive telemarketing calls from organizations under the FTC's jurisdiction. Covered telemarketers would be prohibited from calling any consumer who had placed his or her telephone number in the database. The amendments also address the use of "pre-acquired account information." Consumers and law enforcers are concerned that, unbeknownst to the consumer, frequently a telemarketer already has the consumer's billing information in hand before that telemarketer ever initiates a sales call to the consumer. Account information that has been "pre-acquired" can be misused, resulting in unauthorized charges on consumers' accounts. The TSR amendments also impose new restrictions on the practice of "call abandonment" and require telemarketers to transmit caller-ID information.

Enforcement efforts will continue to focus on cases involving sensitive personal or financial information, and claims touting the privacy and security features of products and services.

E-commerce

The electronic marketplace continues to be a fertile ground for frauds and deception – both traditional frauds and new forms of technological trickery. The FTC will pursue new consumer protection issues that are emerging with the convergence of technologies and new payment systems.

Internet fraud and deception remain a law enforcement priority for the FTC. The FTC will continue to lead efforts to coordinate law enforcement with officials throughout the United States and abroad. Two key elements of its global enforcement efforts using the Internet are (1) sharing complaint data through *Consumer Sentinel* and the recently created international Web site, *econsumer.gov*, and (2) training enforcement officials here and abroad on the newest Internet technologies and how to bring cases involving those technologies. Since FY

2000, staff has offered 27 “hands-on” training programs to more than 1,750 law enforcement personnel representing 20 countries, 38 states, 23 federal agencies and 19 Canadian agencies. FTC staff has followed this outreach by working with groups of its law enforcement partners (called “Netforces”) on joint cases, or sweeps, identified through this training.

Globalization

As the marketplace becomes more global, the Commission staff is continuing its work on cross-border fraud and devoting more attention to enforcement actions that have a cross-border component. U.S. consumers often receive telemarketing or e-mail solicitations from vendors outside the United States. The FTC works to combat fraud regardless of the source. In October 2002, the agency unveiled a five-point plan to fight cross-border fraud, which includes: (1) advocating an Organization for Economic Cooperation and Development (OECD) Recommendation on Cross-Border Fraudulent and Deceptive Commercial Practices; (2) issuing a report to Congress with recommendations for legislative changes strengthening the FTC’s ability to combat cross-border fraud; (3) conducting a workshop on public/private partnerships to fight cross-border fraud; (4) pursuing bilateral and multilateral cooperation arrangements; and (5) providing technical assistance to developing countries on consumer protection issues. In January 2003, the FTC launched a new Web site, www.ftc.gov/crossborder, to help consumers identify, stop, and avoid cross-border fraud. Consistent with the five-point plan, on February 19 and 20, the FTC will hold a workshop on public-private partnerships to fight cross-border fraud. As the FTC pursues these initiatives relating to cross-border fraud, we will work to identify measures that will enable us to report on our performance in this area.

Health Care Products and Services

The FTC is placing increased priority on a growing problem area: the deceptive marketing of products that may affect consumer health and safety. The FTC is focusing on dietary supplements and other health products promoted on the Internet. Consumer demand for these products is increasing, and fraudulent or deceptive claims about the products can pose risks to consumers’ well-being.

New Performance Measures

The FTC will establish two new performance measures under this objective in FY 2003 – to report the number of data searches by FTC and other law enforcement personnel of the FTC’s *Consumer Sentinel* complaints and the number of data searches by law enforcement personnel of the FTC’s identity theft complaints.

The FTC will eliminate the performance measure reporting the total expenditures of deceptive or unfair advertising campaigns stopped. This measure has not proven to be appropriate in evaluating performance. When first created, the Commission based it on prior year data that included several large national advertising claims that were terminated as a result of FTC action. Since that time, the agency has increased its focus on deceptive Internet advertising claims. Internet advertising is very broadly disseminated, but is considerably less expensive than traditional advertising campaigns. In addition, last fiscal year, the FTC did a better job of identifying problems in traditional ads early on, further reducing the dollar volume of deceptive ads that were stopped. As a result of the changes in performance

measures, the section below has been consolidated into one section. In past versions, this information was divided into two sections: Stopping Fraud and Ensuring Broad-Based Protections for Consumers.

As discussed in Objective 1.1, the FTC is conducting surveys of various consumers. The results will be used to evaluate the FTC's enforcement and identity theft campaigns and to determine whether other measures should be adopted to evaluate performance in this area.

1. GPRA Five-Year Strategies

- Lead and coordinate a nationwide attack on telemarketing fraud by continuing to lead federal and state law enforcement sweeps, and by using *Consumer Sentinel* data to (1) identify targets and (2) coordinate with other federal and state agencies to prosecute actions against these targets.
- Target high-tech frauds that have moved to the Internet and exploit other new technologies.
- Develop additional international law enforcement partnerships 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.
- 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 2003 Implementation Plan

- Target for federal-state sweeps or other law enforcement initiatives, the most significant areas of telemarketing and other types of fraud, such as direct mail scams, predatory lending, and unauthorized billing ("cramming").
- Stop the most pernicious Internet-related scams, such as unauthorized charges on consumers' phone bills through dialer programs, the misuse of pre-acquired customer account information, and deceptive spam, as they are identified through *Consumer Sentinel*, the spam database, Internet surfs, and other monitoring.

- Enforce the provisions of the TSR dealing with “pre-acquired account information”; implement TSR amendments creating a national do-not-call registry that would be binding on all telemarketers under the FTC’s jurisdiction; and increase enforcement of privacy-related amendments to the TSR.
- Continue enforcement activities against fraudulent and deceptive spam promoting chain letters, pyramid schemes, or other kinds of “get-rich-quick” schemes.
- Recruit new local, state, federal, and international law enforcement partners for anti-fraud initiatives.
- Follow nationwide Internet training for law enforcement partners with joint “Netforce” enforcement sweeps.
- Further initiatives to fight cross-border fraud.
- Continue to equip the FTC’s Internet Lab to keep pace with technology and support rapid response law enforcement capability.
- Target law enforcement efforts to fight 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.
- Continue enforcement efforts against the abusive practice of pretexting that causes consumers concern about the security of their personal financial information.
- Bring privacy and security cases involving sensitive information and claims touting the privacy and security features of products and services.
- Ensure that there is broad compliance with consumer protection laws, rules, and guides in the electronic marketplace; target law enforcement to the most serious violations.
- Implement regulations governing franchising, telemarketing sales, and telephone billing services.
- Address cutting-edge consumer protection issues in emerging areas – e-commerce, globalization, privacy of personal information, and the marketing of new products and services and newly deregulated services.

3. FY 2003 Performance Measures

In FY 2003, the agency will:

- Save consumers approximately \$400 million by helping to stop Internet scams and other types of fraud.

Preventing economic injury to consumers is the ultimate goal of the FTC's anti-fraud campaign. The FTC saves consumers money each time a fraudulent operator is stopped through successful litigation or settlement with the agency. The FTC increases 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 stopped.

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

- Reduce consumer injury through law enforcement by providing access to essential data for law enforcement purposes through the *Consumer Sentinel*. In FY 2003, the goal is that FTC and law enforcement personnel will conduct 20,000 data searches of the FTC's *Consumer Sentinel*.
- Of those 20,000 data searches, 1,400 will be conducted by law enforcement personnel reviewing the FTC's identity theft complaints.

The FTC's *Consumer Sentinel* and identity theft data serve as a rich source of information for FTC staff and its law enforcement partners as they investigate and pursue instances of potential fraud, deception, and unfair practices. The expanded access to and use of this information is critical as the FTC works to help stop these practices. By tracking the number of accesses by both internal and external law enforcement personnel, the FTC hopes to demonstrate the value of the information contained in these databases. Generally, those personnel who are accessing the system are seeking information directly relevant to enforcement action - whether they are building a case, investigating a company, identifying potential witnesses, or gathering information for a sentencing hearing. In particular, the FTC will track the number of accesses that external agencies perform of the identity theft data in evaluating identity theft training programs for outside law enforcement agencies.

4. Program Evaluations

- Review the results of the consumer fraud and identity theft surveys and assess the overall trends revealed by review of the database to determine whether the amount of resources dedicated to the program should be altered or the program's priorities modified, and create new performance measures, if appropriate.
- Assess the litigation success rate for obtaining preliminary relief in fraud cases.

- Determine the success of leveraging resources through coordinated joint law enforcement initiatives.
- Evaluate the success of self-regulatory programs.
- 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 2003 Budgeted Resources:** 49 FTE \$8,762,000

The FTC's education efforts target identified areas of fraud and deception, and areas where information gaps are greatest because of rapid changes in the marketplace, such as new technology-based products and services, privacy of personal information, new types of payment systems, and global transactions. The agency makes creative use of new technologies and private and public partners to reach new and under-served audiences, particularly those who may not seek information directly from the FTC. The FTC will expand its consumer education program to reach these new audiences, build new partnerships to help distribute its messages, and continue to create and support education Web sites, including FTC's international site, *econsumer.gov*. In addition, every case that the FTC brings contains a consumer education component – targeting the message to consumers about the fraud that has occurred. To reach the expanding population of Hispanic consumers in the United States, the FTC instituted an Hispanic Outreach Program. We also cooperate with organizations such as the NAACP and the National Council of La Raza to work with minority communities and have targeted education campaigns to reach the young adults who enlist in the military. The FTC will continue to publicize its consumer complaint and identity theft toll-free numbers and seek to hold constituent service conferences with congressional offices as part of its effort to increase public awareness of its programs and inform the public of the ways to contact the FTC to obtain information or file a complaint.

The FTC will establish two new performance measures to report the annual number of education publications distributed to or accessed electronically by consumers relating to identity theft, and the annual number of Spanish-language publications distributed to or accessed electronically by consumers. These measures will highlight the outreach the agency is performing in the identity theft area and its efforts to reach the nation's growing Hispanic population. In carrying out these functions, the FTC strives to ensure that any publicly disseminated data or information subject to the Data Quality Act (section 515 of Pub. L. No. 106-554) meets basic quality standards.

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 2003 Implementation Plan

- 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.
- Plan a consumer awareness campaign to let consumers know that they should report their privacy-related complaints to the FTC.
- Continue an outreach program to increase consumer awareness of the privacy information required by the Gramm-Leach-Bliley Act.
- Increase education efforts about frauds that cause consumers the greatest financial injury.
- Through greater outreach, lead more consumers to the FTC's Web site (*ftc.gov*) and the "one-stop" government Web site for consumer information (*consumer.gov*).
- Expand coverage of FTC messages, including the toll-free helplines, through marketing, new products, technology, and a speakers bureau.
- Continue efforts to identify and reach under-served audiences, businesses, and law enforcement offices.

3. FY 2003 Performance Measures

In FY 2003, the agency will:

- Provide education messages online and in print to 14 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, the FTC makes maximum use of the national media, the agency's *ftc.gov* Web site, and the interagency *firstgov.gov* Web site. The FTC's messages also reach the public through the Consumer Response Center and hundreds of partners who distribute FTC materials, link to the FTC Web site, or post FTC messages on their Web sites.

The number of education messages distributed by the FTC has been increasing steadily. In FY 2000, the performance target of 8.7 million was exceeded with a total of 11 million. In FY 2001, the performance target of 10 million was exceeded with a total of 15 million. In FY 2002, the performance target of 10.5 million was exceeded with a total of 19.3 million, including nearly 7.0 million print publications and more than 12.0 million electronic accesses to FTC publications. In light of the actual

numbers of education messages distributed, this performance target is being raised in FY 2003 from the original target of 11 million to 14 million.

- As part of the 14 million education messages, provide education messages related to identity theft online and in print to 2.5 million recipients.

The FTC has coordinated with other government agencies and organizations to develop and disseminate comprehensive consumer education materials for victims of identity theft and those concerned with preventing this crime. The FTC's most popular publication, "Identity Theft: When Bad Things Happen to Your Good Name," is available in print and online. The FTC also distributes CDs containing this publication, thus enabling other federal agencies to print and distribute it. The FTC also joined with several companies and privacy organizations to make available a universal identity theft affidavit that victims of identity theft can submit to creditors. This form, available online in both Spanish and English, will help victims recoup their losses and restore their legitimate credit records more quickly.

- Continue to build the agency's new Hispanic Outreach Program and establish a baseline for the new performance measure of the annual number of Spanish-language education publications distributed to or accessed electronically by consumers.

Since this program began in January 2002, the FTC has created a dedicated page of the FTC Web site, *Proteccion para el Consumidor*, to mirror the English-language page, and translated 44 consumer publications as of December 2002. It also translated the FTC Consumer Complaint Form and provided a Spanish translation of the "bestseller" on identity theft – *Robo de Identidad: Algo malo puede pasarle a su buen nombre*. As of December 2002, the FTC had distributed more than 66,000 print and electronic copies of the Spanish version of this publication. The universal identity theft affidavit has been translated into Spanish and is available on the FTC Web site. In conjunction with these efforts, the Commission is conducting media outreach and providing press interviews in Spanish. The FTC will continue to translate more documents into Spanish and conduct other outreach activities in FY 2003. The majority of these translations should be completed by the first quarter of FY 2003, thus allowing the agency to establish a baseline and performance targets for subsequent years.

4. Program Evaluations

- Determine the number of publications distributed or accessed online to evaluate outreach efforts and identify topics of particular consumer interest.
- 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.
- Assess the number and range of public and private organizations that partner with FTC to do outreach; the more private and public partners the FTC has, and the larger those partners are, the greater its potential to reach different types of audiences, both business and consumer.

- Determine whether the FTC needs to reach new audiences, in light of any changes in demographics, advertising, and marketing practices.
- Review the focus of FTC education efforts and adjust them based on changing consumer and business needs.
- Assess the consumer education needs of the Spanish-speaking population. Census data shows that the United States has a large and growing Spanish-speaking population. Because these consumers may not speak English or are non-native speakers of the language, they may be less aware of the nuances and the complexities of disclosures, advertisements, or other aspects of consumer transactions. The FTC will assess the vulnerabilities of this group and then craft a strategy to meet their needs.
- Use the results of the consumer fraud and identity theft surveys to determine whether certain classes of consumers are not represented in the FTC database, and target consumer education to close any gaps.
- Review trends or patterns in complaints, if any, filed under the Data Quality Act to determine appropriate techniques or strategies for improving the quality of publicly disseminated data or information that are subject to the Act.

theft will allow the FTC to better assess the nature and prevalence of identity theft and to judge the effectiveness of agency efforts to assist and educate consumers, identity theft victims, law enforcement officials, and industry representatives. The FTC also may seek to revise its GPRA performance measures at that time based on the information provided through the surveys.

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.
- 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 2004 Implementation Plan

- Recruit new partners in the United States and abroad to contribute complaint data to *Consumer Sentinel*; add to the group of state, local, federal, and international law enforcement agencies accessing information in *Consumer Sentinel*; and train new partners in how to take full advantage of its features.
- Facilitate the exchange of data with law enforcement officials in other countries; expand the use of *econsumer.gov* by recruiting additional partners, providing more information on the site, and increasing complaint collection and sharing.
- Enhance analysis of data to make it more useful to private and public sector partners.
- Enhance the system's capacity to collect privacy-related complaints in the database.
- Increase the number and utility of identity theft complaints in the database.
- Monitor the marketplace to identify allegedly illegal practices that may not be fully captured by the database by, for example, using technology to monitor the Internet and conducting surveys.
- Collect data on consumers' experiences and general inquiries through focus groups, surveys, research, readability studies, and other methods of monitoring the marketplace in order to better target enforcement and education resources.

- Identify consumer protection issues emerging as a result of changes in the marketplace, for example, the increasing use of new technologies, such as new push technology and digital television and Internet telephony, the use of new payment systems, changes in demographics (the aging population, immigration, etc.), and globalization; explore them through public workshops, hearings, surveys, etc.

3. FY 2004 Performance Measures

In FY 2004, the agency will:

- Increase the number of consumer complaints and inquiries in the FTC's comprehensive information system by at least 500,000, and
- As part of this increase in total consumer complaints and inquiries, enter at least 170,000 consumer complaints and inquiries relating to identity theft.

The FTC continues to focus law enforcement resources on the most serious consumer protection problems identified through its consumer complaint database. The data enables the FTC to rapidly detect and respond to fraud, deception, and other illegal practices, and to help prevent consumer injury in a timely fashion. Furthermore, by broadly sharing its fraud complaints through *Consumer Sentinel* with external partners, the FTC can enhance the effectiveness of law enforcement agencies across the United States, Canada, and Australia. The FTC also continues to focus on identity theft and uses its resources to collect information from identity theft victims and share that information with its law enforcement partners.

4. Program Evaluations

- Use the results of the consumer fraud and identity theft surveys to evaluate the representative value of complaints entered into the database and whether an increase in the number of complaints is due to an increase in the occurrence of fraud or an increase in the reporting of fraud by consumers.
- Assess whether the FTC's law enforcement and education efforts are addressing the leading problem areas identified by the complaint database.
- Determine the extent to which *Consumer Sentinel* services are used by law enforcement partners.
- 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 2004 Budgeted Resources: 408 FTE \$76,968,000

The FTC operates a range of programs to help stop fraud, deception, and unfair practices. The FTC will continue to focus efforts on high-tech fraud, deceptive marketing of health care products and services, consumer privacy, and international law enforcement, among other areas.

E-commerce

The Commission long has been mindful that the growth of e-commerce may spur the growth of online fraud and deception. Law enforcement resources will be used to attack new forms of complex and fast-moving high-tech fraud, a continued growth in deceptive online health claims, and online privacy practices that violate Section 5 of the FTC Act and the Children's Online Privacy Protection Act. The Commission also will monitor the need to train law enforcement partners to keep pace with technologically based scams. As the Internet grows, so does the need for coordinated law enforcement to meet those consumer protection challenges. Critical to that effort will be a highly educated cadre of law enforcement partners.

Health Care Products and Services

The deceptive marketing of products that may affect consumer health and safety continues to be an FTC priority. The FTC is focusing on dietary supplements and other health products promoted on the Internet. Consumer demand for these products is increasing, and fraudulent or deceptive claims about the products can pose risks to consumers' well-being.

Privacy

The FTC will continue to highlight the protection of consumers' private information in FY 2004. The Commission's approach in this arena will encompass both enforcement and education, as the FTC focuses on telemarketing, unsolicited e-mail (spam), identity theft, and pretexting, as well as enforcement of the Children's Online Privacy Protection Act, the Gramm-Leach-Bliley Act, and the Telemarketing Sales Rule (TSR). The TSR was amended in December 2002, and the Commission will continue in FY 2004 initiatives to implement the creation of a centralized national "do-not-call" database and enforce violations of the rule. Other enforcement efforts in privacy will center on cases involving sensitive personal or financial information, and claims touting the privacy and security features of products and services.

Globalization

As the marketplace becomes more global, the FTC is involved on two fronts: law enforcement and policy development. With respect to law enforcement, cases increasingly involve an international component as defendants, their operations, or their assets are moved offshore, making it difficult to locate and stop scams or to provide redress to consumers. The FTC is meeting these challenges by building international partnerships to assist in identifying and pursuing these cases. As the FTC continues to developing initiatives relating to cross-border

fraud, we will work to measure and report our performance in this area. On the policy side, the FTC is promoting international development of market-oriented consumer protection policies.

1. GPRA Five-Year Strategies

- Lead and coordinate a nationwide attack on telemarketing fraud by continuing to lead federal and state law enforcement sweeps, and by using *Consumer Sentinel* data to (1) identify targets and (2) coordinate with other federal and state agencies to prosecute actions against these targets.
- Target high-tech frauds that have moved to the Internet and 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.
- 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 captured fully 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 2004 Implementation Plan

- Target for federal-state sweeps or other law enforcement initiatives, the most significant areas of telemarketing and other types of fraud, such as direct mail scams, predatory lending, and unauthorized billing (“cramming”).
- Stop the most pernicious Internet-related scams, such as unauthorized charges on consumers’ phone bills through dialer programs, the misuse of pre-acquired customer account information, and deceptive spam, as they are identified through the *Consumer Sentinel*, the spam database, through Internet surfs, and other monitoring.
- Enforce the provisions of the TSR dealing with “pre-acquired account information”; continue to implement TSR amendments creating a national do-not-call registry; and increase enforcement of privacy-related amendments to the TSR.

- Continue enforcement activities against fraudulent and deceptive spam promoting chain letters, pyramid schemes, or other kinds of “get-rich-quick” schemes.
- Recruit new local, state, federal, and international law enforcement partners for anti-fraud initiatives.
- Conduct joint enforcement sweeps with law enforcement partners.
- Further initiatives to fight cross-border fraud.
- Continue to equip the FTC’s Internet Lab to keep pace with technology and support rapid response law enforcement capability.
- 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.
- Continue enforcement efforts against the abusive practice of pretexting that causes consumers concern about the security of their personal financial information.
- Bring privacy and security cases involving sensitive information and claims touting the privacy and security features of products and services.
- Ensure that there is broad compliance with consumer protection laws, rules, and guides in the electronic marketplace; target law enforcement to the most serious violations.
- Implement regulations governing franchising, telemarketing sales, and telephone billing services.
- Address cutting-edge consumer protection issues in emerging areas – e-commerce, globalization, privacy of personal information, and the marketing of new products and services and newly deregulated services.

3. FY 2004 Performance Measures

In FY 2004, the agency will:

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

Preventing economic injury to consumers is the ultimate goal of the FTC’s anti-fraud efforts. The FTC saves consumers money each time a fraudulent operator is stopped by successful litigation or settlement with the agency. The FTC increases these con-

sumer 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 stopped.

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

- Reduce consumer injury through law enforcement by providing access to essential data for law enforcement purposes through the *Consumer Sentinel*. In FY 2004, the goal is that FTC and other law enforcement personnel will conduct 20,000 data searches of the FTC's *Consumer Sentinel* complaints.
- Of those 20,000 data searches, 1,500 will be conducted by other law enforcement personnel reviewing the FTC's identity theft complaints.

The FTC's Consumer Sentinel and identity theft data are a rich source of information for FTC staff and its law enforcement partners as they investigate and pursue instances of potential fraud, deception, and unfair practices. The expanded access to and use of this information is critical as the FTC works to stop these practices. By tracking the number of accesses by both internal and external law enforcement personnel, the FTC hopes to demonstrate the value of the information contained in these databases. Generally, those personnel who are accessing the system are seeking information directly relevant to enforcement action – whether they are building a case, investigating a company, identifying potential witnesses, or gathering information for a sentencing hearing. In particular, the FTC will track the number of accesses that external agencies perform of the identity theft data in evaluating identity theft programs for outside law enforcement agencies.

4. Program Evaluations

- Assess the results of the consumer fraud and identity theft surveys and the overall trends revealed by review of the database to determine whether the amount of resources dedicated to the program should be altered or the program's priorities modified, and create new performance measures, if appropriate.
- Assess the litigation success rate for obtaining preliminary relief in fraud cases.
- Determine the success of leveraging resources through coordinated joint law enforcement initiatives.
- Evaluate the success of self-regulatory programs.
- 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 2004 Budgeted Resources:** 49 FTE \$9,242,000

The FTC's education efforts target identified areas of fraud and deception, and areas where information gaps are greatest because of rapid changes in the marketplace, such as new technology-based products and services, privacy of personal information, new types of payment systems, and global transactions. The agency creatively uses new technologies and private and public partnerships to reach new and under-served audiences, particularly those who may not seek information directly from the FTC. The FTC will expand its consumer education program to reach these new audiences, build new partnerships to help distribute its messages, and continue to create and support education Web sites, including FTC's international site, *econsumer.gov*. In addition, every case that the FTC brings possesses a consumer education component – targeting the message to the fraud that has occurred. To reach the expanding population of Hispanic consumers in the United States, the FTC instituted an Hispanic Outreach Program in FY 2002. We also cooperate with organizations such as the NAACP and the National Council of La Raza to work with minority communities and have targeted educational campaigns to reach the young adults who enlist in the military. The FTC will continue to publicize its consumer complaint and identity theft toll-free numbers in an ongoing effort to increase public awareness of its programs and inform the public of the ways to contact the FTC to obtain information or file a complaint. In carrying out these functions, the FTC strives to ensure that any publicly disseminated data or information subject to the Data Quality Act (section 515 of Pub. L. No. 106-554) meets basic quality standards.

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 2004 Implementation Plan

- 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.

- Implement a consumer awareness campaign to let consumers know that they should report their privacy-related complaints to the FTC.
- Continue an outreach program to increase consumer awareness of the privacy information required by the Gramm-Leach-Bliley Act.
- Increase education efforts about frauds that cause consumers the greatest financial injury.
- Through greater outreach, lead more consumers to the FTC's Web site (*ftc.gov*) and the "one-stop" government Web site for consumer information (*consumer.gov*).
- Expand coverage of FTC messages, including the toll-free helplines, through marketing, new products, technology, and a speakers bureau.
- Continue efforts to identify and reach under-served audiences, businesses, and law enforcement offices.

3. FY 2004 Performance Measures

In FY 2004, the agency will:

- Provide education messages online and in print to 15 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, the FTC maximizes its use of the national media, the agency's *ftc.gov* Web site, and the interagency *firstgov.gov* Web site. The FTC's messages also reach the public through the Consumer Response Center and hundreds of partners who distribute FTC materials, link to the FTC Web site, or post FTC messages on their Web sites. Continuing from the increased FY 2003 target of 14 million, the target for this performance measure has been raised to 15 million in FY 2004.

- As part of the 15 million education messages, provide education messages related to identity theft online and in print to 2.5 million recipients.

The FTC has coordinated with other government agencies and organizations to develop and disseminate comprehensive consumer education materials for victims of identity theft and those concerned with preventing this crime. The FTC's most popular publication, "Identity Theft: When Bad Things Happen to Your Good Name," is available in print and online. The FTC also distributes CDs containing this publication, thus enabling other federal agencies to print and distribute it. Thus, the distribution numbers reported in this measure may be lower than actual numbers.

- Continue to build the agency's Hispanic Outreach Program and work from the baseline of the targeted annual number of Spanish-language education publications

distributed to or accessed electronically by consumers that will be established for this performance measure in FY 2003.

The FTC first began this program in January 2002 to reach the growing Hispanic population in the United States. As of December 2002, the FTC had created a dedicated page of the FTC Web site, *Proteccion para el Consumidor*, to mirror the English-language page, and translated 44 consumer publications. It also translated the FTC Consumer Complaint Form and provided a Spanish translation of the “bestseller” on identity theft – *Robo de Identidad: Algo malo puede pasarle a su buen nombre*. The universal identity theft affidavit has been translated into Spanish and also is available on the FTC Web site. The majority of the translations of FTC publications should be completed by the first quarter of FY 2003, thus allowing the FTC to establish a baseline and performance targets for subsequent years. The first time the agency will measure its performance under this new program will be FY 2004.

4. Program Evaluations

- Determine the number of publications distributed or accessed online to evaluate outreach efforts and identify topics of particular consumer interest.
- 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.
- Assess the number and range of public and private organizations that partner with FTC to do outreach; the more private and public partners the FTC has, and the larger those partners are, the greater its potential to reach different types of audiences, both business and consumer.
- Determine whether the FTC needs to reach new audiences, in light of any changes in demographics, advertising, and marketing practices, and as a result of any further information from the consumer fraud and identity theft surveys.
- Review the focus of FTC education efforts and adjust them based on changing consumer and business needs.
- Continue to assess the consumer education needs of the Spanish-speaking population. Census data shows that the United States has a large and growing Spanish-speaking population. Because these consumers may not speak English or are non-native speakers of the language, they may be less aware of the nuances and the complexities of disclosures, advertisements, or other aspects of consumer transactions. The FTC will assess the vulnerabilities of this group and then craft a strategy to meet their needs.
- Review trends or patterns in complaints, if any, filed under the Data Quality Act to determine appropriate techniques or strategies for improving the quality of publicly disseminated data or information that are subject to the Act.

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 2003 Budgeted Resources: 54 FTE \$8,303,000

After a decade of rapid growth, overall merger activity declined during FY 2001 and FY 2002. In addition, revisions to the Hart-Scott-Rodino Act (HSR) reporting thresholds, effective in FY 2001, significantly reduced the number of transactions subject to the notification requirement. Still, identifying anticompetitive mergers continues as a top priority in the FTC's Maintaining Competition Mission and poses significant challenges for the agency. Despite the revised HSR filing thresholds and the decline in merger activity generally, the FTC still faces a demanding merger review workload:

- The number of mergers remains high by historic standards. Although down from the record-setting years 1998-2000, the 1,187 transactions subject to the new HSR filing thresholds in FY 2002 was only 16% fewer than the average annual number of mergers that would have been reportable under the revised thresholds during FY 1990 to FY 2000 (1,378), a period widely recognized as a merger wave of historic proportions.
- Although the 2001 amendments to the HSR Act reduced the number of merger transactions subject to the reporting requirement, they did not change the standard of legality. As a result, the FTC now devotes more attention to the identification of unreported, usually consummated, mergers that could harm consumers. Moreover, during FY 2002, the FTC shifted substantial resources to enforcement actions involving consummated mergers.

Notwithstanding the significant demands imposed by merger review, the recent decline in merger activity has enabled the FTC to increase its efforts to identify appropriate targets for nonmerger investigations, making the balance between merger and nonmerger activities more consistent with historic allocations.

1. GPRA Five-Year Strategies

- Administer the Hart-Scott-Rodino (HSR) premerger notification program, under which parties to certain mergers and acquisitions must report the planned transactions in advance to the FTC and Department of Justice to allow for antitrust review. Track and maintain the timeliness of merger review under the HSR Program.
- In light of the higher HSR premerger reporting thresholds effective in early 2001, continue increased use of various means to identify possibly illegal mergers that are not subject to the HSR reporting requirement.

- Improve use of the initial 30-day period after HSR filings (or 15 days for a cash tender offer or a bankruptcy sale) to determine whether a merger is likely to harm competition, including reducing delays in interagency clearance (*i.e.*, the process used by the FTC and the Department of Justice Antitrust Division to determine which of the two will investigate a particular transaction) 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.
- Continue the use of task forces, such as the FTC's *Noerr-Pennington* Task Force and the State Action Task Force, and other means to examine the scope of exemptions to the antitrust laws to identify possible categories of harmful conduct that, while ostensibly protected from antitrust challenge, are in fact not exempt from the antitrust laws.
- Refine the investigative and decisional tools used in both merger and nonmerger investigations through continuous learning.

2. FY 2003 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 on the average time needed to "clear" transactions that do not require further review. Review and analyze these statistics on a regular basis.
- Articulate FTC policies and procedures through speeches, electronic and print media, and other means to inform potentially aggrieved parties that they may lodge complaints with the FTC, as well as to help parties stay in compliance with the antitrust laws.

B. Mergers Filed Under HSR

- In the initial review of each HSR filing, determine compliance with reporting requirements; prepare and transmit to management officials a summary of the transaction and a recommendation regarding further review.
- Promptly determine whether further review is needed to determine whether the transaction may be anticompetitive. If further review is deemed unnecessary, recommend early termination of the statutory waiting period. If additional review is required, seek investigational clearance from the Department of Justice through the interagency liaison process. Seek prompt resolution of clearance requests, whether initiated by the FTC or the Department of Justice, to maximize the portion of the initial waiting period available for investigation.

- Following clearance, use the remainder of the initial 30-day waiting period after filing (15 days in certain instances) to investigate and reach a sound and well-informed determination of whether the proposed merger raises sufficiently serious threat of harm to consumers to expand the investigation by issuing requests for additional information (“second requests”) and seeking Commission approval for use of compulsory process authority.

C. HSR Compliance Enforcement

- To promote voluntary compliance with HSR premerger notification requirements, vigorously pursue violations. Monitor compliance of merging entities and fully investigate apparent violations.
- If an investigation indicates 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 civil penalties sufficient to deter similar conduct in the future.
- 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, conduct or assist in litigation of the action.

D. Mergers Not Subject to HSR

- In light of the statutory increase in HSR filing thresholds effective in FY 2001, continue increased 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 and Internet resources, (2) responding to and following up on case leads from Congressional offices, other Executive Branch agencies, and state and local government, and (3) encouraging consumers, businesses, and the bar to notify the FTC of possibly anticompetitive mergers.
- Seek interagency clearance for investigation of transactions raising concerns and, if obtained, conduct appropriate investigation, including use of the Commission’s compulsory process authority if warranted. When appropriate, seek voluntary postponement of the transaction or other measures to facilitate possible future relief.

E. Nonmerger Practices

- Seek interagency clearance for investigation of business practices raising concerns and, if obtained, conduct appropriate investigation, including use of the Commission’s compulsory process authority if warranted.
- Devote additional scrutiny to selected issues or industry practices raising significant consumer concerns or involving potential for significant consumer injury. Continue in-depth studies of important competition issues, such as the study on the significance of generic drugs in the pharmaceutical marketplace (completed in FY 2002), the study of factors underlying the pricing of refined petroleum products (to be completed in FY 2003), the workshop on possible anticompetitive efforts to restrict competition on the internet, which took place during the fall of 2002, and the hearings on intellectual property and antitrust, which took place during FY 2002.

3. FY 2003 Performance Measures

In FY 2003, the agency will:

- Continue effective screening of HSR premerger notification filings to identify those that most likely present antitrust concerns, so that between 60% and 80% of HSR requests for additional information result in enforcement action.¹

A percentage below 60% may suggest that the FTC is targeting enforcement resources ineffectively by investigating too many competitively benign transactions (and unduly burdening businesses as a result), while a percentage higher than 80% may suggest that the agency is focusing too narrowly and thus potentially allowing problematic transactions to go forward without sufficient review.²

- Open a comparable number of new nonmerger investigations as in each of FYs 1991 through 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 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.
- Assess the significance (quantitatively in terms of the aggregate size of markets investigated and potential dollar savings to consumers, and qualitatively in deterrence value and precedential significance) of the matters investigated each year.

¹ The FTC will compute this measure by dividing the number of second request investigations that result in enforcement action during the relevant fiscal year (without regard to when the investigation commenced), by the total number of second request investigations that concluded during the year with or without enforcement action (again, without regard to when the investigation commenced). "Enforcement action" includes Commission authorization of a complaint for preliminary injunction in federal court, issuance of an administrative complaint, a consent agreement, or the parties' abandonment of a proposed transaction based on FTC antitrust concerns.

² The FTC also investigates mergers that are not subject to HSR reporting requirements, but there is no benchmark directly comparable to the issuance of a second request in those matters, and the overall number of non-HSR merger investigations is too small to permit a meaningful statistical measure.

- Continue a study of the merger review process begun in March 2002 with a series of national public workshops to obtain information and ideas from a broad range of knowledgeable parties, including corporate personnel, outside and in-house attorneys, economists, and consumer groups. The workshops addressed topics such as using more voluntary information submissions before issuance of a second request, reducing the scope and content of the second request, negotiating modifications to the second request, and focusing on special issues concerning electronic records and accounting or financial data. In December 2002, the FTC announced a number of procedural reforms designed to improve the quality and efficiency of the merger review process by expediting the gathering of relevant information and reducing the burdens on parties and also issued a companion paper entitled “Best Practices for Data, and Economic and Financial Analyses in Antitrust Investigations.” These modifications represent the first tangible result of the review of merger investigation procedures, and the FTC will continue to collect public input to assist it in enhancing and refining the process.

Objective 2.2: Stop anticompetitive mergers and practices through law enforcement.**FY 2003 Budgeted Resources:** 406 FTE \$63,119,000

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 block anticompetitive mergers and halt anticompetitive business practices.

The FTC seeks to maintain an appropriate balance between its merger and nonmerger enforcement efforts, but the statutory timetable governing the HSR merger review process requires that merger review is the first priority. Over the decade ending in FY 2000, an unprecedented level of merger activity required the shifting of resources from nonmerger activities to the merger arena. Merger activity has declined to a more manageable level since 2000, permitting renewed emphasis on the nonmerger area.

Merger enforcement responsibilities continue to place significant demands on the FTC's resources, however, for the following reasons:

- Mergers continue to grow in size, scope, and complexity. For example, the total dollar value of reported transactions in FY 2001 was about 4.3% higher in constant dollars than the average annual total dollar value reported during FYs 1990 to 2000, and nearly 60% of the transactions reported during FY 2002 exceeded \$100 million in value. The size of mergers affects the FTC's workload because large, diversified firms are likely to be involved in more markets than smaller firms and more likely to be significant players in the markets in which they compete, thus increasing the likelihood and scope of antitrust review. Also, as our economy produces more new technologies and becomes more knowledge-based, the resulting complexity of many mergers requires extensive inquiry.
- The number of mergers raising antitrust concerns, not the overall number of filings, primarily drives the FTC's merger workload. In FY 2002, the FTC took enforcement action in 24 mergers, a level 14% higher than the average volume of merger enforcement activity during the 1991 to 2000 decade.
- Challenging a consummated merger typically entails resource-intensive litigation.

In the nonmerger area, increased emphasis on case identification and investigations will likely result in an increase in enforcement actions in FY 2003. The scope of antitrust exemption doctrines such as *Noerr-Pennington* and state action, restraints on competition among professionals, and anticompetitive abuses of the standards-setting process will continue to receive scrutiny. During FY 2002, the FTC opened 59 nonmerger investigations and moved another 17 ongoing nonmerger investigations forward into a more advanced phase. These developing matters should result in a number of consent agreements or administrative complaints in FY 2003.

Two factors place increasing demands on the FTC's antitrust enforcement mission in both the merger and nonmerger segments:

- FTC antitrust investigations increasingly 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. More so than ever before, FTC investigations may involve difficult scientific and technical material. In addition, antitrust matters increasingly intersect with intellectual property, raising difficult issues on how to reconcile two different bodies of law with similar goals. These trends require more and more specialized knowledge and expertise.

- The FTC will likely be involved in more antitrust litigation during FY 2003 because of changes in HSR merger prenotification requirements and an increased focus on cutting-edge legal issues. Litigation is resource intensive compared to pre-consummation settlements that can resolve antitrust concerns. Although the FTC receives notification of fewer proposed mergers in advance because of modifications in the HSR reporting thresholds, the agency continues to monitor unreported mergers. Unreported mergers are much more likely to have been consummated by the time the FTC can complete an investigation, so any such merger that threatens competition likely will require litigation, rather than a pre-consummation consent agreement, to obtain relief. In the nonmerger area, the agency will examine anticompetitive conduct to which the applicability of one of the exemptions to the antitrust laws may be unclear. Because liability may be unclear in these instances, costly litigation is a likely possibility. Nevertheless, cases that add clarity to legal standards can have substantial benefit over a broad range of commerce.

In addition to significant staff time over a lengthy period, antitrust litigation requires significant expenditures for travel, stenographic reporting, and expert witnesses. Moreover, the increasing emphasis on quantitative evidence and econometric analysis in antitrust investigations and litigation requires that the FTC spend more resources in analysis and understanding of the issues. Merging firms increasingly rely on sophisticated accounting, econometric, and other data-intensive economic studies regarding competitive effects, entry issues, and efficiency and failing company defenses, requiring analogous investments by the FTC.

The FTC must also 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 devising and drafting effective compliance orders in individual matters, a highly fact-specific process. In addition, the FTC conducts general and historical analyses on the effectiveness of various kinds of merger and nonmerger remedies, 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. The FTC continues to absorb some of this ever-increasing workload through more efficient use of resources.

1. GPRA Five-Year Strategies

- Save consumers millions of dollars a year directly by working to stop anticompetitive mergers and anticompetitive conduct.
- Save consumers money indirectly by negotiating consent orders and winning litigated orders that have significant remedial, precedential, and deterrent effects in merger and nonmerger cases.
- Improve negotiation, litigation, and economic skills through continuous learning.

- Continue to ensure that divestiture remedies in Commission orders are achieved in a timely fashion, employing, where appropriate, requirements that suitable divestitures be arranged before consummation of a merger.
- Ensure that administrative litigation and adjudication reach a timely resolution.

2. FY 2003 Implementation Plan

A. All Programs

- Review the progress of all ongoing investigations on at least a monthly basis. Monitor time and resource expenditures.
- Continue to strengthen the timeliness, efficiency, and effectiveness of nonmerger investigations through the restoration of resources to the nonmerger program, to the extent permitted by the level of merger activity.
- Monitor the timeliness of administrative adjudication and issue to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.
- Enhance the FTC's ability to investigate and litigate matters involving high-tech segments of the economy by obtaining technical support from independent industry experts and experts in intellectual property law.
- Enhance the FTC's ability to litigate complex cases by investing in more sophisticated use of technology to support litigation, including document management and courtroom presentations.
- Arrange seminars featuring distinguished scholars speaking on substantive research and analysis of important antitrust law and policy issues.
- Integrate assessments of investigative and enforcement activity with new learning on law and economic policy to further the FTC's objective of (1) bringing enforcement actions only when anticompetitive effects from the challenged practices or mergers are likely and (2) not overlooking anticompetitive practices or mergers.
- Participate in planning, developing, improving and conducting agency-wide training programs in basic and advanced legal skills for FTC attorneys, including such areas as taking and defending depositions, written discovery, trial advocacy, negotiation skills, and advanced legal writing, as well as mission-specific procedures and substantive law. A comprehensive series of legal skills training programs, begun late in FY 2002, helped to accelerate newly entering attorneys' rapid development into important contributors to the agency's enforcement work.
- Complete a series of national public workshops on merger remedies. Analyze input from a broad range of knowledgeable parties, including corporate personnel, outside and in-house attorneys, economists, and consumer groups, on topics such as structuring asset packages for divestitures, timing of divestitures – upfront or after, evaluating the competitive adequacy of proposed buyers, and assessing preservation of competition after divestitures.

- Refine policies on the suitability and effectiveness of different remedies and policies relating to remedies, such as disgorgement of illegal profits, and various requirements associated with divestiture orders in merger cases.

B. Merger Enforcement

- During the initial HSR review period, carefully identify those merger transactions that are likely to raise potentially significant competitive concerns. Employ HSR second requests and other appropriate investigative techniques during the extended HSR waiting period to obtain documents, testimony, and other evidence.
- In non-HSR investigations, employ appropriate investigative tools other than HSR second requests to obtain documents, testimony, and other evidence.
- For both HSR and non-HSR merger investigations, complete the analysis of likely competitive effects of the transaction, based on evidence gathered, and prepare recommendations to Bureau management and the Commission on whether settlement or litigation is warranted.
- Where appropriate, seek to negotiate a consent order to protect consumers by correcting the competitive problem, while permitting the benign aspects of a merger to proceed.
- If an effective consent order cannot be negotiated to protect consumers from harmful effects of a merger, recommend that the Commission undertake litigation to challenge the merger, either by seeking a preliminary injunction from a federal court to block the merger (if it has not been consummated) or by issuing an administrative complaint against the merger (when the merger has already occurred, when the grant of a preliminary injunction does not result in abandonment of the merger, or when it is in the public interest to proceed with a full trial on the merits despite denial of an injunction).
- Litigate the preliminary injunction action or administrative complaint, employing outside experts as necessary to address economic or technical issues. Pursue or defend appeals as appropriate.
- For management review, collect data regarding the FTC's efficiency in investigating mergers, 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, (3) the number of HSR investigations that result in enforcement action, (4) the number of such matters resolved through a "quick look" investigation (that is, one not requiring the parties to produce all of the documents and information called for by the second request), (5) the volume of material obtained from the parties, (6) the number of hours of staff time spent on investigations, and (7) other costs associated with investigations.

C. Merger Compliance

- Track the time between issuance of Commission remedial orders in merger cases 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.
- 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.
- Modify orders when warranted by changed conditions of fact or law or when otherwise required in the public interest.

D. Nonmerger Enforcement

- Employ appropriate investigative techniques, including compulsory process if authorized, to obtain relevant information and to assess whether the practice in question is harming consumers.
- If the evidence is sufficient to establish reason to believe that the law has been violated, prepare a recommendation for authorization to engage in consent negotiations or to submit a complaint recommendation to the Commission.
- If an investigation indicates that a business practice is anticompetitive, seek to negotiate a consent order that protects consumers by effectively correcting the competitive problem.
- If a satisfactory consent order cannot be negotiated, recommend that the Commission undertake litigation to challenge the practice in question, either through the Commission's adjudicative process, or by asking a federal court to enjoin the challenged practice. In appropriate cases, recommend that the Commission authorize the filing of a federal court action for consumer redress or restitution. Pursue litigation authorized by the Commission, employing outside experts as necessary to address economic or technical issues. Pursue or defend appeals as appropriate.

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 2003 Performance Measures

In FY 2003, the agency will:

- For cases in which the Commission finds reason to believe the law has been violated, achieve a positive result (including consent orders, litigation successes, and, for mergers, transactions abandoned based on FTC antitrust concerns) in at least 80% of those cases.
- 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.³ 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.⁴

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.⁵ In some cases, detailed pricing data or other case-specific information will enable the calculation of a relatively accurate estimate of the likely price increase for a particular merger. In most cases, however, the agency relies on a “default” methodology for estimating consumer savings, derived from the analytical method used to identify the relevant market.⁶ 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 a net loss to

³ The agency may prevent an anticompetitive result from a proposed merger by (1) conducting successful litigation to block the merger, (2) negotiating a settlement to resolve anticompetitive aspects of the merger while allowing the underlying transaction to go forward, or (3) identifying antitrust concerns sufficient to cause the parties to abandon the transaction without court action. The consumer savings estimate does not include transactions abandoned by the parties for business considerations unrelated to antitrust. Settlements are subject to Commission approval, and require sufficient supporting evidence for the Commission to have “reason to believe” that a law violation would occur.

⁴ For example, though the \$726 million total estimated consumer savings from merger enforcement in FY 2002 was slightly less than the target average of \$800 million, adding the total of \$2.5 billion in FY 2001 results in a two-year total of \$3.2 billion. Thus, the agency is close to reaching its FYs 2001-2005 target of \$4 billion after only two years.

⁵ 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.

⁶ 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.

consumers amounting to at least 1% of the relevant market(s) would occur absent enforcement action.⁷

The FTC assumes that the duration of the anticompetitive price increase generally will be at least two years.⁸ Case-specific estimates of consumer savings, if available, are 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.

The FTC's use of this performance measure, and use of a similar measure by the Department of Justice, has generated some constructive criticism.⁹ The issues that have been raised relate to (1) how well the measure correlates with the substantive legal standard that applies to mergers, (2) an apparent assumption of agency infallibility implicit in the measure (*i.e.*, that every merger enforcement action taken by the FTC benefits consumers), (3) possible perverse incentives for the agency to pursue inappropriate policies, and (4) difficulty in comparing agency performance from one year to the next based on this measure.

The Commission acknowledges these concerns.¹⁰ While the consumer savings measure can be an appropriate indicator of the scope of the FTC's merger enforcement activities, it can be subject to misinterpretation.¹¹ Consequently, the FTC anticipates adopting a revised measure of the scope of merger enforcement activity, beginning with FY 2004, which should offer similar benefits with fewer drawbacks.

- 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 an 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

⁷ One reason for the conservative approach is that, in some instances, a proposed merger may create consumer savings through efficiencies that partially could offset losses to consumers due to reduced competition. The 1% figure takes into account the possibility of such efficiencies.

⁸ The two-year time frame 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. *See id.* § 3.0. This is because the prospect of rapid entry is likely to deter anticompetitive pricing. Therefore, it can be assumed 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.

⁹ *See, e.g.*, Philip Nelson and Su Sun, *Consumer Savings from Merger Enforcement: A Review of the Antitrust Agencies' Estimates*, 69 ANTITRUST LAW JOURNAL 921, 936-7 (2002).

¹⁰ *See* Appendix Relating to Objective 2.1 of this Performance Plan

¹¹ *Id.*

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.¹²

Many of the issues discussed above in connection with merger consumer savings apply in the nonmerger area as well.

4. Program Evaluations

- Evaluate effectiveness of FTC merger policy by conducting retrospective studies of FTC enforcement actions, or decisions not to take enforcement action, to determine if actual outcomes were consistent with the goals the Commission sought to achieve.
- Assess the deterrence value and precedential significance of the enforcement actions brought during the year.
- Review statistical data relating to 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, (3) the number of such matters resolved through a “quick look” investigation (that is, one not requiring the parties to produce all of the documents and information called for by the second request), (4) the volume of material obtained from merging parties in response to second requests, (5) the number of staff hours devoted to each investigation, and (6) the overall costs associated with each investigation. Take corrective action where necessary. Determine an appropriate basis of comparison with historic benchmarks, in light of revised reporting thresholds in 2001.
- Review and evaluate the timeliness and effectiveness of the Commission’s merger consent orders and litigated orders and make adjustments to future orders where appropriate.

¹² 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.

Objective 2.3: Prevent consumer injury through education.**FY 2003 Budgeted Resources:** 45 FTE \$6,951,000

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. In carrying out these functions, the FTC strives to ensure that any publicly disseminated data or information subject to the Data Quality Act (section 515 of Pub. L. No. 106-554) meets basic quality standards.

1. GPRA Five-Year Strategies

- Continue to educate businesses and consumers about antitrust issues through traditional means – guidelines, advisory opinions, speeches – and develop other avenues of communication, such as the FTC Web site (*ftc.gov*).
- Continue to provide advice to other governmental entities upon request.

2. FY 2003 Implementation Plan

- 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.
- Provide Commission and staff advisory opinions on competition issues.
- Upon request of other governmental entities considering proposed regulatory and legislative actions, prepare and submit comments or testimony to share information and analysis about how the proposed action may affect competition and consumers.
- Prepare and file amicus briefs in appropriate competition matters.
- Monitor the content of Commission 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. In appropriate cases in which the Commission determines that enforcement action would not be in the public interest, issue statements explaining the Commission’s reasoning.
- Make available prepared texts of speeches; as appropriate, develop other materials that explain Commission policies and procedures; circulate economic papers on competition issues.
- Arrange presentations by Commissioners and staff at seminars, panel discussions, and conferences, to explain how the Commission analyzes mergers and business practices.

- Support outreach efforts to international bodies to explain U.S. competition perspectives; aid the development of antitrust laws and programs in developing nations by participating in technical missions.
- Respond to correspondence, e-mail, and telephone calls from the public. Provide informal guidance, particularly on HSR matters. Evaluate inquiries and complaints about potentially anticompetitive practices, and respond to questions about the antitrust laws and the FTC.
- Make available on the FTC's Web site the guidelines issued by the agency, advisory opinions, advocacy comments, written press releases, texts of speeches, Bureau of Economics reports, and other materials that explain the Commission's policies and procedures.
- Continue to hold public hearings and workshops to expand understanding of increasingly significant public policy issues, such as factors that affect the price of refined petroleum products, and the implications of antitrust and patent law and policy for innovation and other aspects of consumer welfare.

3. FY 2003 Performance Measures

In FY 2003, the agency will:

- Work to prevent consumer injury through education by planning, preparing, and delivering at least 325 speeches, presentations, testimony, advisory opinions, advocacy comments, and amicus briefs.
- Work to prevent consumer injury through education by planning, preparing, and publishing antitrust-related content on the FTC's Web site that is of sufficient utility to visitors that it generates at least 3.5 million hits.

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" and "stakeholders" on the effectiveness of FTC educational efforts. Assess methods of measuring the success of educational efforts on a consistent, reliable basis.
- Evaluate the transparency of FTC merger review policy by assessing the extent to which significant changes in such policy are communicated to stakeholders.
- Review trends or patterns in complaints, if any, filed with the agency under the Data Quality Act to determine appropriate techniques or strategies for improving the quality of publicly disseminated data or information that are subject to the Act.

Appendix Relating to Objective 2.1

Commentators have raised concerns about the FTC's use of performance measures that purport to represent actual dollar savings to consumers that result from FTC antitrust enforcement actions¹ Some of the specific concerns are that:

- the measure may not correlate with the substantive legal standard that applies to mergers;
- the measure assumes infallibility, *i.e.*, that every merger enforcement action taken by the FTC benefits consumers;
- the measure, like many other measures, could create perverse incentives for the agency to pursue inappropriate policies; and
- because of the influence of external factors, as well as the agency's ability to affect the measure through policy choices, the consumer savings measure is not a good basis for comparing the FTC's performance across years.

The following discussion addresses each of these points.

Legal Standard With respect to the substantive legal standard, Section 7 of the Clayton Act does not require proof that prices would increase if the merger were permitted as an element of illegality; rather, it prohibits mergers the effect of which “may be substantially to lessen competition, or to tend to create a monopoly.” This raises two questions: (1) whether “lessen competition” is tantamount to a price increase, and (2) whether it is appropriate to assume that merger enforcement action would produce consumer savings in every instance, given the use of the word “may” in the statute.

While it is true that courts do not require proof of, and agencies do not focus on, the likelihood that a merger will result in price increases, *per se*, the applicable standards correlate closely with the likely effects on price. Under the Merger Guidelines, “[t]he unifying theme . . . is that mergers should not be permitted to create or enhance market power or to facilitate its exercise.”² The Guidelines further explain that “[m]arket power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time.”³ In other words, when challenging a merger, the FTC does not seek to prove directly that the merger would raise prices to consumers, but the agency does rely on evidence that it would “create or enhance market power or facilitate its exercise,” and it is well accepted in antitrust economics that market power generally leads to higher prices, among other adverse effects. It is possible for market power primarily to affect some non-price element of competition (such as in innovation), but in that atypical instance the “dollar value” of consumer savings should serve as a reasonable proxy for the non-price harm to consumers.

¹ See, e.g., Philip Nelson and Su Sun, *Consumer Savings from Merger Enforcement: A Review of the Antitrust Agencies' Estimates*, 69 *Antitrust Law Journal* 921, 936-7 (2002).

² Merger Guidelines Section 0.1.

³ *Id.*

The statutory language “may be substantially to lessen competition . . .” suggests that every merger prevented under Section 7 would not necessarily have harmed consumers if allowed to go forward. As applied by the courts, however, the legal standard is more rigorous than the words of the statute suggest. “Of course the word “may” should not be taken literally, for if it were, every acquisition would be unlawful.”⁴ Clearly, the courts do not require proof that a merger would harm competition as a matter of certainty before determining whether to block the merger. Applying Section 7 requires predicting the future, and the applicable methodology, antitrust economics, remains an inexact science despite considerable gains in knowledge over the years.

Assumption of Infallibility The discussion of probability versus certainty relates to the second general criticism of the consumer savings performance measure, namely that the FTC assumes all its actions benefit consumers, despite the inevitability that, at least in rare instances, even very well-grounded conclusions that a particular merger would harm consumers may be incorrect. While it is true that the FTC cannot be expected to predict without error the outcome of every one of thousands of proposed merger transactions annually, enforcement decisions nevertheless are based on a very rigorous examination of hard evidence, and, in any case, the consumer savings measure is designed to estimate the overall benefit of merger enforcement rather than to compare the impact of one merger case versus another.

While it is unclear what GPRA requires in terms of the level of certainty in the information underlying performance measure results, it seems likely that GPRA calls for good faith “best estimates” on performance measures, rather than total certitude in the accuracy of reported results. The basic assumption inherent in the consumer savings measure – that the FTC correctly assesses the outcome of mergers it chooses to challenge – is subject, at least potentially, to a very demanding, external review, because the FTC does not, on its own, have the ability to block a merger. To prevent the consummation of a merger it believes to be illegal, the FTC must offer proof sufficient to persuade a federal court, with vigorous opposition from the parties, to enter an injunction. The level of proof required to prevail in federal court litigation may well exceed the standard typically applied in the GPRA performance measurement context.

Most merger cases are resolved by settlement, and those that do settle are not exposed to the rigor of litigation. It is generally not possible to tell in advance, however, which matters will settle and which will not, so for both policy and practical reasons the agency applies the same internal standard in all cases. Moreover, as a matter of law, FTC Commissioners must have “reason to believe” a proposed merger would violate the law before voting to approve a consent agreement,⁵ and there is no reason to believe that Commissioners fail to take this responsibility seriously.

A fundamental premise of merger policy is that mergers are presumptively procompetitive. Recognizing that stopping a procompetitive merger may be as harmful as permitting an anticompetitive merger, the FTC carefully analyzes a great deal of evidence, obtains additional information from customers, competitors, and others with relevant information, and gives the parties ample opportunity to be heard before deliberating whether to take

⁴ *FTC v. Elders Grain*, 868 F.2d 901.

⁵ See 15 U.S.C. § 45(b).

enforcement action against a merger. While not every decision can be accurate, this cautious approach maximizes the quality of FTC enforcement decisions.

Finally, the consumer savings measure is designed to measure the net effect of FTC merger enforcement, not the effect of each individual case. The 1% figure is conservative enough to take some error into account.⁶

Incentives A risk with any performance measure is that it may create an incentive to maximize one aspect of performance at the expense of others. With respect to the consumer savings measure, for example, a shift toward an unduly restrictive merger policy would not help consumers, but it might produce a higher value on this measure.⁷ The presence of other measures focusing on different facets of performance can serve as a system of checks and balances. For example, a shift toward an inappropriately stringent merger policy might appear to increase consumer savings, but cause the agency to lose more cases in court, lowering the score on Performance Measure 2.2.1. In addition, cases are more likely to settle when the FTC has credibility in the eyes of respondents, *i.e.*, the agency is perceived as choosing its cases wisely and is likely to win the cases that it litigates. An inappropriately stringent merger policy would likely reduce the agency's credibility among the relevant stakeholders, leading to fewer settlements, more litigation and, again, less success in the courts.

Use of the Measure When the agency's performance is graded by a mix of performance measures, each focusing on different aspects of performance, the danger of perverse incentives is minimized. Still, the consumer savings measure is likely more useful as a means of demonstrating the overall value of the FTC's merger enforcement work, including the magnitude of consumer benefit versus the costs of merger enforcement (either direct to the taxpayers or overall). For example, the \$2.5 billion in consumer savings obtained through FTC merger enforcement in FY 2001 was 97 times the amount allocated for merger enforcement in the FTC's budget for that year, 36 times the amount budgeted for all of the FTC's Maintaining Competition Mission, and 17 times the entire FTC budget for FY 2001.

The consumer savings measure may be less useful as a means of comparing the FTC's performance in one year versus another, since the amount of merger activity in the marketplace largely drives the FTC's merger enforcement agenda. For example, one case accounted for more than half the reported consumer savings in merger enforcement in FY 2001. The measure may also be ill-suited as a means of motivating performance. Setting a very ambitious "target" for consumer savings may be more likely to induce questionable enforcement decisions than to result in better overall performance. Although the measure is informative about the scope and impact of FTC merger enforcement, the FTC will consider whether there may be a more suitable substitute for FY 2004.

⁶ See Nelson and Sun, *supra* note 1 at 949. ("The authors generally agree with the agencies' characterizations of the GPRA estimates as rough estimates of the merger enforcement efforts' value, which are likely to be conservative.")

⁷ See *id.* at 950.

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 2004 Budgeted Resources: 54 FTE \$8,626,000

After a decade of rapid growth, overall merger activity declined during FY 2001 and 2002. In addition, revisions to the Hart-Scott-Rodino Act (HSR) reporting thresholds, effective in 2001, significantly reduced the number of transactions subject to the notification requirement. Still, identifying anticompetitive mergers continues as a top priority in the FTC's Maintaining Competition Mission and poses significant challenges for the agency. Despite the revised HSR filing thresholds and the decline in merger activity generally, the FTC still faces a demanding merger review workload:

- The number of mergers remains high by historic standards. Although down from the record-setting years 1998-2000, the 1187 transactions subject to the new HSR filing thresholds in 2002 was only 16% fewer than the average annual number of mergers that would have been reportable under the revised thresholds during 1990 to 2000 (1,378), a period widely recognized as a merger wave of historic proportions.
- Although the 2001 amendments to the HSR Act reduced the number of merger transactions subject to the reporting requirement, they did not change the standard of legality. As a result, the FTC now devotes more attention to the identification of unreported, usually consummated, mergers that could harm consumers. Moreover, during 2002, the FTC shifted substantial resources to enforcement actions involving consummated mergers.

Notwithstanding the significant demands imposed by merger review, the recent decline in merger activity has enabled the FTC to increase its efforts to identify appropriate targets for nonmerger investigations, making the balance between merger and nonmerger activities more consistent with historic allocations.

Under this objective, the FTC seeks to focus its investigative resources on those activities most likely to harm consumers significantly. The goal is to avoid overlooking antitrust problems by focusing too narrowly, but also to avoid spending resources unproductively by investing in too many investigations that do not yield evidence of a problem. The two performance measures in use through FY 2003 under this objective – the percentage of HSR second requests resulting in enforcement action and the number of nonmerger investigations opened – provide useful information about the FTC's performance in identifying anticompetitive mergers and practices, but neither tells a comprehensive story. The first measure indicates the agency's effectiveness in screening HSR filings for those likely to raise antitrust issues, but does not reveal the level of activity in this area. Conversely, the second measure indicates the number of nonmerger investigations, but does not reveal information about the results of those investigations.

The addition of two new measures should alleviate this problem. First, the number of HSR second requests, coupled with the current measure of how frequently second requests result in enforcement action, should give a fuller picture of both the extent to which the FTC uses the second request mechanism and how effectively the agency targets the mergers that threaten competition. Second, the frequency with which significant nonmerger investigations result in enforcement action, coupled with the number of new investigations opened, should similarly provide a fuller picture of both the extent of FTC nonmerger activity and the agency's effectiveness in targeting activity that threatens competition.

1. GPRA Five-Year Strategies

- Administer the Hart-Scott-Rodino (HSR) premerger notification program, under which parties to certain mergers and acquisitions must report the planned transactions in advance to the FTC and Department of Justice to allow for antitrust review. Track and maintain the timeliness of merger review under the HSR Program.
- In light of the higher HSR premerger reporting thresholds effective in early 2001, continue increased use of various means to identify possibly illegal mergers that are not subject to the HSR reporting requirement.
- Improve use of the initial 30-day period after HSR filings (or 15 days for a cash tender offer or a bankruptcy sale) to determine whether a merger is likely to harm competition, including reducing delays in interagency clearance (*i.e.*, the process used by the FTC and the Department of Justice Antitrust Division to determine which of the two will investigate a particular transaction) 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.
- Continue the use of task forces, such as the FTC's *Noerr-Pennington* Task Force and the State Action Task Force, and other means to examine the scope of exemptions to the antitrust laws to identify possible categories of harmful conduct that, while ostensibly protected from antitrust challenge, are in fact not exempt from the antitrust laws.
- Refine the investigative and decisional tools used in both merger and nonmerger investigations through continuous learning.

2. FY 2004 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 on the average time needed to "clear" transactions that do not require further review. Review and analyze these statistics on a regular basis.

- Articulate FTC policies and procedures through speeches, electronic and print media, and other means to inform potentially aggrieved parties that they may lodge complaints with the FTC, as well as to help parties stay in compliance with the antitrust laws.

B. Mergers Filed Under HSR

- In the initial review of each HSR filing, determine compliance with reporting requirements; prepare and transmit to management officials a summary of the transaction and a recommendation regarding further review.
- Promptly determine whether further review is needed to determine whether the transaction may be anticompetitive. If further review is deemed unnecessary, recommend early termination of the statutory waiting period. If additional review is required, seek investigational clearance from the Department of Justice through the interagency liaison process. Seek prompt resolution of clearance requests, whether initiated by the FTC or the Department of Justice, to maximize the portion of the initial waiting period available for investigation.
- Following clearance, use the remainder of the initial 30-day waiting period after filing (15 days in certain instances) to investigate and reach a sound and well-informed determination of whether the proposed merger raises sufficiently serious threat of harm to consumers to expand the investigation by issuing requests for additional information (“second requests”) and seeking Commission approval for use of compulsory process authority.

C. HSR Compliance Enforcement

- To promote voluntary compliance with HSR premerger notification requirements, vigorously pursue violations. Monitor compliance of merging entities and fully investigate apparent violations.
- If an investigation indicates 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 civil penalties sufficient to deter similar conduct in the future.
- 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, conduct or assist in litigation of the action.

D. Mergers Not Subject to HSR

- In light of the statutory increase in HSR filing thresholds effective in FY 2001, continue increased 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 and Internet resources, (2) responding to and following up on case leads from Congressional offices, other Executive Branch agencies, and state and local government, and (3) encouraging consumers, businesses, and the bar to notify the FTC of possibly anticompetitive mergers.

- Seek interagency clearance for investigation of transactions raising concerns and, if obtained, conduct appropriate investigation, including use of the Commission's compulsory process authority if warranted. When appropriate, seek voluntary postponement of the transaction or other measures to facilitate possible future relief.

E. Nonmerger Practices

- Identify potentially anticompetitive nonmerger business practices through the same means used to identify potentially anticompetitive mergers not subject to HSR, as well as pursuing investigative leads developed by staff in other investigations, and using task forces to identify harmful practices in selected areas.
- Seek interagency clearance for investigation of business practices raising concerns and, if obtained, conduct appropriate investigation, including use of the Commission's compulsory process authority if warranted.
- Devote additional scrutiny to selected issues or industry practices raising significant consumer concerns or involving potential for significant consumer injury. Continue in-depth studies of important competition issues, such as the study on the significance of generic drugs in the pharmaceutical marketplace (completed in FY 2002), the study of factors underlying the pricing of refined petroleum products (to be completed in FY 2003), the workshop on possible anticompetitive efforts to restrict competition on the internet, which took place during the fall of 2002, and the hearings on intellectual property and antitrust, which took place during FY 2002.

3. FY 2004 Performance Measures

In FY 2004, the agency will:

- Continue effective screening of HSR premerger notification filings to identify those that most likely present antitrust concerns, so that between 60% and 80% of HSR requests for additional information result in enforcement action.¹

A percentage below 60% may suggest that the FTC is targeting enforcement resources ineffectively by investigating too many competitively benign transactions (and unduly burdening businesses as a result), while a percentage higher than 80% may suggest that the agency is focusing too narrowly and thus potentially allowing problematic transactions to go forward without sufficient review.² In conjunction with this measure, and to facilitate evaluation of results,

¹ The FTC will compute this measure by dividing the number of second request investigations that result in enforcement action during the relevant fiscal year (without regard to when the investigation commenced), by the total number of second request investigations that concluded during the year with or without enforcement action (again, without regard to when the investigation commenced). "Enforcement action" includes Commission authorization of a complaint for preliminary injunction in federal court, issuance of an administrative complaint, a consent agreement, or the parties abandonment of a proposed transaction based on FTC antitrust concerns.

² The FTC also investigates mergers that are not subject to HSR reporting requirements, but there is no benchmark directly comparable to the issuance of a second request in those matters, and the overall number of non-HSR merger investigations is too small to permit a meaningful statistical measure

the FTC will also report the number of second requests issued each year.

- Effectively target nonmerger investigative resources, so that between 60 and 80% of nonmerger investigations in which the Commission issues a resolution authorizing the use of compulsory process result in enforcement action.

The issuance of a compulsory process resolution indicates that the Commission has found the matter to be serious enough to warrant the use of its compulsory process authority and also generally correlates with those investigations to which the agency devotes meaningful resources. In conjunction with this measure, and to facilitate evaluation of results, the FTC will also report the number of nonmerger investigations opened and the number in which the Commission authorizes the use of compulsory process each year.

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 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.
- Assess the significance (quantitatively in terms of the aggregate size of markets investigated and potential dollar savings to consumers, and qualitatively in deterrence value and precedential significance) of the matters investigated each year.
- Continue to seek improvements in the merger review process to improve further the effectiveness and efficiency of investigations. In 2002, for example, the FTC conducted a series of national public workshops to obtain information and ideas from a broad range of knowledgeable parties, including corporate personnel, outside and in-house attorneys, economists, and consumer groups. The workshops addressed topics such as using more voluntary information submissions before issuance of a second request, reducing the scope and content of the second request, negotiating modifications to the second request, and focusing on special issues concerning electronic records and accounting or financial data. As an initial result of the workshops, the FTC announced a number of procedural reforms to improve the merger review process by expediting the gathering of relevant information and reducing the burdens on parties and also issued a companion paper entitled “Best Practices for Data, and Economic and Financial Analyses in Antitrust Investigations.” The FTC will continue to collect public input to assist it in enhancing and refining the process.

Objective 2.2: Stop anticompetitive mergers and practices through law enforcement.**FY 2004 Budgeted Resources:** 406 FTE \$65,596,000

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 block anticompetitive mergers and halt anticompetitive business practices.

The FTC seeks to maintain an appropriate balance between its merger and nonmerger enforcement efforts, but the statutory timetable governing the HSR merger review process requires that merger review is the first priority. Over the decade ending in FY 2000, an unprecedented level of merger activity required the shifting of resources from nonmerger activities to the merger arena. Merger activity has declined to a more manageable level since 2000, permitting renewed emphasis on the nonmerger area.

Merger enforcement responsibilities continue to place significant demands on the FTC's resources, however, for the following reasons:

- Mergers continue to grow in size, scope, and complexity. For example, the total dollar value of reported transactions in FY 2001 was about 4.3% higher in constant dollars than the average annual total dollar value reported during 1990 to 2000, and nearly 60% of the transactions reported during FY 2002 exceeded \$100 million in value. The size of mergers affects the FTC's workload because large, diversified firms are likely to be involved in more markets than smaller firms and more likely to be significant players in the markets in which they compete, thus increasing the likelihood and scope of antitrust review. Also, as our economy produces more new technologies and becomes more knowledge-based, the resulting complexity of many mergers requires extensive inquiry.
- The number of mergers raising antitrust concerns, not the overall number of filings, primarily drives the FTC's merger workload. In FY 2002, the FTC took enforcement action in 24 mergers, a level 14% higher than the average volume of merger enforcement activity during the 1991 to 2000 decade.
- Challenging a consummated merger typically entails resource-intensive litigation.

In the nonmerger area, increased emphasis on case identification and investigations will likely result in an increase in enforcement actions in FY 2003. The scope of antitrust exemption doctrines such as *Noerr-Pennington* and state action, restraints on competition among professionals, and anticompetitive abuses of the standards-setting process will continue to receive scrutiny. During FY 2002, the FTC opened 59 nonmerger investigations and moved another 17 ongoing nonmerger investigations forward into a more advanced phase. These developing matters should result in a number of consent agreements or administrative complaints in FY 2003 and FY 2004.

Two factors place increasing demands on the FTC's antitrust enforcement mission in both the merger and nonmerger segments:

- FTC antitrust investigations increasingly 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. More so than ever before, FTC investigations may involve difficult scientific and technical material. In addition, antitrust matters increasingly intersect with intellectual property, raising difficult issues on how to reconcile two different bodies of law with similar goals. These trends require more and more specialized knowledge and expertise.

Cases involving highly technical subject matter increasingly require the agency to obtain outside technical expertise to assist staff with the factual issues that arise. In particular, the increasing importance of intellectual property considerations creates a need for additional in-house expertise in intellectual property law to supplement the agency's existing capabilities in antitrust cases involving high-tech industries.

- The FTC likely will be involved in more antitrust litigation during FY 2004 because of changes in HSR merger prenotification requirements and an increased focus on cutting-edge legal issues. Litigation is resource-intensive compared to pre-consummation settlements that can resolve antitrust concerns. Although the FTC receives notification of fewer proposed mergers in advance because of modifications in the HSR reporting thresholds, the agency continues to monitor unreported mergers. Unreported mergers are much more likely to have been consummated by the time the FTC can complete an investigation, so any such merger that threatens competition likely will require litigation, rather than a pre-consummation consent agreement, to obtain relief. In the nonmerger area, the agency will examine anticompetitive conduct to which the applicability of one of the exemptions to the antitrust laws may be unclear. Because liability may be unclear in these instances, costly litigation is a likely possibility. Nevertheless, cases that add clarity to legal standards can have substantial benefit over a broad range of commerce.

In addition to significant staff time over a lengthy period, antitrust litigation requires significant expenditures for travel, stenographic reporting, and expert witnesses. Moreover, the increasing emphasis on quantitative evidence and econometric analysis in antitrust investigations and litigation requires that the FTC spend more resources in analysis and understanding of the issues. Merging firms increasingly rely on sophisticated accounting, econometric, and other data-intensive economic studies regarding competitive effects, entry issues, and efficiency and failing company defenses, requiring analogous investments by the FTC.

As a result of the expected increase in litigation in FY 2004, and particularly the increasing proportion of cases dealing with highly technical markets, the FTC likely will need substantially more assistance from technical consultants and expert witnesses.

The FTC must also 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 devising and drafting effective compliance orders in individual matters, a highly fact-specific process. In addition, the FTC conducts general and historical analyses on the effectiveness of various kinds of merger and nonmerger remedies, 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. The FTC continues to absorb some of this ever-increasing workload through more efficient use of resources.

The measurement of consumer savings resulting from antitrust enforcement, used to evaluate the FTC's performance under this objective through FY 2003, provided useful information about the breadth and magnitude of the FTC's enforcement activities, but also received some criticism,³ and also was subject to misinterpretation. Consequently, in FY 2004, the FTC will assess the breadth and magnitude of its enforcement activities by measuring the amount of commerce involved in markets in which the agency takes enforcement action. This approach should provide the same benefits as the previous one, with fewer drawbacks.

1. GPRA Five-Year Strategies

- Save consumers substantial amounts both directly, by stopping anticompetitive mergers and conduct, and indirectly, by negotiating consent orders and winning 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, employing, where appropriate, requirements that suitable divestitures be arranged before consummation of a merger.
- Ensure that administrative litigation and adjudication reach a timely resolution.

2. FY 2004 Implementation Plan

A. All Programs

- Enhance the agency's intellectual property expertise in light of the increasing significance of patents and other intellectual property issues in antitrust cases.
- Support increased antitrust litigation by retaining qualified economists to serve as expert witnesses in trials.
- Further enhance the FTC's ability to investigate and litigate complex matters involving high-tech segments of the economy by increasing technical support from independent industry experts.
- Continue support of the FTC's ability to litigate complex cases by investing in more sophisticated use of technology to support litigation, including document management and courtroom presentations.

³ See, e.g., Philip Nelson and Su Sun, *Consumer Savings from Merger Enforcement: A Review of the Antitrust Agencies' Estimates*, 69 ANTITRUST LAW JOURNAL 921, 936-7 (2002). Among the issues that have been raised are (1) the measure may not correlate with the substantive legal standard that applies to mergers, (2) the measure assumes infallibility, *i.e.*, that every merger enforcement action taken by the FTC benefits consumers, (3) the measure, like many other measures, could create perverse incentives for the agency to pursue inappropriate policies, and (4) because of the influence of external factors, as well as the agency's ability to affect the measure through policy choices, the consumer savings measure is not a good basis for comparing the FTC's performance across years.

- Review the progress of all ongoing investigations on at least a monthly basis. Monitor time and resource expenditures.
- Monitor the timeliness of administrative adjudication and issue to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.
- Continue seminars featuring distinguished scholars speaking on substantive research and analysis of important antitrust law and policy issues.
- Integrate assessments of investigative and enforcement activity with new learning on law and economic policy to further the FTC's objective of (1) bringing enforcement actions only when anticompetitive effects from the challenged practices or mergers are likely and (2) not overlooking anticompetitive practices or mergers.
- Participate in planning, developing, improving and conducting agency-wide training programs in basic and advanced legal skills for FTC attorneys, including such areas as taking and defending depositions, written discovery, trial advocacy, negotiation skills, and advanced legal writing, as well as mission-specific procedures and substantive law.

B. Merger Enforcement

- During the initial HSR review period, carefully identify those merger transactions that are likely to raise potentially significant competitive concerns. Employ HSR second requests and other appropriate investigative techniques during the extended HSR waiting period to obtain documents, testimony, and other evidence.
- In non-HSR investigations, employ appropriate investigative tools other than HSR second requests, to obtain documents, testimony, and other evidence.
- For both HSR and non-HSR merger investigations, complete the analysis of likely competitive effects of the transaction, based on evidence gathered, and prepare recommendations to Bureau management and the Commission on whether settlement or litigation is warranted.
- Where appropriate, seek to negotiate a consent order to protect consumers by correcting the competitive problem, while permitting the benign aspects of a merger to proceed.
- If an effective consent order cannot be negotiated to protect consumers from harmful effects of a merger, recommend that the Commission undertake litigation to challenge the merger, either by seeking a preliminary injunction from a federal court to block the merger (if it has not been consummated) or by issuing an administrative complaint against the merger (when the merger has already occurred, when the grant of a preliminary injunction does not result in abandonment of the merger, or when it is in the public interest to proceed with a full trial on the merits despite denial of an injunction).

- Litigate the preliminary injunction action or administrative complaint, employing outside experts as necessary to address economic or technical issues. Pursue or defend appeals as appropriate.
- For management review, collect data regarding the FTC's efficiency in investigating mergers, 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, (3) the number of HSR investigations that result in enforcement action, (4) the number of such matters resolved through a "quick look" investigation (that is, one not requiring the parties to produce all of the documents and information called for by the second request), (5) the volume of material obtained from the parties, (6) the number of hours of staff time spent on investigations, and (7) other costs associated with investigations.

C. Merger Compliance

- Track the time between issuance of Commission remedial orders in merger cases 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.
- 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.
- Modify orders when warranted by changed conditions of fact or law or when otherwise required in the public interest.

D. Nonmerger Enforcement

- Employ appropriate investigative techniques, including compulsory process if authorized, to obtain relevant information and to assess whether the practice in question is harming consumers.
- If the evidence is sufficient to establish reason to believe that the law has been violated, prepare a recommendation for authorization to engage in consent negotiations or to submit a complaint recommendation to the Commission.
- If an investigation indicates that a business practice is anticompetitive, seek to negotiate a consent order that protects consumers by effectively correcting the competitive problem.
- If a satisfactory consent order cannot be negotiated, recommend that the Commission undertake litigation to challenge the practice in question, either through the Commission's adjudicative process, or by asking a federal court to enjoin the challenged practice. In appropriate cases, recommend that the Commission authorize the filing of a federal court action for consumer redress or restitution. Pursue litigation authorized by the Commission, employing outside experts as necessary to address economic or technical issues. Pursue or defend appeals as appropriate.

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 2004 Performance Measures**In FY 2004, the agency will:**

- For cases in which the Commission finds reason to believe the law has been violated, achieve a positive result (including consent orders, litigation successes, and, for mergers, transactions abandoned based on FTC antitrust concerns) in at least 80% of those cases.
- Take action against mergers⁴ that would harm competition affecting \$40 billion in annual sales.

While the agency expects to protect competition in markets averaging at least \$40 billion in sales per year over a period of time, external factors, such as level of merger activity, may affect this measure in any given year.

- Take action against anticompetitive conduct that affects at least \$20 billion in commerce.

Nonmerger enforcement actions can benefit competition both directly, by halting specific conduct by specific parties, and indirectly, by communicating to similarly situated parties that similar conduct will be challenged. A single action may have only a limited effect in this regard, but multiple actions generally have been quite effective in stopping a particular anticompetitive practice. Therefore, the FTC will compute this measure by measuring the amount of commerce directly affected by its order, and adding to that number one-third of the amount of commerce indirectly affected (*i.e.*, the sales of similarly situated parties engaging in similar practices).⁵ While the agency

⁴ The agency may prevent an anticompetitive result from a proposed merger by (1) conducting successful litigation to block the merger, (2) negotiating a settlement to resolve anticompetitive aspects of the merger while allowing the underlying transaction to go forward, or (3) identifying antitrust concerns sufficient to cause the parties to abandon the transaction without court action. The volume of affected commerce measure does not include transactions abandoned by the parties for business considerations unrelated to antitrust. Settlements are subject to Commission approval, and require sufficient supporting evidence for the Commission to have "reason to believe" that a law violation would occur.

⁵ In general, the commerce "directly affected" means the volume of sales in the relevant market(s) affected by the challenged practice. The "indirectly affected" commerce may vary from case to case, but in general it means the volume of sales in markets in which one or more participants are engaging in the same practice challenged in the Commission's enforcement action. In general, when the Commission

expects to protect competition in markets averaging at least \$20 billion in sales per year over a period of time, external factors, such as the level of merger activity in the marketplace, may affect this measure in any given year.

4. Program Evaluations

- Evaluate effectiveness of FTC merger policy by conducting retrospective studies of FTC enforcement actions, or decisions not to take enforcement action, to determine if actual outcomes were consistent with the goals the Commission sought to achieve.
- Assess the deterrence value and precedential significance of the enforcement actions brought during the year.
- Review statistical data relating to 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, (3) the number of such matters resolved through a “quick look” investigation (that is, one not requiring the parties to produce all of the documents and information called for by the second request), (4) the volume of material obtained from merging parties in response to second requests, (5) the number of staff hours devoted to each investigation, and (6) the overall costs associated with each investigation. Take corrective action where necessary. Determine an appropriate basis of comparison with historic benchmarks, in light of revised reporting thresholds in 2001.
- Review and evaluate the timeliness and effectiveness of the Commission’s merger consent orders and litigated orders and make adjustments to future orders where appropriate.

successfully brings three cases challenging a particular practice, it is enough to send a unequivocal signal about FTC enforcement intentions to others who may be engaging in the same practice, and consequently puts an end to the practice as a practical matter.

Objective 2.3: Prevent consumer injury through education.**FY 2004 Budgeted Resources:** 45 FTE \$7,221,000

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. In carrying out these functions, the FTC strives to ensure that any publicly disseminated data or information subject to the Data Quality Act (section 515 of Pub. L. No. 106-554) meets basic quality standards.

One performance measure used under this objective through FY 2003 quantified the number of education and outreach efforts such as speeches, participation on panels, testimony, advisory opinions, advocacy comments, amicus briefs, etc. While these activities have been and remain important, the current performance measure does not effectively indicate the FTC's performance in education and outreach for two reasons. First, the various items counted are not of equal weight: a speech describing a new policy initiative before several hundred antitrust lawyers at an ABA meeting has far more significance than a speech simply describing past actions before a much smaller group, for example, yet no effective way of distinguishing among different efforts has been identified. Second, measurements of activities, such as the number of speeches given, may indicate the level of effort put toward an objective, but not the agency's effectiveness in accomplishing it.

The second measure used under this objective through FY 2003, the number of hits on relevant content on the FTC's Web site, does not have these drawbacks. Visitors to the FTC Web site will have little interest in matters that hold no relevance or importance to the public, and therefore will not visit the applicable pages. At the same time, matters that are of great importance to the public – as determined by the public – will draw a large number of visitors. The number of hits will reflect these differences. For example, if two speeches are posted on the site, the more significant one should draw more interest and attention, and therefore more hits on the applicable page.

Because Objective 2.3 has two different components – (1) educating the legal and business communities about applicable legal standards and enforcement policies to facilitate compliance with the law, and (2) educating the public in general, as well as policymakers, about the benefits of competition – the FTC will separate the Web hits data in order to report under two different measures, each applicable to one of the two components of this objective.

1. GPRA Five-Year Strategies

- Continue to educate businesses and consumers about antitrust issues through traditional means – guidelines, advisory opinions, speeches – and develop other avenues of communication, such as the FTC Web site (*ftc.gov*).
- Continue to provide advice to other governmental entities upon request.

2. FY 2004 Implementation Plan

- 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.
- Provide Commission and staff advisory opinions on competition issues.
- Upon request of other governmental entities considering proposed regulatory and legislative actions, prepare and submit comments or testimony to share information and analysis about how the proposed action may affect competition and consumers.
- Prepare and file amicus briefs in appropriate competition matters.
- Monitor the content of Commission 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. In appropriate cases in which the Commission determines that enforcement action would not be in the public interest, issue statements explaining the Commission’s reasoning.
- Make available prepared texts of speeches; as appropriate, develop other materials that explain Commission policies and procedures; circulate economic papers on competition issues.
- Arrange presentations by Commissioners and staff at seminars, panel discussions, and conferences, to explain how the Commission analyzes mergers and business practices.
- Support outreach efforts to international bodies to explain U.S. competition perspectives; aid the development of antitrust laws and programs in developing nations by participating in technical missions.
- Respond to correspondence, e-mail, and telephone calls from the public. Provide informal guidance, particularly on HSR matters. Evaluate inquiries and complaints about potentially anticompetitive practices, and respond to questions about the antitrust laws and the FTC.
- Make available on the FTC’s Web site the guidelines issued by the agency, advisory opinions, advocacy comments, written press releases, texts of speeches, Bureau of Economics reports, and other materials that explain the Commission’s policies and procedures.
- Continue to hold public hearings and workshops to expand understanding of increasingly significant public policy issues, such as factors that affect the price of refined petroleum products, and the implications of antitrust and patent law and policy for innovation and other aspects of consumer welfare.

3. FY 2004 Performance Measures

In FY 2004, the agency will:

- Measure and establish appropriate targets for the number of hits on the FTC antitrust Web site on pages that are relevant to the business and legal communities.
- Measure and establish appropriate targets for the number of hits on the FTC antitrust Web site on pages that are relevant to policy makers and the public at large.

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” and “stakeholders” on the effectiveness of FTC educational efforts. Assess methods of measuring the success of educational efforts on a consistent, reliable basis.
- Evaluate the transparency of FTC merger review policy by assessing the extent to which significant changes in such policy are communicated to stakeholders.
- Review trends or patterns in complaints, if any, filed with the agency under the Data Quality Act to determine appropriate techniques or strategies for improving the quality of publicly disseminated data or information that are subject to the Act.

President's Management Agenda

The FTC is a small, citizen-centered, results-oriented agency with a large mission. Demands on the agency have grown dramatically over the past decade as commerce has become increasingly electronic and the economy has gone high-tech and global. During this period, the agency has found new ways to meet these growing demands and reach out to more consumers and businesses without an appreciable addition of personnel. To address these issues, the FTC has been engaged in long-term, concerted efforts to work smarter and more effectively.

The FTC has been working to improve management and program performance. The agency has an outstanding record of assessment, realignment, innovation, and improvement. There are several efforts underway to address, among other areas, recruitment and training, performance and costs, and reporting and systems. The FTC is committed to managing its resources effectively and achieving immediate, concrete, and measurable results in each of the five management initiative areas: human capital; competitive sourcing; e-government; financial management; and integration of budget and performance.

Initiative: Human Capital Management

- **Knowledge Management** The FTC is engaged in a systematic program to improve staff training of all types – professional, managerial, technical, and administrative. Training is a key component to working smarter and improving productivity. It is also critical in managing FTC attrition, especially in the ranks of lawyers and economists, where career training and professional development are valued highly. New and innovative training programs have resulted in increased interest and participation from all segments of the workforce. For the past three years, the FTC's training and development program has been guided by its Training Council, composed of representatives throughout the agency. In recognition of the FTC's commitment to provide employees with high quality training opportunities, the agency received the Distinguished Service Award from the Training Officers Conference. Finally, the FTC will shortly implement its first e-learning program. E-learning will offer an array of self-directed training opportunities in all mission-critical areas as well as personal and professional development. The agency is currently establishing its database and reporting infrastructure, which will be followed by several pilot runs of programs in preparation of expanded e-learning offerings.
- **Leadership** As a key part of its management improvement efforts, the FTC implemented three training programs. The *Manager Series* is the cornerstone of the agency's management development and is mandatory for all supervisors and managers. The program focuses on employee relations, performance management, and labor relations. The *Leadership Series* introduces participants to contemporary issues and concepts for today's manager. Finally, the *Best Practices in Management and Leadership Series* provides participants with current theory and best practice approaches to important areas of human resource management.
- **Performance Management** The FTC recently completed a study of its performance management system. The study involved four steps: collecting information from inside and outside the FTC; identifying issues and possible solutions; obtaining input from FTC managers and employees on the identified solutions; and preparing a report with findings and recommendations. The FTC issued the final report in August 2002, recommending

that the current system be retained with minor improvements. The study also served to focus managers on good performance management. As a result of manager input, efforts are currently underway to clarify and strengthen performance elements and standards for positions with the largest population of employees. Management-wide training on the updated performance management policy will commence in Spring 2003.

- **Strategic Alignment** The FTC continues to examine a range of management and support positions to determine which ones can be eliminated to put more staff at the front lines of the agency's missions. As part of this effort, in the late 1990s, the agency reduced by 24 percent the Office of the Executive Director, the agency's management and administrative organization. The FTC moved some administrative positions to other organizations where the work could be performed more efficiently, but eliminated most of these positions to free FTE for attorneys, investigators, and other positions at the front lines of the agency's competition and consumer protection missions. These examinations continue today.
- **Core Competencies** In the rapidly growing electronic and global marketplace, the FTC needs professionals with specialized skills to investigate complex economic issues and apply sophisticated legal precedents to antitrust and consumer protection litigation. Attorneys account for approximately 54 percent of the FTC's permanent workforce, and Ph.D. economists account for an additional 8 percent. These professionals are supported by staff with technical skills and expertise, such as paralegals, data analysts, and computer specialists, and a core complement of staff with solid management and operational skills. The FTC is working to recruit and retain highly qualified individuals by offering hiring and relocation bonuses, moving expenses, high starting salaries, large cash awards, as well as non-monetary benefits such as time-off, training and development opportunities, and assignments to high profile cases. We are identifying core competencies to recruit applicants with specific knowledge and skills needed to support our mission, particularly in the legal area. Based on FY 2002 statistics, attorney and overall agency attrition appears to be leveling off from the high rates of the last five years.
- **Workforce Mix** In 1996, the agency began an Honors Paralegal Program to relieve attorneys of the routine tasks in investigations and litigation, and to allow them to focus on complex matters of policy, analysis, and strategy. The Bureaus of Competition and Consumer Protection and the Office of the General Counsel participate in the program, which has approximately 50 employees at any given time. Honors Paralegals are recent college graduates, hired at the GS-7 level under expedited procedures of the Outstanding Scholar Program, and generally work for the agency for one to three years under term appointments before moving on to graduate or professional school. The Bureau of Economics established a similar program, focusing on recent college graduates with degrees in economics to provide technical support to Ph.D. economists.
- **Delayering** The agency also examines decision processes to eliminate layers of review. The Bureau of Competition has already removed a level of management from its reporting structure, streamlining decision making on recommendations to the Commission concerning investigations and litigation. The Bureau of Consumer Protection also has streamlined review to ensure that actions were considered at an early stage, thus eliminating unnecessary work on investigations and projects. The Office of General Counsel has capped the number of reviewers' signatures on official memoranda at two, speeding recommendations to the Commission and other agency actions. The General

Counsel also delegated approval or decision making authority to lower-level managers on several types of matters.

- **Restructuring** The FTC restructured its regional office system to use FTE more efficiently. In 1999, the agency closed two offices (Boston and Denver) located in areas of the country with a relatively low incidence of consumer fraud. The agency also consolidated Regional competition mission FTE into two offices (New York and San Francisco) so they could handle resource-intensive merger cases more effectively. Previously, the FTC also consolidated regional consumer contact functions into the FTC's centralized Consumer Response Center (CRC). The CRC now offers two toll-free telephone numbers that allow consumers from across the country to contact the FTC with complaints and requests for consumer education materials.
- **Continuing Assessment of Workforce** Across the FTC, a number of clerical and administrative staff will retire over the next five years, and the development of new technology will allow for accomplishment of more administrative tasks electronically. The agency will transfer these support positions to the front lines of the missions, either in law enforcement or consumer education. The FTC is also focusing on training and employee development for staff who are not yet ready to retire, but who are performing tasks that could be automated. We are also analyzing statistics for potential retirements among the supervisory and management ranks and developing strategies for knowledge management and succession.

Initiative: Competitive Sourcing

- **FAIR Act** Through increased scrutiny, the FTC identified 54 commercial FTE in its 2002 FAIR Act inventory, a net increase of 12 FTE or 29 percent over 2001. In the past year, a net of two FTE (five percent) of the 2000 baseline year's inventory were converted to commercial positions. The agency will continue to look for opportunities to convert or compete commercial positions as opportunities arise. These efforts will include conversion of several positions currently held by clerical and administrative staff who will retire over the next five years.
- **Reimbursable Support Service Arrangements** The FTC has streamlined support, administrative, and technical functions, and has eliminated positions through reimbursable support service arrangements. The areas in which these changes have occurred include significant agency services, such as payroll/personnel, accounting/payment system operations, health unit, retirement counseling, and the transit subsidy program.
- **Performance Based Service Contracting** The FTC has met OMB's 20 percent target of using performance-based contracts for services. The agency's largest service contracts are now performance-based, including: the Consumer Response Center; Help Desk Services; Reproduction/Mailroom/Warehouse Services; Consumer Redress Fund Administration; and Internet Services for Library Cataloging.

Initiative: Expanding e-Government

- **e-Government** The FTC has been a leader in the use of technology and the Internet to inform citizens of our mission without having to enlarge its workforce significantly. Starting in the mid 1990s, the FTC began building interlinked public consumer protection Web sites, many in connection with other domestic or foreign law enforcement agencies, to educate consumers and to collect and analyze data on a broad range of consumer protection issues, including high-tech fraud and identity theft. The FTC will continue to use the Internet and electronic systems to reach the public on more consumer and competition topics.
- **Integrated One-Stop Systems** The FTC maintains an Internet site, *ftc.gov*, that provides a wide array of information about the actions and operations of the agency, and direct access to consumer and business education information and publications. In the last two years, electronic distribution of education materials has surpassed print distribution. The site also permits citizens to file online complaints about consumer fraud and identity theft; these complaints are used to target the agency's law enforcement and education efforts. Consumers currently can access the Web site (including the complaint form) in four different languages. Via the *consumer.gov/sentinel* link, consumers can view summary data collected by the FTC, such as the scams that garner the most frequent consumer complaints; the scams that cost consumers most; the number of identity theft complaints, by state; the types of identity theft most frequently reported; and how to spot and avoid fraud and deception online and off. The FTC Web site also has a direct link to the government-wide public site, *FirstGov.gov*, and to the Small Business Administration's (SBA) one-stop services: the U.S. Business Advisor (www.business.gov) and SBA's online business guide to legal and regulatory information (www.businesslaw.gov).
- **Citizen Information Access** The FTC for many years has recognized that the complexity of the federal government makes it difficult for citizens to know where to go for information and assistance on consumer issues. In 1997, the FTC led a group of five agencies with consumer protection responsibilities to create a Web site, *consumer.gov*, as a "one-stop" link to a broad range of federal consumer information resources available online. *Consumer.gov* links to documents located on the Web sites of its participating federal agencies – which have grown from five to more than 180 agencies as of December 2002. This site has become the portal for interagency consumer information that the federal government provides to the public through *FirstGov.gov*.
- **Cross-agency Information Sharing** The FTC Consumer Response Center receives consumer complaints and inquiries through two toll-free telephone lines and postal and electronic mail. Information from these complaints is collected in a database, which contained more than 2.2 million entries as of December 2002. The FTC also developed and hosts a secure Web site, *Consumer Sentinel*, that makes the consumer complaints accessible to other federal, state, local, and international law enforcement partners. The nearly one million fraud complaints in the database are accessible to more than 610 law enforcement partners (*e.g.*, the FBI, the Postal Inspection Service, 50 State Attorneys General), and the more than 380,000 identity theft complaints to approximately 500 domestic partners (*e.g.*, the Secret Service, Social Security Administration Inspector General, U.S. Attorney Offices) as of December 2002. Collecting this information in one database and sharing it electronically with other agencies reduce redundancy and help the law enforcement community identify general trends in consumer issues, track the illegal activities of specific businesses, and coordinate investigations and litigation.

- **Electronic Filing** The FTC is developing a process that will permit electronic filing of required information about proposed mergers and acquisitions under the Hart-Scott-Rodino Premerger Notification Act. This system will be deployed in FY 2003 and shared with the Department of Justice. Electronic options will allow businesses to select the submission method that is most effective and efficient for them, and will reduce the FTC's administrative cost of reviewing and analyzing the filings.
- **Reducing the Burden on the Public** The growing use of sophisticated electronic systems and software in litigation requires the FTC to keep its technology current, not only to be competitive in the courtroom, but also to reduce the paperwork burden on the public. The FTC has developed the ability to interface with computerized document production systems which allow law firms to provide documents and information to the agency more efficiently. In addition, the agency is employing state-of-the-art computerized systems that support agency attorneys' litigation preparation and courtroom presentations.
- **Developing E-procurement** The FTC's planned and ongoing procurement enhancements are designed around the Integrated Acquisition Environment (IAE), one of the Administration's e-government initiatives. As requirements arise, the FTC uses the government-wide FED BIZ OPPS Web site. This site provides a single location at which interested vendors can view and, if interested, respond to government requirements for goods and services. The FTC plans to convert to the Business Process Network (BPN) Web site, an expansion of Central Contract Registration Web site, by October 1, 2003. This site provides Federal agencies with a single source for vendor contact and payment information and requires that each vendor maintain all appropriate information on a current basis. Additionally, the FTC plans to register in BPN for intra-governmental transactions by Spring 2003. The FTC is also preparing for the implementation of the new Federal Procurement Data System - Next Generation, a central point for consolidated collection and access of statistical and management information related to government acquisitions.
- **Information Requirements** The FTC has initiated a management information requirements project to provide managers with ready information to support data gathering and decision making. The agency will accomplish this goal by employing standard data definitions and providing timely, accurate, and useful standard reports and ad hoc reporting capabilities. The agency anticipates that the project will be a multi-year effort, with the first major round of improvements planned for the spring of 2003.
- **Improving Productivity** The recent analysis of agency information requirements revealed that efficient and effective document management is the primary need. The FTC has begun to implement a comprehensive document management system with the fundamental goal of streamlining the process of sending documents and other information through any electronic channel (*e.g.*, Internet, database, e-mail), in any spoken language, regardless of its original data format. The cycle of creating, editing, approving, publishing, and removing outdated content traditionally has been filled with impediments. The agency is re-engineering basic work processes to enable targeted, accurate interchange of electronic information without technological barriers. Users will be able to generate, publish, and find information with virtually no learning curve or technical assistance. By establishing consistent work flows and templates that cross organizational boundaries, the system will assure that information from across the agency can be readily shared, reused, recombined, and re-purposed to a variety of uses.

Initiative: Improved Financial Performance

- **Audited Financial Statements** Without a statutorily mandated requirement, the FTC has prepared Audited Financial Statements in a timely manner that comply with government-wide accounting standards for five consecutive years (1997 - 2001). Each year, the agency has received an unqualified opinion with no material weaknesses.
- **Accurate and Timely Financial Information** The FTC maintains a small, highly skilled, in-house financial staff but contracts with the Department of Interior's National Business Center (NBC) for more routine accounting, payroll, personnel, and voucher payment services. The result is the best use of agency resources and a significant improvement in the accuracy and timeliness of financial data available to agency managers. The FTC meets all Treasury, OMB, and agency financial reporting deadlines.
- **Federal Accounting and Transaction Standards** The FTC is in general compliance with all Federal accounting principles and standards. The FTC's accounting system conforms in all material respects with the principles, standards, and related requirements specified in the Federal Financial Management Improvement Act of 1996. The Joint Financial Management Improvement Program has evaluated and qualified the American Management System's Federal Financial System (FFS) software, used by NBC.
- **Integrating Financial and Performance Management Systems** The FTC maintains a data warehouse, updated daily, that accommodates both financial and program performance data. Costs are related to Mission activities in the data warehouse and support day-to-day operations. Efforts are underway to improve the integration of the data by tying a broader range of costs (*e.g.*, training, information technology, performance awards, furnishings) to program performance activities in the financial system.

Initiative: Integrating Budget and Performance

- **Integrating Planning/Evaluation and Budget** The FTC assigns responsibilities to its budget staff according to program area. The FTC's Budget Office works closely with the programs to build budget plans that ensure the most efficient use of the agency's resources to achieve the goals of the annual GPRA Performance Plan. The agency also monitors implementation of operating plans by programs through the use of financial systems and periodic reports. The Budget Office conducts detailed reviews of the status of programs' budget execution throughout the fiscal year to ensure that funds are sufficient to meet objectives. The FTC requires program managers to report on GPRA Performance Measures each quarter; the FTC's Commissioners review this information twice a year.
- **Linking Goals and Objectives to Results** The FTC's Strategic Plan under the Government Performance and Results Act (GPRA) identifies five-year strategies and performance measures that are an integral part of the fiscal year budget requests. Over the past year, the FTC re-examined its performance measures and revamped those that did not effectively measure its outcomes. The FTC will develop its Strategic Plan for FY 2003 - 2008 over the next several months, and will continue its ongoing effort to articulate strategies and develop measures that effectively relate to outcomes and that integrate budget and performance. The annual Performance Plans provide an assessment of the savings and benefits to consumers and businesses expected from the requested

level of resources. Budget requests tie to the GPRA objectives, and all requests to increase resources are justified in the Performance Plan and tie to programs.

- **Aligning Budget Accounts and Program Activities** The agency allocates resources to programs based on program goals and workload projections. As workload projections change throughout the year, we shift resources allocations accordingly making certain to comply with Congressional parameters. The FTC uses its annual GPRA Performance Plan as the guideline to align agency resources to achieve targets. FTC budget staff work closely with program managers to ensure alignment of budget accounts, staff, and program activities to support program goals.
- **Integrating Technology** The FTC implements a life cycle management approach to managing and developing agency technology. Through this approach, the agency identifies existing products and services, determines how frequently each should be reassessed, and schedules reassessments for the next several years. When a new project is proposed, technical staff evaluate its cost and relative need, and, if justified, make a recommendation to senior program managers. Review and decision making by program managers ensures that technological projects are aligned with the agency mission and integrated with performance in budget requests.
- **Improving Integration** The agency is working to improve the link between performance and budget, both by refining the selection and the measurement of performance goals and measures, and by developing improved management processes for data use and analysis. Over time, this work will enhance agency performance by improving the quality, access, and timeliness of management information throughout the FTC.