

# FEDERAL TRADE COMMISSION



**FISCAL YEARS 2009 AND 2010  
PERFORMANCE PLANS**



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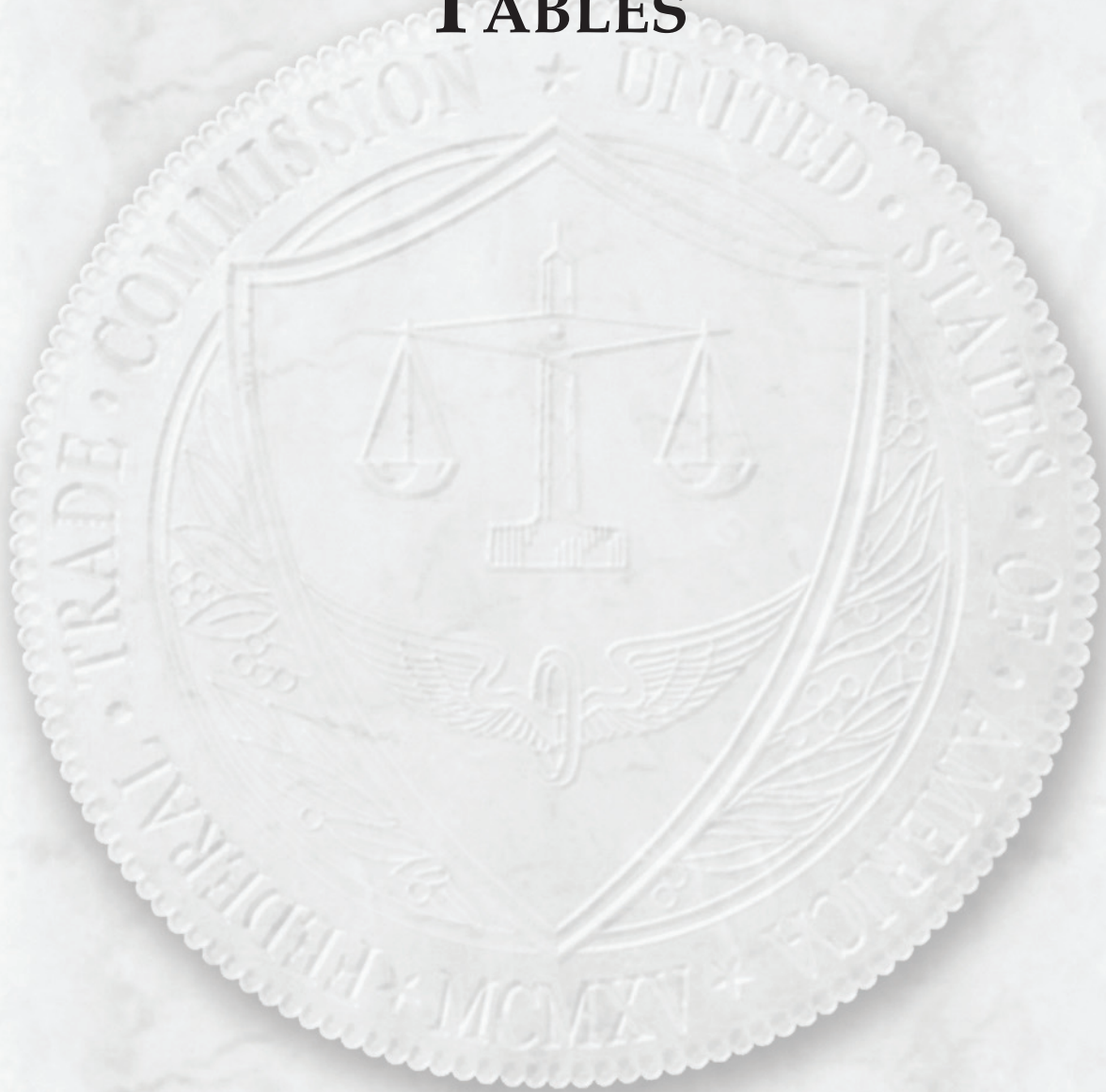
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# PERFORMANCE PLAN TABLES



## Budgeted Resources by Objective (\$ in thousands)

### Consumer Protection

Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace	FY 2009 FTE	FY 2009 Amount	FY 2010 FTE	FY 2010 Amount
Objective 1.1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury	96	\$24,827	95	\$26,038
Objective 1.2: Stop fraud, deception, and unfair practices through law enforcement	419	\$102,042	436	\$114,191
Objective 1.3: Prevent consumer injury through education	49	\$12,351	51	\$13,779
Objective 1.4: Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange	37	\$9,083	41	\$11,136
<b>Total</b>	<b>601</b>	<b>\$148,303</b>	<b>623</b>	<b>\$165,144</b>

### Maintaining Competition

Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace	FY 2009 FTE	FY 2009 Amount	FY 2010 FTE	FY 2010 Amount
Objective 2.1: Identify anticompetitive mergers and practices that cause the greatest consumer injury	57	\$12,255	56	\$13,029
Objective 2.2: Stop anticompetitive mergers and practices through law enforcement	413	\$88,957	428	\$99,337
Objective 2.3: Prevent consumer injury through education	26	\$5,610	23	\$5,298
Objective 2.4: Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange	19	\$4,075	19	\$4,392
<b>Total</b>	<b>515</b>	<b>\$110,897</b>	<b>526</b>	<b>\$122,056</b>

## Objectives by FTE

### Consumer Protection

	Fiscal Year 2009					Fiscal Year 2010				
	Objective Number				Total FTE	Objective Number				Total FTE
	1	2	3	4		1	2	3	4	
Privacy and Identity Protection	6	32	2	7	47	6	36	2	8	52
Financial Practices	4	53	3	5	65	4	67	3	6	80
Marketing Practices	5	105	2	3	115	5	96	2	3	106
Advertising Practices	6	46	1	3	56	6	47	1	4	58
Enforcement	4	49	1	1	55	4	52	1	1	58
Planning and Information	40	6	3	0	49	40	6	3	0	49
Consumer and Business Education	0	0	20	1	21	0	0	21	1	22
Economic and Consumer Policy Analysis	0	1	1	3	5	0	1	1	3	5
Management	5	15	3	4	27	5	15	3	4	27
Support	26	112	13	10	161	25	116	14	11	166
<b>Total</b>	<b>96</b>	<b>419</b>	<b>49</b>	<b>37</b>	<b>601</b>	<b>95</b>	<b>436</b>	<b>51</b>	<b>41</b>	<b>623</b>

### Maintaining Competition

	Fiscal Year 2009					Fiscal Year 2010				
	Objective Number				Total FTE	Objective Number				Total FTE
	1	2	3	4		1	2	3	4	
Premerger Notification	16	1	4	1	22	15	1	2	1	19
Merger and Joint Venture Enforcement	13	166	7	4	190	13	172	7	4	196
Merger and Joint Venture Compliance	1	8	1	1	11	1	8	1	1	11
Nonmerger Enforcement	7	112	4	3	126	7	117	4	3	131
Nonmerger Compliance	0	2	0	0	2	0	2	0	0	2
Antitrust Policy Analysis	1	2	1	3	7	1	2	1	3	7
Other Direct	4	12	2	2	20	4	12	2	2	20
Support	15	110	7	5	137	15	114	6	5	140
<b>Total</b>	<b>57</b>	<b>413</b>	<b>26</b>	<b>19</b>	<b>515</b>	<b>56</b>	<b>428</b>	<b>23</b>	<b>19</b>	<b>526</b>

## Annual Performance Measures Fiscal Years 2009 to 2010

	FY 2009 Target	FY 2010 Target
<b>Protect Consumers</b>		
<b>Goal 1: To prevent fraud, deception, and unfair practices in the marketplace.</b>		
<b>Objective 1.1-Identify fraud, deception, unfairness, and other unlawful practices that cause the greatest consumer injury:</b>		
Measure 1.1.1: Collect and enter complaints and inquiries entered into the consumer database.	1.75 million	1.75 million
Measure 1.1.2: The percentage of the agency's consumer protection law enforcement actions that are responsive to complaint information gathered by the agency.	65%	65%
<b>Objective 1.2-Stop fraud, deception, unfairness, and other unlawful practices through law enforcement:</b>		
Measure 1.2.1: Stop economic injury to consumers through law enforcement.	\$400 million	\$400 million
<b>Objective 1.3-Prevent consumer injury through education:</b>		
Measure 1.3.1: Track consumer protection messages accessed online or in print.	55 million	55 million
Measure 1.3.2: Track consumer protection messages related to identity theft, accessed online or in print.	10 million	10 million
Measure 1.3.3: Track consumer protection messages in Spanish, accessed online or in print.	3.0 million	3.8 million
Measure 1.3.4: Track (a) the number of times print media publish articles that refer to FTC consumer protection activities and (b) the circulation of media that publish those articles.	(a) 2,750 articles (b) 750 million circulation	(a) 3,000 articles (b) 750 million circulation
<b>Objective 1.4-Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange:</b>		
Measure 1.4.1: Convene or participate substantially in workshops and conferences on novel or challenging consumer protection problems or issues.	6	6
Measure 1.4.2: Issue reports on novel or challenging consumer protection problems or issues.	8	8
Measure 1.4.3: File public and advocacy comments with other federal and state government agencies.	6	6
Measure 1.4.4: Cooperate with foreign government agencies on enforcement matters with cross-border components.	20	20
Measure 1.4.5: Provide consumer protection related policy or technical input to foreign government agencies or international organizations.	20	20



	FY 2009 Target	FY 2010 Target
<b>Maintain Competition</b>		
<b>Goal 2: To prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.</b>		
<b>Objective 2.1—Identify anticompetitive mergers and practices that cause the greatest consumer injury:</b>		
Measure 2.1.1: Achieve positive outcomes in matters in which HSR requests for additional information are issued.	90%	90%
Measure 2.1.2: Percentage of significant nonmerger investigations that result in a positive outcome.	90%	90%
Measure 2.1.3: Track the number of enforcement actions for the total mission, for the (a) merger and (b) nonmerger actions.	track results	track results
Measure 2.1.4 Track the number of (a) second requests, (b) reportable transactions for which premerger notifications were received, (c) HSR investigations that resulted in enforcement action, (d) transactions in which antitrust issues were resolved through voluntary abandonment or restructuring because of FTC concerns, and (e) investigations closed because the evidence indicated that a competitive problem was unlikely.	track results	track results
Measure 2.1.5: Track the number of significant nonmerger investigations closed each year, (a) with enforcement action and (b) without enforcement action.	track results	track results
<b>Objective 2.2—Stop anticompetitive mergers and practices through law enforcement:</b>		
Measure 2.2.1: Positive result of cases brought by FTC due to alleged violations.	80%	80%
Measure 2.2.2: Achieve savings for consumers through merger enforcement.	\$500 million	\$500 million
Measure 2.2.3: Take action against mergers likely to harm competition in markets with a total of at least \$125 billion in sales over a five-year period; \$25 billion in sales each year.	\$25 billion	\$25 billion
Measure 2.2.4: Achieve savings for consumers through nonmerger enforcement.	\$80 million	\$80 million
Measure 2.2.5: Take action against anticompetitive conduct in markets with a total of at least \$40 billion in annual sales over five-year period; \$8 billion each year.	\$8 billion	\$8 billion
Measure 2.2.6 Save consumers at least six times the amount of agency resources allocated to merger activity.	600%	600%
Measure 2.2.7: Save consumers at least four times the amount of agency resources allocated to nonmerger enforcement activity.	400%	400%
<b>Objective 2.3—Prevent consumer injury through education:</b>		
Measure 2.3.1: Quantify number of hits on antitrust information on FTC Web site.	15 million	15 million
Measure 2.3.2: Track (a) the number of times print media publish articles that refer to FTC competition activities and (b) the circulation of the media that publish those articles.	(a) 2,700 articles (b) track results	(a) 2,700 articles (b) track results
<b>Objective 2.4—Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange:</b>		
Measure 2.4.1: Convene or participate substantially in workshops, conferences, seminars, and hearings involving significant competition-related issues.	4	4
Measure 2.4.2: Issue studies, reports, and working or issues papers on significant competition-related issues.	8	8
Measure 2.4.3: Make advocacy filings with other federal and state government agencies urging them to assess the competitive ramifications and costs and benefits to consumers of their policies.	6	6
Measure 2.4.4: Issue advisory opinions to persons seeking agency review of proposed business actions.	2 to 3	2 to 3
Measure 2.4.5: File <i>amicus</i> briefs with courts addressing competition-related issues.	2 to 3	2 to 3
Measure 2.4.6: Track the volume of traffic on ftc.gov relating to competition research, reports, advocacy, and international cooperation and exchange.	700,000	700,000
Measure 2.4.7: Track the number of (a) cases on which the FTC cooperated with a foreign competition authority, (b) consultations with or comments to foreign competition authorities, (c) written submissions on international fora, (d) international events attended, and (e) leadership positions held by FTC staff in international competition organizations.	a) 30 b) 25 c) 7 d) 8 e) 5	a) 30 b) 25 c) 7 d) 8 e) 5

## Annual Performance Measures - Historical Fiscal Years 2004 to 2008

	FY 2004 Actual	FY 2005 Actual	FY 2006 Actual	FY 2007 Actual	FY 2008 Actual
<b>Protect Consumers</b>					
<b>Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.</b>					
<b>Objective 1.1-Identify fraud, deception, and unfair practices that cause the greatest consumer injury:</b>					
Measure 1.1.1: Collect and enter complaints and inquiries entered into the consumer database.	994,000	1,015,000	1,011,000	1,100,000	3,050,000
Measure 1.1.2: The percentage of the agency's consumer protection law enforcement actions that are responsive to complaint information gathered by the agency.	---	---	---	76%	71%
<b>Objective 1.2-Stop fraud, deception, unfairness, and other unlawful practices through law enforcement:</b>					
Measure 1.2.1: Stop economic injury to consumers each year through law enforcement.	\$349 million	\$366 million	\$293 million	\$519 million	\$474 million
Measure 1.2.2: Stop fraudulent, deceptive, unfair, and other unlawful practices by obtaining orders or conducting other direct interventions with businesses resulting in a change in business conduct	---	---	---	137	132
<b>Objective 1.3-Prevent consumer injury through education:</b>					
Measure 1.3.1: Track consumer protection messages accessed online or in print.	26.5 million	35.3 million	53 million	47 million	49.2 million
Measure 1.3.2: Track consumer protection messages related to identity theft, accessed online or in print.	3.7 million	3.7 million	9.4 million	9.6 million	11.4 million
Measure 1.3.3: Track consumer protection messages in Spanish, accessed online or in print.	0.7 million	1.1 million	2.4 million	2.2 million	2.0 million
Measure 1.3.4: Track (a) the number of times print media publish articles that refer to FTC consumer protection activities and (b) the circulation of media that publish those articles.	---	---	---	(a) 3,066 articles (b) 863 million circulation	(a) 3,100 articles (b) 791 million circulation
<b>Objective 1.4-Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange:</b>					
Measure 1.4.1: Convene or participate substantially in workshops and conferences on novel or challenging consumer protection problems or issues.	---	---	---	10	16
Measure 1.4.2: Issue reports on novel or challenging consumer protection problems or issues.	---	---	---	8	12
Measure 1.4.3: File public and advocacy comments with other federal and state government agencies.	---	---	---	7	6
Measure 1.4.4: Cooperate with foreign government agencies on enforcement matters with cross-border components.	---	---	---	23	46
Measure 1.4.5: Provide consumer protection related policy or technical input to foreign government agencies or international organizations.	---	---	---	34	88

	FY 2004 Actual	FY 2005 Actual	FY 2006 Actual	FY 2007 Actual	FY 2008 Actual
<b>Maintain Competition</b>					
<b>Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.</b>					
<b>Objective 2.1-Identify anticompetitive mergers and practices that cause the greatest consumer injury:</b>					
Measure 2.1.1: Achieve positive outcomes in matters in which HSR requests for additional information are issued.	55%	52%	59%	100%	100%
Measure 2.1.2: Percentage of significant nonmerger investigations that result in a positive outcome.	63%	50%	40%	100%	100%
Measure 2.1.3: Track the number of enforcement actions for the total mission, for the (a) merger and (b) nonmerger actions.	---	---	---	a) 22 b) 11	a) 21 b) 4
Measure 2.1.4 Report the number of (a) second requests, (b) reportable transactions for which premerger notifications were received, (c) HSR investigations that resulted in enforcement action, (d) transactions in which antitrust issues were resolved through voluntary abandonment or restructuring because of FTC concerns, and (e) investigations closed because the evidence indicated that a competitive problem was unlikely.	---	---	---	a) 31 b) 2,108 c) 20 d) 5 e) 11	a) 21 b) 1,656 c) 12 d) 2 e) 7
Measure 2.1.5: Track the number of significant nonmerger investigations closed each year, (a) with enforcement action and (b) without enforcement action.	---	---	---	a) 11 b) 17	a) 4 b) 14
<b>Objective 2.2-Stop anticompetitive mergers and business practices through law enforcement:</b>					
Measure 2.2.1: Positive result of cases brought by FTC due to alleged violations.	100%	95%	100%	100%	96%
Measure 2.2.2: Achieve savings for consumers through merger enforcement.	---	---	---	\$805 million	\$360 million
Measure 2.2.3: Take action against mergers likely to harm competition in markets with a total of at least \$125 billion in sales over a five-year period; \$25 billion in sales each year.	\$8.5 billion	\$61.8 billion	\$13.4 billion	\$ 42.6 million	\$14.9 million
Measure 2.2.4: Achieve savings for consumers through nonmerger enforcement.	---	---	---	\$75 million	\$28 million
Measure 2.2.5: Take action against anticompetitive conduct in markets with a total of at least \$40 billion in annual sales over five-year period; \$8 billion each year.	\$2.6 billion	\$19.4 billion	\$1.4 billion	\$2.6 billion	\$0.4 billion
Measure 2.2.6 Save consumers at least six times the amount of agency resources allocated to merger activity.	---	---	---	2,500%	1,121%
Measure 2.2.7: Save consumers at least four times the amount of agency resources allocated to nonmerger enforcement activity.	---	---	---	424%	164%

## Annual Performance Measures - Historical Fiscal Years 2004 to 2008

	FY 2004 Actual	FY 2005 Actual	FY 2006 Actual	FY 2007 Actual	FY 2008 Actual
<b>Objective 2.3—Prevent consumer injury through education:</b>					
Measure 2.3.1: Quantify number of hits on antitrust information on FTC Web site.	11 million	9.8 million	10.6 million	15.7 million	12.5 million
Measure 2.3.2: Track (a) the number of times print media publish articles that refer to FTC competition activities and (b) the circulation of the media that publish those articles.	---	---	---	a) 2,982 articles b) 635 million	a) 1,858 articles b) 397 million
<b>Objective 2.4—Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange:</b>					
Measure 2.4.1: Convene or participate substantially in workshops, conferences, seminars, and hearings involving significant competition-related issues.	---	---	---	7	5
Measure 2.4.2: Issue studies, reports, and working or issues papers on significant competition-related issues.	---	---	---	18	7
Measure 2.4.3: Make advocacy filings with other federal and state government agencies urging them to assess the competitive ramifications and costs and benefits to consumers of their policies.	---	---	---	11	12
Measure 2.4.4: Issue advisory opinions to persons seeking agency review of proposed business actions.	---	---	---	2	1
Measure 2.4.5: File amicus briefs with courts addressing competition-related issues.	---	---	---	4	1
Measure 2.4.6: Track the volume of traffic on ftc.gov relating to competition research, reports, advocacy, and international cooperation and exchange.	---	---	---	1.1 million	1.2 million
Measure 2.4.7: Track the number of (a) cases on which the FTC cooperated with a foreign competition authority, (b) consultations with or comments to foreign competition authorities, (c) written submissions on international fora, (d) international events attended, and (e) leadership positions held by FTC staff in international competition organizations.	---	---	---	a) 61 b) 70 c) 19 d) 48 e) 8	a) 79 b) 89 c) 30 d) 68 e) 9

# FISCAL YEAR 2009 PERFORMANCE PLAN





# Consumer Protection Fiscal Year 2009

## **GOAL 1: TO PREVENT FRAUD, DECEPTION, AND UNFAIR PRACTICES IN THE MARKETPLACE**

To fulfill its consumer protection goal the FTC must identify consumer protection problems and trends in the fast-changing, increasingly global marketplace. The agency strives to understand issues affecting consumers, including newly-emerging methods of fraud or deceit, so that it can target its enforcement, education, and advocacy to those areas where consumers suffer the most harm. The FTC reports this information to other law enforcement authorities and encourages those authorities to assist in its efforts, either independently or jointly. In this way, the FTC can leverage its resources by ensuring multiple “cops on the beat.”

### **Objective 1.1: Identify fraud, deception, unfairness and other unlawful practices that cause the greatest consumer injury**

To fulfill this objective, the FTC is using new technologies creatively and building on its broad base of private and public sector partners. The agency continues to collect consumer complaint information directly through four principal sources: a toll-free helpline (1-877-FTC HELP), an identity theft hotline (1-877-ID-THEFT), the National Do Not Call Registry ([www.donotcall.gov](http://www.donotcall.gov)), and online consumer complaint forms that support each of these efforts, as well as online forms dedicated to complaints from members of the U.S. Armed Forces and to cross-border fraud complaints. In addition, the FTC continues to gather consumer complaint information from other sources, including law enforcement agencies, Better Business Bureaus, and private entities. The agency makes this and other information available, through a secure Internet Web site called the Consumer Sentinel Network, to more than 1,700 law enforcement partner agencies in the United States, Canada, and Australia. In addition, since 1998, the FTC has maintained an electronic mailbox ([spam@uce.gov](mailto:spam@uce.gov)) to which Internet users are encouraged to forward spam. This spam is stored in a searchable database enabling the FTC staff to track trends and identify law

enforcement targets when researching potential cases. The agency augments identification of targets from its databases with other strategies for generating enforcement leads, such as ad monitoring, Internet surfs, and direct referrals from government and private sector partners.

## Strategies

- Continue to upgrade and enhance the Consumer Sentinel Network.
- Expand the pool of entities that make their consumer complaint data available to the law enforcement community through the Consumer Sentinel Network.
- Monitor the marketplace to identify illegal practices that may not be fully captured by the consumer complaint database, for example, through the FTC Internet Lab, spam database, Web surfs, and consumer surveys.

## FY 2009 Implementation Plan

- Continue to upgrade and enhance the Consumer Sentinel Network and maintain it as the premier consumer protection law enforcement information resource.
- Upgrade and enhance the spam database.
- Recruit state, local, federal, and foreign law enforcement agencies to join Consumer Sentinel Network and contribute complaint data, and train them to take full advantage of its features.
- Make comprehensive consumer complaint information, as well as the analysis of that information, available to the FTC's law enforcement partners through the Consumer Sentinel Network.



- Improve the capacity to receive and integrate complaints from U.S. and foreign sources and facilitate the exchange of that data with law enforcement officials in the U.S. and other countries.
- Encourage consumers to report fraud, identity theft, and do not call complaints by increasing public awareness of the complaint process.
- Mine the reported complaint data to identify enforcement targets and provide pertinent information to public and private sector partners.
- Coordinate with enforcement partners and other sources of case generation leads, and conduct advertising reviews, test shopping, and Web surfs.
- Identify novel or challenging consumer protection problems.
- Identify key areas of noncompliance in the consumer credit reporting system.
- Ensure the quality, security, and integrity of the Consumer Sentinel Network and its data.

## FY 2009 Performance Measures

- Collect and enter into the FTC's consumer information system more than 1.75 million complaints and inquiries.
- Determine if at least 65 percent of the agency's consumer protection law enforcement actions are responsive to the consumer complaint information gathered by the agency.

The FTC mines the complaint data and other information it collects to identify and target the most serious cases of fraud and deception and respond quickly to emerging problems. The agency also makes this information available to its law enforcement partners. Information sharing helps the agency coordinate its efforts to fight the many serious problems facing consumers. It also helps the agency leverage law

enforcement resources, as other agencies who have access to the complaint data can take appropriate action to address consumer problems.

The first performance measure will ensure that the agency assimilates a large number of consumer complaints, including complaints about Do Not Call violations. The agency will receive these complaints from a variety of sources, including direct consumer complaints to the FTC and complaints received by the FTC's partners. In this manner, the FTC will be collecting robust information to inform its law enforcement efforts. The second measure will ensure that the FTC's law enforcement actions are responsive to the needs identified by consumers.

## Evaluations

- Assess whether the FTC's law enforcement and education efforts are addressing the leading areas identified by the consumer complaint information gathered by the agency.
- Assess the extent to which the consumer complaint and other information made available by the agency is used by staff and its law enforcement partners.
- Review current functions and determine what changes or upgrades to the Consumer Sentinel Network would be helpful.
- Assess security and integrity protections for the Consumer Sentinel Network and evaluate the policies in place.

In conducting its activity evaluations under this objective, as well as each of the other objectives set forth in this strategic plan, the FTC will work to improve the integration of budget and performance by linking goals and objectives to results; develop improved processes for collection, use, and analysis of management data; and follow a basic standard of data quality, including objectivity, utility, and integrity for the

information used in measuring performance, and for any performance or other data that the agency may distribute publicly.

## **Objective 1.2: Stop fraud, deception, unfairness, and other unlawful practices through law enforcement**

The FTC protects consumers by enforcing Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce, as well as by enforcing an increasing number of statutes and rules proscribing specific unlawful practices. The agency initiates civil cases, primarily by filing actions in federal court, which allege that defendants have violated these laws and rules and seek injunctions and other relief. The agency's main areas for law enforcement activity in 2009 will include the following:

### **Financial Services**

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

### **Privacy and Data Security**

The FTC will continue its efforts to protect consumers' privacy by enforcing relevant laws requiring companies to maintain reasonable safeguards to protect sensitive consumer information. The FTC also will continue to enforce the Children's Online Privacy Protection Act, the Gramm-Leach-Bliley Act, and the Fair and Accurate Credit Transactions Act. Other enforcement efforts in privacy will center on cases involving claims touting the privacy and security features of products and services.

### **Do Not Call and Telemarketing**

The FTC will continue to enforce the Telemarketing Sales Rule vigorously, including the Do Not Call provisions that prohibit most telemarketing to consumers who place their telephone numbers on the National Do Not Call Registry.

The FTC will also continue to enforce the Do Not Call provisions prohibiting “abandoned calls,” which fail to connect consumers to a live operator within two seconds.

The FTC will continue to bring cases against those who abuse technology. As part of this work, the FTC will continue to enforce laws prohibiting unfair and deceptive spam email. The FTC will also work to stop spyware and other high-tech problems that plague consumers. The FTC will invest in high-tech tools to analyze new problems, collect and review evidence, and protect consumers from becoming victimized by viruses or other security and infrastructure threats.

The FTC will direct resources to tackling deceptive and unfair practices in mobile marketing. The agency will continue to research this issue and take action as appropriate.

The deceptive marketing of products that may affect consumer health and safety will continue to be an FTC priority. The FTC will focus on health care products, including dietary supplements. Consumer demand for such products is increasing, and fraudulent or deceptive claims about these products can pose risks to consumers’ well-being.

The FTC will continue its vigorous pursuit of scammers targeting the Hispanic community, by taking law enforcement action and working with its partners to fight fraud in this community.

The FTC will continue to promote the work of its Criminal Liaison Unit (CLU), dedicated to encourage criminal prosecution of consumer fraud by coordinating with criminal law enforcement authorities on consumer fraud cases. CLU identifies law enforcement agencies and case agents for referral of specific types of consumer fraud cases, educates criminal law enforcement authorities about the FTC and its mission, and coordinates training of FTC staff by criminal law enforcement to help staff prepare cases for referral and ensure smooth progress of parallel prosecutions.

The FTC will also continue to focus on individuals and companies that already are subject to FTC and federal court orders as a result of prior FTC law enforcement actions, and

### **Spam, Spyware, and Other High- Tech Problems**

### **Mobile Marketing**

### **Health Care Products and Services**

### **Hispanic Enforcement Initiative**

### **Order Enforcement**

will place a high priority on enforcing orders against repeat offenders as well as against those who act in concert with them.

## Strategies

- Stop injury to consumers by applying fundamental consumer protection principles to new practices, such as those arising from emerging payment systems and the convergence of information technologies.
- Halt advertising and marketing practices that are most injurious to consumers or that prey on specific groups of vulnerable consumers.
- Challenge practices that threaten consumer privacy.
- Enforce consumer credit statutes and rules to protect consumers from deceptive lending practices and other illegal credit practices.
- Update, rescind, or promulgate trade regulation rules and other agency rules in response to regulatory reviews and Congressional mandates.
- Create and implement a comprehensive order-enforcement program that targets those individuals and corporations that violate federal court and administrative orders obtained by the FTC.
- Promote the criminal prosecution of the most egregious fraud violators through coordination and cooperation with criminal law enforcement authorities.

## FY 2009 Implementation Plan

- Target law enforcement toward violations that create the greatest risks to consumer health, safety, and economic well-being by reviewing complaints, evaluating practices in the marketplace, and monitoring industry data and other information.

- Enforce protections for consumers from fraud, deception, and other abuse perpetrated through different media such as direct mail, telemarketing, Web sites, and new technologies.
- Monitor national advertising in print, television, radio, and online to identify illegal practices that may not be captured fully by the complaint database.
- Identify industries whose consumer data is at high risk and use law enforcement to promote better data security practices through enforcement of the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, and Section 5 of the FTC Act.
- Administer and enforce the National Do Not Call Registry.
- Enhance government efforts to deter, prevent, defend, investigate, and prosecute identity theft by continuing to implement the recommendations of the President's Identity Theft Task Force and through the FTC's own activities.
- Develop and maintain the order-enforcement database to improve the monitoring of compliance with federal court and administrative orders and bring actions against those individuals and companies that violate those orders.
- Train FTC staff to improve investigative and litigation skills through formal activities that teach best practices used in government and private industry.
- Increase the FTC's capacity to respond rapidly to fast-moving technology-based scams by enhancing the Internet Lab and increasing tech-savvy litigation support.
- Leverage FTC enforcement resources by recruiting, supporting, and coordinating local, state, federal, and international law enforcement partners for initiatives and sweeps.

- Work with criminal prosecutors and investigators to promote criminal prosecution of FTC fraud defendants and those who assist their deceptive practices.

### **FY 2009 Performance Measure**

- Save consumers approximately \$400 million through law enforcement.

The FTC calculates consumer savings by totaling the estimated annual sales of defendants in the 12 months prior to the FTC's contacting the defendants or filing a complaint. The calculation actually underestimates the agency's impact because it assumes that the challenged business practices would have continued for only one more year and it ignores the deterrent effect of FTC enforcement.

### **Evaluations**

- Track number of enforcement actions brought and amount of economic injury to consumers stopped and determine where resources need to be shifted.
- Evaluate whether enforcement activities are tracking the areas of greatest concern and injury to consumers and whether there are new practices or technologies that require additional consumer protection law enforcement.

### **Objective 1.3: Prevent consumer injury through education**

Consumer and business education serves as the first line of defense against fraud, deception, and unfair practices. Most FTC law enforcement initiatives include a consumer and/or business education component aimed at preventing consumer injury and unlawful business practices, and mitigating financial losses. From time to time, the agency conducts pre-emptive consumer and business education campaigns

to raise awareness of new or emerging marketplace issues that have the potential to cause harm. 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 continue to publicize its consumer complaint and identity theft Web site addresses and toll-free numbers in an ongoing effort to increase public awareness of its activities and inform the public of the ways to contact the FTC to obtain information or file a complaint.

## Strategies

- Focus consumer and business education efforts on areas where fraud, deception, unfair practices, and information gaps cause the greatest injury.
- Leverage resources (by working with federal, state, local, international, and private sector partners) to maximize the reach of consumer and business education campaigns.
- Target particular demographic groups with messages about marketplace issues that impact their health, safety, and economic well-being.

## FY 2009 Implementation Plan

- Deliver efficiently and effectively educational information in English and Spanish to consumers, industry members, and law enforcement partners on how to prevent consumer injury, avoid unlawful business practices, and enhance consumer welfare.
- Focus efforts on high-profile or emerging issues – for example, financial literacy, identity theft, online privacy, and Internet scams – to close information gaps.
- Find new and creative ways to reach consumers with information about marketplace issues that can cause



them financial injury and to reach businesses with information that increases knowledge about consumer risks and compliance.

- Monitor, review, and provide guidance to parents and children on marketing that may affect children and teenagers.
- Build partnerships with industry and advocacy organizations to lead more visitors to the FTC's Web site ([www.ftc.gov](http://www.ftc.gov)) and to other issue-oriented Web sites developed by the FTC such as, [www.DoNotCall.gov](http://www.DoNotCall.gov), [www.OnGuardOnLine.gov](http://www.OnGuardOnLine.gov), and [www.DontServeTeens.gov](http://www.DontServeTeens.gov).
- Continue to build relationships with international organizations to educate consumers and businesses about cross-border consumer protection issues.
- Increase media coverage to broadcast the agency's education message to a broader audience.
- Launch a new consumer and business education campaign on "green marketing" involving claims from carbon offsets and other climate-related issues to recycling, energy savings, and landfill reduction.
- Continue education programs to meet the demand for information about significant events in the marketplace, including data security, and other initiatives, including the Business Opportunity Rule, Energy Guide, etc.
- Continue to integrate e-government initiatives into activities.

## **FY 2009 Performance Measures**

- Track FTC's consumer protection messages to determine whether they are accessed online or in print a total of more than 55 million times.

- Determine whether within the total of FTC's consumer protection messages accessed online or in print, the messages relating to identity theft are accessed more than 10 million times.
- Determine whether within the total of FTC's consumer protection messages accessed online or in print, the messages in Spanish are accessed more than 3 million times.
- Determine whether external print media, such as newspapers, magazines, business and trade journals, and professional journals, publish more than 2,750 articles that refer to FTC consumer protection activities and whether the circulation of the media that publish those articles is more than 750 million.

Consumer and business education are crucial tools in preventing and reducing consumer harm efficiently and effectively. These performance measures will help ensure that the agency is engaging in a sufficient amount of educational activity and that the educational materials are aimed at new trends and at particularly vulnerable populations. They also will ensure that the FTC is publicizing its education materials in the best way possible.

## Evaluations

- Assess whether the appropriate mix of media is being used to communicate consumer education messages and whether the FTC is making the most efficient use of available media and technology.
- Assess the number and range of public and private sector organizations that partner with the FTC on outreach.
- Determine whether the FTC needs to reach new audiences, in light of any changes in demographics, advertising, and marketing practices, and what strategies or partnerships may allow the FTC to reach those audiences.

- Review the focus of FTC education efforts and adjust them based on changing consumer and business needs.
- Continue to assess the consumer information needs of the Spanish-speaking population.

### **Objective 1.4: Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange**

The FTC uses a variety of strategies in addition to law enforcement and education to enhance consumer welfare. The agency convenes conferences and workshops through which experts and other experienced and knowledgeable parties identify novel or challenging consumer protection issues and discuss ways to address those issues. The FTC also issues reports requested or mandated by Congress or the President, or that the agency has prepared on its own initiative, that analyze consumer protection problems and suggest public and private sector policies to address them, such as self-regulatory efforts. Further, the FTC files comments with federal and state government bodies advocating policies that promote the interests of consumers and highlight the role of consumer and empirical research in their decision making. The agency testifies before Congress on consumer protection issues. The FTC engages in a variety of international cooperation, exchange, and advocacy activities designed to promote market-based consumer protection policies and effective cross-border coordination. The FTC also files amicus briefs to aid courts' considerations of important consumer protection issues.

#### **Strategies**

- Focus workshops and conferences on emerging or challenging consumer protection problems, especially those related to new technologies.
- Issue reports mandated by law and other reports that articulate concrete measures that the public and

private sectors could take to address consumer protection problems, particularly those related to new or emerging technologies.

- Target advocacy activities to encourage state, federal, and foreign government policymakers to evaluate both the costs and benefits of their policies for consumers, emphasizing the impact on consumers of policies that unnecessarily affect the dissemination of truthful, non-misleading information to consumers and the interplay of competition and consumer protection concerns.
- Use letters and public comments to urge state, federal, and foreign government policymakers to consider consumer research and other empirical data in their decisions regarding the costs and benefits of their policies for consumers.
- Pursue the development of an international market-based consumer protection model, which focuses on protecting consumers from significant harm while maximizing economic benefit, consumer access to information, and consumer choice.
- Encourage industry self-regulation where consumer protection problems are emerging, industry has a comparative advantage in addressing the problems, and/or legal or practical limitations constrain the government's ability to act.

## **FY 2009 Implementation Plan**

- Convene workshops and conferences and issue reports (including those required by law).
- Analyze federal and state government policies and identify those that impose costs on consumers that may exceed their benefits to consumers, especially policies that affect the dissemination of truthful, non-misleading information to consumers.

- File comments or otherwise engage in advocacy with state, federal, and foreign government policymakers that evaluate both the costs and benefits of proposed policies on consumers, with a particular emphasis on the role of consumer research and other empirical data in their decisions, and an awareness of the intersection of competition and consumer protection concerns.
- File amicus curiae briefs in state and federal courts urging adoption of legal principles that promote consumer welfare.
- Present major policy speeches that discuss emerging or challenging consumer protection problems and explain the FTC's approach to them.
- Identify through monitoring or other means consumer protection problems that industry self-regulation could effectively combat and work with industry to adopt such self-regulatory measures.
- Further the FTC's Congressionally-endorsed efforts to promote industry self-regulation in the marketing of entertainment and food and alcohol.
- In rulemakings, evaluate the regulatory effect on industry, consumers, and other parties, invite public comment, coordinate with other agencies, and promulgate rules accordingly.
- Publicize advocacy comments to increase public awareness of consumer protection problems and solutions.

## FY 2009 Performance Measures

- Convene or participate substantially in approximately six workshops and conferences and issue approximately eight reports on topics such as novel

or challenging consumer protection problems, including issues related to the scope and effectiveness of self-regulation.

- File approximately six public and advocacy comments with other federal and state government bodies helping them to assess the costs and benefits to consumers of their policies and the implication of consumer research and other empirical data for their policy decisions, where appropriate.
- Cooperate with foreign government agencies on at least 20 enforcement matters with cross-border components.
- Provide policy or technical input to foreign government agencies or international organizations in at least 20 instances involving consumer protection.

Public policy that enhances consumer welfare is based on a thorough understanding of complex issues, which arises from dialogue, study, and empirical research. Such policy also appreciates that stakeholders other than government, such as industry associations or private standard-setting organizations, may be better placed to address certain consumer protection issues. These performance measures will help ensure that the agency augments its enforcement and education efforts by encouraging discussions among all interested parties, as well as careful study of and empirical research on novel or challenging consumer protection problems. These activities will help enhance consumer welfare by promoting sound consumer protection policies, as well as the decision of other state, federal, and international policymakers.

## Evaluations

- Determine whether reports issued by the FTC following workshops or conferences are issued timely (approximately within nine months for reports that simply summarize the proceedings), and contribute to progress on the issue of the workshop or conference.

- Evaluate whether the FTC is filing comments or otherwise engaging in advocacy with state, federal, and foreign government bodies on consumer protection policies that will have a significant impact on consumers and whether the recipients of these comments give weight to the views expressed in these comments in making policy decisions that affect consumers.
- Assess whether industry gives weight to the FTC's evaluation, monitoring, and advocacy, and whether market interests are affected.
- Determine the scope and frequency of citation of and reference to FTC reports, studies, conference materials, and major policy speeches by other policymakers, academics, the courts, and the media.





# Maintaining Competition

## Fiscal Year 2009

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

#### GOAL 2: TO PREVENT ANTICOMPETITIVE MERGERS AND OTHER ANTICOMPETITIVE BUSINESS PRACTICES IN THE MARKETPLACE

The Hart-Scott-Rodino (HSR) Premerger Notification Act provides the FTC an effective starting point for identifying anticompetitive mergers before they are consummated. The FTC administers the HSR program both for itself and for the Department of Justice's (DOJ) Antitrust Division, which shares authority to challenge anticompetitive mergers. Mergers reported to the FTC vary tremendously in their complexity and potential anticompetitive effect. In most cases, the agency can make a reasonable judgment within a few days of filing about whether a merger has the potential to be anticompetitive, competitively neutral, or procompetitive, simply by reviewing materials filed with the notification or after a brief inquiry within an initial 30-day waiting period. In a relatively small percentage of cases, an investigation can take months and require a major commitment of resources. Taken overall, the HSR program generates a portion of the cases identified for review and that may lead to an enforcement action.

In addition to HSR notifications, the FTC also uses trade press articles, consumer and competitor complaints, and other means to identify potentially anticompetitive mergers that were not required to be reported under HSR, or that were not reported in violation of HSR. Moreover, the agency continues to monitor consummated mergers to ensure that transactions do not generate unexpected anticompetitive consequences.

There is no comparable statutorily mandated program to help identify anticompetitive business practices. The FTC must instead employ a variety of methods to identify potentially anticompetitive practices (for example, consumer and competitor complaints, referrals from other government agencies, and monitoring the trade press).

## Strategies

- Continue to make efficient use of the initial 30-day period after HSR filings (or 15 days for a cash tender offer and certain bankruptcy transactions) to determine whether a more detailed investigation is needed to assess whether a merger is likely to harm competition, and to avoid unnecessary extended investigations, including prompt inter-agency clearance and timely review.
- Use trade press articles, consumer and competitor complaints, and other means to identify potentially anticompetitive mergers that were not required to be reported under HSR, or that were not reported in violation of HSR, and potentially anticompetitive nonmerger business practices.
- When appropriate, issue requests for additional information under HSR to determine whether a merger is likely to be anticompetitive.
- When appropriate, use compulsory process in merger and nonmerger investigations to obtain additional information needed to make an informed judgment about the anticompetitive potential of mergers and nonmerger practices.
- Apply merger process reforms to conduct investigations more efficiently, in order to enhance enforcement outcomes while minimizing burdens on business.
- Employ integrated teams of lawyers, economists, and other professionals to conduct an economically sound, fact-based analysis of mergers and other potentially anticompetitive business practices. Retain outside experts and consultants in relevant fields of expertise, as needed, when specialized supplementary resources would enhance enforcement outcomes.
- Work with state or local officials, other federal agencies, or international agencies to maximize resources in identifying anticompetitive mergers and business

practices, and to minimize, to the extent possible, burdens on enforcers and business and duplication of effort, and to avoid conflicting remedies.

- Track and maintain the timeliness of investigations and merger review under the HSR program.
- Refine the investigative and decisional tools used in both merger and nonmerger investigations through continuous learning.
- 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, drawing upon the results of hearings, task forces, agency studies and reports, and other means.
- Continue to integrate e-government initiatives, such as electronic premerger filing, into activities.

## FY 2009 Implementation Plan

- Continue to improve the investigative skills and antitrust analysis training programs.
- Identify “best practices” used by government and private antitrust attorneys and use this knowledge in training FTC staff.
- Continue effective screening of mergers under the HSR program so that all reported mergers that raise potentially significant competitive issues undergo an appropriate investigation.
- Continue to assess the merger review process to determine if additional changes are needed to improve the effectiveness and efficiency of investigations.
- Continue to use and improve existing techniques for identifying anticompetitive business practices, such as monitoring the trade press, responding to and following up on case leads by Congressional offices, other

Executive Branch agencies, and state and local governments, and informing potentially aggrieved parties that they can lodge complaints with the agency by “getting FTC’s message out” through speeches and electronic and other publications for consumer, bar, and business groups (including those representing specific industries), and general public outreach.

- Continue effective administration of the review of nonmerger practices so that the FTC may investigate those that raise potentially significant competitive issues.
- Apply to FTC practices the results of hearings, conferences, reports, studies, and workshops on significant competition issues.
- Continue discussions among attorneys in the FTC’s regional offices and in the nonmerger divisions on ways to improve techniques for monitoring business practices and for identifying anticompetitive practices.
- Collect data, for management review, regarding the FTC’s efficiency in conducting investigations, such as the amount of time required to complete the HSR review process, the number of HSR matters requiring issuance of an investigative second request, the number of HSR and significant nonmerger investigations that result in enforcement action, the number of hours of staff time spent on investigations, and other costs associated with investigations.
- Review significant deviations from the statistical benchmarks for timely and efficient review of merger transactions and take corrective action where necessary.

## **FY 2009 Performance Measures**

- Continue effective administration of merger review under the HSR program so that at least 90 percent of HSR requests for additional information result in a

positive outcome, which includes Commission authorization of a complaint for preliminary injunction in federal court, issuance of an administrative complaint, acceptance of a consent agreement, the parties' voluntary abandonment or restructuring of a proposed transaction based on FTC antitrust concerns, and closing of an investigation without subsequent events indicating that the transaction injured competition.

- Continue effective administration of the nonmerger activity so that at least 90 percent of significant nonmerger investigations (those with at least 150 hours of investigative effort) will result in a positive outcome, which includes Commission authorization to file a complaint in federal court, issuance of an administrative complaint, acceptance of a consent agreement, resolution of antitrust concerns without enforcement action, or closing of an investigation without subsequent events indicating that the business practice injured competition.

Success on these measures will indicate that the FTC is effectively screening HSR-reported mergers and nonmerger investigations to identify those that raise significant antitrust issues and warrant further investigation and possible enforcement action. Setting high goals for positive outcomes from these investigations demonstrates the FTC's commitment to targeting its enforcement resources effectively. Failure to meet these measures would result in an evaluation of the FTC's screening process used to identify potential competition problems and target investigatory resources.

## **FY 2009 Informative Measures**

Three additional measures under this objective require the Commission to report detailed supplemental information on its merger and nonmerger activities. These measures are directly related to the two key performance measures described above and are intended to facilitate the evaluation of performance results.

- Track the number of enforcement actions undertaken in Maintaining Competition and, separately, in the merger and nonmerger activities, including Commission authorization of a complaint for preliminary injunction or permanent relief in federal court, issuance of an administrative complaint, and acceptance of a consent agreement, and, for mergers, the parties' voluntary abandonment or restructuring of a proposed transaction based on FTC antitrust concerns.
- In conjunction with the prior merger review performance measure, report the number of second requests issued, the number of reportable transactions for which premerger notifications were received, the number of HSR investigations that resulted in enforcement action, the number of transactions in which antitrust issues were resolved through voluntary abandonment or restructuring because of FTC concerns, and the number of investigations closed because the evidence indicated that a competitive problem was unlikely.
- In conjunction with the prior nonmerger measure, report the number of significant nonmerger investigations closed each year, with or without enforcement action.

## Evaluations

- Assess markets where investigations were closed without enforcement action, explore whether outcomes remain positive over time, and use this information to enhance the agency's ability to predict likely competitive consequences in future investigations.
- If there was a failure to investigate a merger or business practice, known to the agency, which had a significant potential for causing competitive and consumer harm, assess whether there were factors

that indicated the presence of a competitive problem that the agency should have reasonably been able to identify.

- Assess the burden imposed on merger parties by the HSR merger investigation process, explore ways of reducing that burden without compromising effectiveness of investigations, and explore methods of measuring HSR compliance burden.
- Assess the FTC's efficiency in conducting antitrust investigations, explore ways to increase efficient use of investigatory resources and reduce burdens on business, and explore whether we can more meaningfully measure our efficiency in conducting investigations.

## **Objective 2.2: Stop anticompetitive mergers and practices through law enforcement**

This enforcement objective includes both obtaining orders to stop anticompetitive activity (either through litigation or by consent) and ensuring that the remedies imposed by those orders are effective. Conduct that reduces competition is likely to cause consumers to pay higher prices or enjoy lower quality than they otherwise would. Antitrust enforcement provides substantial benefits to consumers by preventing anticompetitive mergers and other coordinated or unilateral conduct that is likely to lessen competition.

### **Strategies**

- Continue to benefit consumers in markets significant to them by challenging anticompetitive mergers and other nonmerger anticompetitive conduct, negotiating consent orders, and winning litigated orders, resulting in millions of dollars in consumer savings.

- Negotiate merger and nonmerger consent orders and win litigated orders that have significant remedial, precedential, and deterrent effects.
- Improve negotiation and litigation skills through continuous learning.
- Apply the merger process reforms to conduct investigations more efficiently, in order to enhance enforcement outcomes while minimizing burdens on business.
- Improve the FTC's capacity to promote consumer welfare by applying the information gained through workshops, hearings, and research projects that improve its understanding of significant antitrust issues.
- Retain outside experts and consultants in relevant fields of expertise, as needed, when specialized supplementary resources would enhance enforcement outcomes.
- Continue to integrate e-government initiatives into activities.
- Ensure that administrative litigation and adjudication reach a timely resolution.
- Improve the integration of budget and performance by linking goals and objectives to results; develop improved processes for use and analysis of management data.

## **FY 2009 Implementation Plan**

- Challenge anticompetitive mergers and business practices in federal court or through administrative litigation, and obtain relief with significant remedial, precedential, and deterrent effects.



- Resolve anticompetitive mergers and practices, where possible, by negotiating consent orders that secure relief with significant remedial, precedential, and deterrent effects without the need for litigation.
- Retain outside experts and consultants in relevant fields of expertise, as needed, when specialized supplementary resources would enhance enforcement outcomes.
- Continue to improve negotiation and litigation skills through training programs. Ensure that lead attorneys and managers collect any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.
- Continue to monitor implementation of divestitures and other requirements of the FTC's merger consent orders. Seek civil penalties where appropriate if a respondent fails to fulfill its obligations under an order in a timely fashion.
- Continue to seek improvements in both the substantive aspects of remedies, as well as the process by which they are derived.

## FY 2009 Performance Measures

- Achieve a positive result (including consent orders, litigation victories, or, for mergers, transactions abandoned after recommendation of a complaint) in at least 80 percent of cases in which the FTC takes enforcement action.
- Take action against mergers likely to harm competition in markets with a total of at least \$25 billion in sales.
- Save consumers an estimated \$500 million through enforcement actions against mergers likely to harm competition.

- Achieve a level of consumer savings from merger enforcement that is at least six times the amount of agency resources (in dollars of total resources) allocated to the merger activity during that period.
- Take action against nonmerger anticompetitive conduct in markets with a total of at least \$8 billion in annual sales.
- Save consumers an estimated \$80 million through enforcement actions against nonmerger anticompetitive conduct likely to harm competition.
- Achieve a level of consumer savings from nonmerger enforcement that is at least four times the amount of agency resources (in dollars of total resources) allocated to the nonmerger activity during that period.

Because external factors may cause the results to fluctuate significantly from year to year, the latter six goals are to be evaluated in terms of an aggregate target for the five-year strategic plan period, rather than as a yearly target.

These measures evaluate agency performance in several ways: the percentage of enforcement actions that have successful outcomes, the volume of commerce affected (benefited) by merger and nonmerger enforcement action, the estimated dollar savings to consumers resulting from merger and nonmerger enforcement action, and the estimated dollar savings to consumers per dollar of enforcement resources. In the absence of case-specific information, the dollar savings to consumers is conservatively estimated as one percent of the volume of commerce in the affected markets (for two years in merger cases and for one year in nonmerger cases). This is not intended as a precise estimate of consumer savings, but, rather, as an indication of general magnitude, even though a more precise estimate based on case-specific information will be used whenever possible. The use of a volume of sales performance measure does not mean that the FTC will only investigate and take enforcement action in markets with large sales volumes. The FTC will continue to investigate and take enforcement action as necessary in all markets where considerable consumer harm is likely. The benchmarks for the estimated dollar savings to consumers per dollar of enforcement resources for merger and non-

merger actions are based on historical experience, reflecting the different mix of cases and the different investigative and enforcement processes.

These measures will help guide the agency in challenging conduct that causes substantial consumer injury through targeting of its resources effectively and efficiently. These measures provide a gauge of the appropriateness of case selection and resolution, whether through litigation or settlement, as well as of the crafting of sufficient and effective remedies.

## Evaluations

- Assess the scope of the FTC's annual merger enforcement activities, as reflected by the volume of commerce in markets in which the agency took merger enforcement action. Determine whether the total volume of commerce in such markets is likely to reach \$40 billion and determine whether the level of consumer savings is likely to reach \$800 million. Compare the likely consumer welfare impact in these markets to the resources spent on this goal.
- Assess the scope of the FTC's annual nonmerger enforcement activities, as reflected by the volume of commerce in markets in which the agency took nonmerger enforcement action. Determine whether the total volume of commerce in such markets is likely to reach \$20 billion and determine whether the level of consumer savings is likely to reach \$200 million. Compare the likely consumer welfare impact in these markets to the resources spent on this goal.
- Assess qualitatively the deterrence value and precedential significance of the enforcement actions brought during FY 2009.
- Where warranted, conduct periodic retrospective studies of past investigative and enforcement activity to determine the extent to which the FTC's case selection process is accurately identifying matters that require FTC intervention.

- Evaluate litigation performance for lessons that may be applicable to future litigation.
- Review the results of major competition research initiatives to identify their usefulness in guiding FTC decisions and influencing other policymakers' approaches to competition issues.
- Closely monitor the characteristics of individual merger and nonmerger matters that comprise the basis for estimating volume of commerce and consumer savings. Determine whether the anomalous nature of the relevant product market involved suggests excluding a specific matter or adjusting the targets.

### **Objective 2.3: Prevent consumer injury through education**

The FTC 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 Public Law No. 106-554) exceeds basic quality standards.

### **Strategies**

- Educate consumers and businesses about antitrust issues through traditional means such as guidelines, advisory opinions, reports, articles in professional or other publications, speeches, and participation in professional organizations.

- Educate businesses through detailed information regarding agency actions on the FTC website, and in press releases, reports, articles, and other publications.
- Continue to conduct and disseminate the results of public hearings, conferences, and workshops on practices and developments in the marketplace and the results of economic research on how markets operate.
- Continue to enhance avenues of communication with consumers and business, such as email and the FTC website.
- Ensure that the content of complaints, press releases, and analyses to aid public comment 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 requirements.
- Expand the use of other public statements to explain why the Commission elected not to take enforcement action in certain matters to further improve the public’s understanding of the FTC’s enforcement policies.
- Engage in outreach to lay groups such as schools to provide information about the work of the FTC and basic principles of economics and competition.
- Engage in outreach to foreign competition agencies to facilitate the agency’s efforts to promote convergence toward sound consumer-welfare-based competition enforcement and policy.

## FY 2009 Implementation Plan

- Issue guidance to help businesses understand and comply with the application of the antitrust laws in certain areas, such as horizontal mergers, international operations, intellectual property, and health care.

- Continue to provide Commission and staff advisory opinions on various competition issues; continue to provide guidance in response to informal requests, particularly concerning HSR matters.
- Monitor the content of complaints, press releases, and analyses to aid public comment to ensure they are “transparent,” that is, that they explain in sufficient detail and with sufficient clarity the evidence and theory of a case, within the constraints of confidentiality requirements.
- Expand the use of press releases and other public statements to explain why the Commission elected not to take enforcement action in certain matters to further improve the public’s understanding of the FTC’s enforcement policies.
- Make available prepared texts of speeches and develop other materials that explain FTC policies and procedures.
- Continue to have Commissioners and staff speak at and participate in seminars, panel discussions, and conferences to explain how the FTC analyzes mergers and other business practices.
- Make available to the public the materials relating to public hearings, conferences, and workshops on practices and developments in the marketplace, including transcripts, written submissions, and reports.
- Make available on the FTC’s website the guidance issued by the FTC, advisory opinions, advocacy comments, written releases, texts of speeches, Bureau of Economics reports, and other materials that explain the FTC’s policies and procedures.
- When opportunities arise, engage in outreach to lay groups to provide information about the work of the FTC and basic principles of economics and competition.
- Engage in outreach to foreign competition authorities and international competition organizations.

- Develop and implement increasingly sophisticated web metric and analytical tools that will allow for a more accurate and representative view of the volume of traffic on the Commission’s antitrust related web pages. Monitor the results generated by the new web metric applications and, where necessary, make adjustments to the corresponding target.

## **FY 2009 Performance Measures**

- Track volume of traffic on the FTC website on anti-trust-related pages that are relevant to policymakers, the business and legal communities, and the public at large to determine if the site receives at least 15 million visits.
- Determine if external print media, such as newspapers, magazines, business and trade journals, and professional journals, publish at least 2,700 articles that refer to FTC competition activities and track the circulation of the media that publish those articles.

## **Evaluations**

- Evaluate what antitrust content on the FTC website generates the largest amount of public interest, and why, and use this information in setting future priorities.
- Seek input from consumer groups, business groups, bar groups, international competition organizations, and other FTC “customers” on the effectiveness of FTC educational efforts.
- Evaluate the transparency of FTC merger review policy by assessing the extent to which we communicate significant changes in such policy to stakeholders.

## **Objective 2.4: Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange**

In addition to its enforcement authority, the FTC has unique jurisdiction to gather, analyze, and make public certain information concerning the nature of competition as it affects U.S. commerce. The FTC uses that authority to hold public hearings, convene conferences and workshops, conduct economic studies on competition issues of significant public importance, and issue reports of its findings. This authority advances the competition goal in numerous ways.

The agency uses the information internally to refine the theoretical framework for analyzing competition issues and the empirical understanding of industry practices, which contributes substantially to an effective response to changing marketplace conditions. The information gained through this authority, combined with the agency's professional expertise on competition issues, also contributes to a better understanding of business practices and their competitive and economic implications by various entities, including the business sector, the legal community, other enforcement authorities, the judiciary, foreign competition agencies, and governmental decision makers and policymakers at the federal, state, and local levels. In particular, the agency testifies before Congress on competition issues. The FTC uses its expertise to encourage governmental actors at all levels to evaluate both the costs and the benefits of their policies for consumers, and to ensure such policies promote consumer welfare. This advocacy includes formal and informal dialogue with state and federal policymakers and *amicus curiae* briefs filed with state and federal courts.

In addition, dialogues with competition authorities of other countries and international organizations, and, in some cases, technical assistance to other competition authorities, promotes procedural consistency and the adoption of competition policies that protect and enhance consumer welfare, which will ultimately benefit American consumers as well as consumers in other countries.



## Strategies

- Conduct public hearings, conferences, and workshops that bring together interested parties to enhance understanding of various practices and developments in the marketplace.
- Conduct studies as requested by Congress and other studies as appropriate.
- Conduct economic studies of the effects of business actions on competition and consumer welfare in accordance with agency data quality standards, as applicable, to ensure the quality of information that may be disseminated publicly.
- Target advocacy activities to encourage state, federal, and foreign government policymakers to evaluate both the costs and the benefits of their policies for consumers, emphasizing the impact on consumers of policies that unnecessarily restrict competition.
- File amicus curiae briefs with state and federal courts deciding important competition policy issues urging them to adopt legal rules that benefit consumers by promoting competition.
- Participate in dialogue with competition authorities of other countries and international organizations on trans-national competition issues that affect American consumers and businesses and to promote sound consumer-welfare-based competition policy.
- Participate in technical assistance missions to countries with new competition regimes.

## FY 2009 Implementation Plan

- Conduct hearings, conferences, and workshops on significant competition issues.

- Continue to support outreach efforts to international bodies to explain U.S. antitrust perspectives on competition theories and approaches; participate in dialogue with competition authorities of other countries and international organizations on trans-national competition issues that affect American consumers and businesses; continue to aid the development of antitrust laws and programs in developing nations by participating in technical assistance missions.
- File comments or otherwise engage in advocacy with state, federal, and foreign government policymakers to encourage them to adopt policies that maximize consumer welfare by evaluating both the costs and the benefits of their policies for consumers.
- Prepare amicus briefs addressing important competition policy issues under consideration in court proceedings.

## FY 2009 Performance Measures

- Track if FTC website pages relating to research, reports, advocacy, and international cooperation and exchange are accessed 700,000 times.
- Convene, or participate substantively in, at least four workshops, conferences, seminars, and hearings involving significant competition-related issues.
- Issue at least eight studies, reports, working papers and issues papers on significant competition-related issues.
- Make at least six advocacy filings with other federal and state government agencies urging them to assess the competitive ramifications and costs and benefits to consumers of their policies.
- Issue at least two to three advisory opinions to persons seeking agency review of proposed business actions.

- File at least two to three amicus briefs with courts addressing competition-related issues.
- Cooperate on 30 cases with foreign competition authorities, provide 25 consultations with or comments to foreign competition authorities, submit seven written submissions to international fora, and attend eight international events. FTC staff should hold five leadership positions in international organizations.

Because external factors may cause the results to fluctuate significantly from year to year, the latter five goals are to be evaluated in terms of an aggregate target for the five-year strategic plan period. These measures will help ensure that the agency is engaging in appropriate types and sufficient levels of research, reports, advocacy, and international cooperation and exchange to ensure that they are relevant to consumers, policymakers, business, and the legal community.

## Evaluations

- Include evaluation forms with workshop and conference materials to help assess whether the workshops and conferences are an effective means of joining the debate relating to these issues.
- Seek input from consumer groups, business groups, bar groups, international organizations, and others on the value of the agency's research, reports, advocacy submissions, and international activities relating to Maintaining Competition.
- Evaluate whether the FTC is filing comments or otherwise engaging in advocacy with state, federal, and foreign government bodies on competition policies that will have a significant impact on consumers and whether the recipients of these comments have given weight to the views expressed in these comments in making policy decisions that affect consumers.

- Develop and implement increasingly sophisticated web metric and analytical tools that will allow for a more accurate and representative view of the volume of traffic on the Commission's antitrust related web pages. Monitor the results generated by the new web metric applications and, where necessary, make adjustments to the corresponding target.

# FISCAL YEAR 2010 PERFORMANCE PLAN





# Consumer Protection Fiscal Year 2010

## **GOAL 1: TO PREVENT FRAUD, DECEPTION, AND UNFAIR PRACTICES IN THE MARKETPLACE**

To fulfill its consumer protection goal the FTC must identify consumer protection problems and trends in the fast-changing, increasingly global marketplace. The agency strives to understand issues affecting consumers, including newly-emerging methods of fraud or deceit, so that it can target its enforcement, education, and advocacy to those areas where consumers suffer the most harm. The FTC reports this information to other law enforcement authorities and encourages those authorities to assist in its efforts, either independently or jointly. In this way, the FTC can leverage its resources by ensuring multiple “cops on the beat.”

### **Objective 1.1: Identify fraud, deception, unfairness and other unlawful practices that cause the greatest consumer injury**

To fulfill this objective, the FTC is using new technologies creatively and building on its broad base of private and public sector partners. The agency continues to collect consumer complaint information directly through four principal sources: a toll-free helpline (1-877-FTC HELP), an identity theft hotline (1-877-ID-THEFT), the National Do Not Call Registry ([www.donotcall.gov](http://www.donotcall.gov)), and online consumer complaint forms that support each of these efforts, as well as online forms dedicated to complaints from members of the U.S. Armed Forces and to cross-border fraud complaints. In addition, the FTC continues to gather consumer complaint information from other sources, including law enforcement agencies, Better Business Bureaus, and private entities. The agency makes this and other information available through a secure Internet Web site called the Consumer Sentinel Network, to more than 1,700 law enforcement partner agencies in the United States, Canada, and Australia. In addition, since 1998, the FTC has maintained an electronic mailbox ([spam@uce.gov](mailto:spam@uce.gov)) to which Internet users are encouraged to forward spam. This spam is stored in a searchable database enabling the FTC staff to track trends and identify law

enforcement targets when researching potential cases. The agency augments identification of targets from its databases with other strategies for generating enforcement leads, such as ad monitoring, Internet surfs, and direct referrals from government and private sector partners.

## Strategies

- Continue to upgrade and enhance the Consumer Sentinel Network.
- Expand the pool of entities that make their consumer complaint data available to the law enforcement community through the Consumer Sentinel Network.
- Monitor the marketplace to identify illegal practices that may not be fully captured by the consumer complaint database, for example, through the FTC Internet Lab, spam database, Web surfs, and consumer surveys.

## FY 2010 Implementation Plan

- Continue to upgrade and enhance the Consumer Sentinel Network and maintain it as the premier consumer protection law enforcement information resource.
- Upgrade and enhance the spam database.
- Recruit state, local, federal, and foreign law enforcement agencies to join the Consumer Sentinel Network and contribute complaint data, and train them to take full advantage of its features.
- Make comprehensive consumer complaint information, as well as the analysis of that information, available to the FTC's law enforcement partners through the Consumer Sentinel Network.



- Improve the capacity to receive and integrate complaints from U.S. and foreign sources and facilitate the exchange of that data with law enforcement officials in the U.S. and other countries.
- Encourage consumers to report fraud, identity theft, and do not call complaints by increasing public awareness of the complaint process.
- Mine the reported complaint data to identify enforcement targets and provide pertinent information to public and private sector partners.
- Coordinate with enforcement partners and other sources of case generation leads, and conduct advertising reviews, test shopping, and Web surfs.
- Identify novel or challenging consumer protection problems.
- Identify key areas of noncompliance in the consumer credit reporting system.
- Ensure the quality, security, and integrity of the Consumer Sentinel Network and its data.

## FY 2010 Performance Measures

- Collect and enter into the FTC's consumer information system more than 1.75 million complaints and inquiries.
- Determine if at least 65 percent of the agency's consumer protection law enforcement actions are responsive to the consumer complaint information gathered by the agency.

The FTC mines the complaint data and other information it collects to identify and target the most serious cases of fraud and deception and respond quickly to emerging problems. The agency also makes this information available to its law enforcement partners. Information sharing helps the agency coordinate its efforts to fight the many serious problems facing consumers. It also helps the agency leverage law

enforcement resources, as other agencies who have access to the complaint data can take appropriate action to address consumer problems.

The first performance measure will ensure that the agency assimilates a large number of consumer complaints, including complaints about Do Not Call violations. The agency will receive these complaints from a variety of sources, including direct consumer complaints to the FTC and complaints received by the FTC's partners. In this manner, the FTC will be collecting robust information to inform its law enforcement efforts. The second measure will ensure that the FTC's law enforcement actions are responsive to the needs identified by consumers.

## Evaluations

- Assess whether the FTC's law enforcement and education efforts are addressing the leading areas identified by the consumer complaint information gathered by the agency.
- Assess the extent to which staff and its law enforcement partners use the consumer complaint and other information made available by the agency.
- Review current functions and determine what changes or upgrades to the Consumer Sentinel Network would be helpful.
- Assess security and integrity protections for the Consumer Sentinel Network and evaluate the policies in place.

In conducting its activity evaluations under this objective, as well as each of the other objectives set forth in this strategic plan, the FTC will work to improve the integration of budget and performance by linking goals and objectives to results; develop improved processes for collection, use, and analysis of management data; and follow a basic standard of data quality, including objectivity, utility, and integrity for the

information used in measuring performance, and for any performance or other data that the agency may distribute publicly.

## **Objective 1.2: Stop fraud, deception, unfairness, and other unlawful practices through law enforcement**

The FTC protects consumers by enforcing Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce, as well as by enforcing an increasing number of statutes and rules proscribing specific unlawful practices. The agency initiates civil cases, primarily by filing actions in federal court, which allege that defendants have violated these laws and rules and seek injunctions and other relief. The agency's main areas for law enforcement activity in 2010 will include the following:

### **Financial Services**

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

### **Privacy and Data Security**

The FTC will continue its efforts to protect consumers' privacy by enforcing relevant laws requiring companies to maintain reasonable safeguards to protect sensitive consumer information. The FTC also will continue to enforce the Children's Online Privacy Protection Act, the Gramm-Leach-Bliley Act, and the Fair and Accurate Credit Transactions Act. Other enforcement efforts in privacy will center on cases involving claims touting the privacy and security features of products and services.

### **Do Not Call and Telemarketing**

The FTC will continue to enforce the Telemarketing Sales Rule vigorously, including the Do Not Call provisions that prohibit most telemarketing to consumers who place their telephone numbers on the National Do Not Call Registry.

The FTC will also continue to enforce the Do Not Call provisions prohibiting “abandoned calls,” which fail to connect consumers to a live operator within two seconds.

### **Spam, Spyware, and Other High-Tech Problems**

The FTC will continue to bring cases against those who abuse technology. As part of this work, the FTC will continue to enforce laws prohibiting unfair and deceptive spam email. The FTC will also work to stop spyware and other high-tech problems that plague consumers. The FTC will invest in high-tech tools to analyze new problems, collect and review evidence, and protect consumers from becoming victimized by viruses or other security and infrastructure threats.

As new technologies open new avenues for companies to communicate and transact business with consumers, the FTC will continue to take a leading role in addressing the privacy, security, and other risks of consumer harm associated with these technologies. In addition to continuing our important work on spam and spyware, some of the areas for law enforcement activity will include the following:

- **Behavioral Advertising:** Following a workshop on behavioral advertising, the Commission staff released and sought public comment on a set of proposed principles to guide the development of self-regulation in this area. The FTC anticipates that behavioral advertising will require a continuing Commission presence, including law enforcement as appropriate, and monitoring of self-regulation.
- **Contactless Payment:** The Commission hosted a town-hall meeting on contactless payment, a technology through which consumers can make purchases by holding a device such as a smart card, cell phone, or key fob in proximity to a reader. The meeting explored the extent to which contactless devices and readers are being deployed in the U.S. and around the world, and the potential benefits and risks to consumers of their use. The FTC anticipates that it may need to take enforcement action.

### **Spam, Spyware, and Other High- Tech Problems**

### **New Media**

- **Mobile Marketing:** The Commission held a Mobile Marketing Town Hall to explore the innovative and efficient consumer services offered by the relatively new mobile marketing medium. While marketing through mobile devices offers enormous benefits to commerce, it may raise privacy, security, fraud, and deception issues. The FTC will monitor mobile marketing, provide guidance where needed and, if warranted, take enforcement action.
- **Social Networking:** With the growth of social networking sites and other new media directed to advertising products to children and teens, the FTC will commence its regulatory review of the Children’s Online Privacy Protection Act to keep pace with rapidly changing technologies.

**Health Care Products and Services**

The deceptive marketing of products that may affect consumer health and safety will continue to be an FTC priority. The FTC will focus on health care products, including dietary supplements. Consumer demand for such products is increasing, and fraudulent or deceptive claims about these products can pose risks to consumers’ well-being.

**Environmental Advertising**

After the FTC completes its series of Green workshops and evaluates whether and how to modify the Green Guides, the Commission anticipates an increased law enforcement presence in this area.

**Hispanic Enforcement Initiative**

The FTC will continue its vigorous pursuit of scammers targeting the Hispanic community, by taking law enforcement action and working with its partners to fight fraud in this community.

**Marketing Practices Targeting Older Americans**

As U.S. consumers age, fraudsters are likely to target their scams to the perceived vulnerabilities of the elderly. The FTC plans to develop a coordinated law enforcement response to challenge fraud targeting older Americans and increase collaboration with state and federal partners.

**Order Enforcement**

The FTC will continue to promote the work of its Criminal Liaison Unit (CLU), dedicated to encourage criminal prosecution of consumer fraud by coordinating with criminal law enforcement authorities on consumer fraud cases. CLU identifies law enforcement agencies and case agents for

referral of specific types of consumer fraud cases, educates criminal law enforcement authorities about the FTC and its mission, and coordinates training of FTC staff by criminal law enforcement to help staff prepare cases for referral and ensure smooth progress of parallel prosecutions.

The FTC will also continue to focus on individuals and companies that already are subject to FTC and federal court orders as a result of prior FTC law enforcement actions, and will place a high priority on enforcing orders against repeat offenders as well as against those who act in concert with them.

## Strategies

- Stop injury to consumers by applying fundamental consumer protection principles to new practices, such as those arising from emerging payment systems and the convergence of information technologies.
- Halt advertising and marketing practices that are most injurious to consumers or that prey on specific groups of vulnerable consumers.
- Challenge practices that threaten consumer privacy.
- Enforce consumer credit statutes and rules to protect consumers from deceptive lending practices and other illegal credit practices.
- Update, rescind, or promulgate trade regulation rules and other agency rules in response to regulatory reviews and Congressional mandates.
- Create and implement a comprehensive order-enforcement program that targets those individuals and corporations that violate federal court and administrative orders obtained by the FTC.
- Promote the criminal prosecution of the most egregious fraud violators through coordination and cooperation with criminal law enforcement authorities.

## FY 2010 Implementation Plan

- Target law enforcement toward violations that create the greatest risks to consumer health, safety, and economic well-being by reviewing complaints, evaluating practices in the marketplace, and monitoring industry data and other information.
- Enforce protections for consumers from fraud, deception, and other abuse perpetrated through different media such as direct mail, telemarketing, Web sites, and new technologies.
- Develop a more sustained and coordinated law enforcement response to abusive and deceptive marketing practices targeting older Americans.
- Monitor national advertising in print, television, radio, and online to identify illegal practices that may not be captured fully by the complaint database.
- Evaluate the ever-expanding advertising of environment claims.
- Identify industries whose consumer data is at high risk and use law enforcement to promote better data security practices through enforcement of the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, and Section 5 of the FTC Act.
- Administer and enforce the National Do Not Call Registry.
- Enhance government efforts to deter, prevent, defend, investigate, and prosecute identity theft by continuing to implement the recommendations of the President's Identity Theft Task Force and through the FTC's own activities.
- Improve the order-enforcement database to monitor compliance with federal court and administrative orders and bring actions against those individuals and companies that violate those orders.

- Train FTC staff to improve investigative and litigation skills through formal activities that teach best practices used in government and private industry.
- Increase the FTC's capacity to respond rapidly to fast-moving technology-based scams by enhancing the Internet Lab and increasing tech-savvy litigation support.
- Leverage FTC enforcement resources by recruiting, supporting, and coordinating local, state, federal, and international law enforcement partners for initiatives and sweeps.
- Work with criminal prosecutors and investigators to promote criminal prosecution of FTC fraud defendants and those who assist their deceptive practices.

## FY 2010 Performance Measure

- Save consumers approximately \$400 million through law enforcement.

The FTC calculates consumer savings by totaling the estimated annual sales of defendants in the 12 months prior to the FTC's contacting the defendants or filing a complaint. The calculation actually underestimates the agency's impact because it assumes that the challenged business practices would have continued for only one more year and it ignores the deterrent effect of FTC enforcement.

## Evaluations

- Track number of enforcement actions brought and amount of economic injury to consumers stopped and determine where resources need to be shifted.
- Evaluate whether enforcement activities are tracking the areas of greatest concern and injury to consumers



and whether there are new practices or technologies that require additional consumer protection law enforcement.

### **Objective 1.3: Prevent consumer injury through education**

Consumer and business education serves as the first line of defense against fraud, deception, and unfair practices. Most FTC law enforcement initiatives include a consumer and/or business education component aimed at preventing consumer injury and unlawful business practices, and mitigating financial losses. From time to time, the agency conducts pre-emptive consumer and business education campaigns to raise awareness of new or emerging marketplace issues that have the potential to cause harm. 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 continue to publicize its consumer complaint and identity theft Web site addresses and toll-free numbers in an ongoing effort to increase public awareness of its activities and inform the public of the ways to contact the FTC to obtain information or file a complaint.

#### **Strategies**

- Focus consumer and business education efforts on areas where fraud, deception, unfair practices, and information gaps cause the greatest injury.
- Leverage resources (by working with federal, state, local, international, and private sector partners) to maximize the reach of consumer and business education campaigns.
- Target particular demographic groups with messages about marketplace issues that impact their health, safety, and economic well-being.

## FY 2010 Implementation Plan

- Deliver efficiently and effectively educational information in English and Spanish to consumers, industry members, and law enforcement partners on how to prevent consumer injury, avoid unlawful business practices, and enhance consumer welfare.
- Continue the Hispanic Outreach and Enforcement Initiative, and research how best to reach out to African American consumers, including what information to provide, and which organizations would be most advantageous with which to partner.
- Focus efforts on high-profile or emerging areas, including financial services, new media, and “green marketing,” to close information gaps.
- Find new and creative ways to reach consumers with information about marketplace issues that can cause them financial injury and to reach businesses with information that increases knowledge about consumer risks and compliance.
- Monitor, review, and provide guidance to parents and children on marketing that may affect children and teenagers.
- Build partnerships with industry and advocacy organizations to lead more visitors to the FTC’s Web site ([www.ftc.gov](http://www.ftc.gov)) and to other issue-oriented Web sites developed by the FTC such as, [www.DoNotCall.gov](http://www.DoNotCall.gov), [www.OnGuardOnLine.gov](http://www.OnGuardOnLine.gov), and [www.DontServeTeens.gov](http://www.DontServeTeens.gov).
- Continue to build relationships with international organizations to educate consumers and businesses about cross-border consumer protection issues.
- Increase media coverage to broadcast the agency’s education message to a broader audience.
- Continue education programs to meet the demand for information about significant events in the market-

place, including data security, and other initiatives, including the Business Opportunity Rule, Energy Guide, etc.

- Continue to integrate e-government initiatives into activities.

## FY 2010 Performance Measures

- Track FTC's consumer protection messages to determine whether they are accessed online or in print a total of more than 55 million times.
- Determine whether within the total of FTC's consumer protection messages accessed online or in print, the messages relating to identity theft are accessed more than 10 million times.
- Determine whether within the total of FTC's consumer protection messages accessed online or in print, the messages in Spanish are accessed more than 3.8 million times.
- Determine whether external print media, such as newspapers, magazines, business and trade journals, and professional journals, publish more than 3,000 articles that refer to FTC consumer protection activities and whether the circulation of the media that publish those articles is more than 750 million.

Consumer and business education are crucial tools in preventing and reducing consumer harm efficiently and effectively. These performance measures will help ensure that the agency is engaging in a sufficient amount of educational activity and that the educational materials are aimed at new trends and at particularly vulnerable populations. They also will ensure that the FTC is publicizing its education materials in the best way possible.

## Evaluations

- Assess whether the appropriate mix of media is being used to communicate consumer education messages and whether the FTC is making the most efficient use of available media and technology.
- Assess the number and range of public and private sector organizations that partner with the FTC on outreach.
- Determine whether the FTC needs to reach new audiences, in light of any changes in demographics, advertising, and marketing practices, and what strategies or partnerships may allow the FTC to reach those audiences.
- Review the focus of FTC education efforts and adjust them based on changing consumer and business needs.
- Continue to assess the consumer information needs of the Spanish-speaking population.

## **Objective 1.4: Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange**

The FTC uses a variety of strategies in addition to law enforcement and education to enhance consumer welfare. The agency convenes conferences and workshops through which experts and other experienced and knowledgeable parties identify novel or challenging consumer protection issues and discuss ways to address those issues. The FTC also issues reports requested or mandated by Congress or the President, or that the agency has prepared on its own initiative, that analyze consumer protection problems and suggest public and private sector policies to address them, such as self-regulatory efforts. Further, the FTC files comments with federal and state government bodies advocating policies that promote the interests of consumers and highlight the role of consumer and empirical research in their decision making. The agency testifies before Congress on

consumer protection issues. The FTC engages in a variety of international cooperation, exchange, and advocacy activities designed to promote market-based consumer protection policies and effective cross-border coordination. The FTC also files amicus briefs to aid courts' considerations of important consumer protection issues.

## Strategies

- Focus workshops and conferences on emerging or challenging consumer protection problems, especially those related to new technologies.
- Issue reports mandated by law and other reports that articulate concrete measures that the public and private sectors could take to address consumer protection problems, particularly those related to new or emerging technologies.
- Target advocacy activities to encourage state, federal, and foreign government policymakers to evaluate both the costs and benefits of their policies for consumers, emphasizing the impact on consumers of policies that unnecessarily affect the dissemination of truthful, non-misleading information to consumers and the interplay of competition and consumer protection concerns.
- Use letters and public comments to urge state, federal, and foreign government policymakers to consider consumer research and other empirical data in their decisions regarding the costs and benefits of their policies for consumers.
- Pursue the development of an international market-based consumer protection model, which focuses on protecting consumers from significant harm while maximizing economic benefit, consumer access to information, and consumer choice.
- Encourage industry self-regulation where consumer protection problems are emerging, industry has a

comparative advantage in addressing the problems, and/or legal or practical limitations constrain the government's ability to act.

## FY 2010 Implementation Plan

- Convene workshops and conferences and issue reports (including those required by law).
- Examine new technologies, to enable the FTC to take a lead role in addressing the privacy, security, and other risks of consumer harm associated with the technologies.
- Analyze federal and state government policies and identify those that impose costs on consumers that may exceed their benefits to consumers, especially policies that affect the dissemination of truthful, non-misleading information to consumers.
- File comments or otherwise engage in advocacy with state, federal, and foreign government policymakers that evaluate both the costs and benefits of proposed policies on consumers, with a particular emphasis on the role of consumer research and other empirical data in their decisions, and an awareness of the intersection of competition and consumer protection concerns.
- File amicus curiae briefs in state and federal courts urging adoption of legal principles that promote consumer welfare.
- Present major policy speeches that discuss emerging or challenging consumer protection problems and explain the FTC's approach to them.
- Identify through monitoring or other means consumer protection problems that industry self-regulation could effectively combat and work with industry to adopt such self-regulatory measures.

- Further the FTC's Congressionally-endorsed efforts to promote industry self-regulation in the marketing of entertainment, food, and alcohol.
- In rulemakings, evaluate the regulatory effect on industry, consumers, and other parties, invite public comment, coordinate with other agencies, and promulgate rules accordingly.
- Publicize advocacy comments to increase public awareness of consumer protection problems and solutions.

## FY 2010 Performance Measures

- Convene or participate substantially in approximately six workshops and conferences and issue approximately eight reports on topics such as novel or challenging consumer protection problems, including issues related to the scope and effectiveness of self-regulation.
- File approximately six public and advocacy comments with other federal and state government bodies helping them to assess the costs and benefits to consumers of their policies and the implication of consumer research and other empirical data for their policy decisions, where appropriate.
- Cooperate with foreign government agencies on at least 20 enforcement matters with cross-border components.
- Provide policy or technical input to foreign government agencies or international organizations in at least 20 instances involving consumer protection.

Public policy that enhances consumer welfare is based on a thorough understanding of complex issues, which arises from dialogue, study, and empirical research. Such policy also appreciates that stakeholders other than government, such as industry associations or private standard-setting

organizations, may be better placed to address certain consumer protection issues. These performance measures will help ensure that the agency augments its enforcement and education efforts by encouraging discussions among all interested parties, as well as careful study of and empirical research on novel or challenging consumer protection problems. These activities will help enhance consumer welfare by promoting sound consumer protection policies, as well as the decision of other state, federal, and international policymakers.

## Evaluations

- Determine whether reports issued by the FTC following workshops or conferences are issued timely (approximately within nine months for reports that simply summarize the proceedings), and contribute to progress on the issue of the workshop or conference.
- Evaluate whether the FTC is filing comments or otherwise engaging in advocacy with state, federal, and foreign government bodies on consumer protection policies that will have a significant impact on consumers and whether the recipients of these comments give weight to the views expressed in these comments in making policy decisions that affect consumers.
- Assess whether industry gives weight to the FTC's evaluation, monitoring, and advocacy, and whether market interests are affected.
- Determine the scope and frequency of citation of and reference to FTC reports, studies, conference materials, and major policy speeches by other policymakers, academics, the courts, and the media.



# Maintaining Competition

## Fiscal Year 2010

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

#### GOAL 2: TO PREVENT ANTICOMPETITIVE MERGERS AND OTHER ANTICOMPETITIVE BUSINESS PRACTICES IN THE MARKETPLACE

The Hart-Scott-Rodino (HSR) Premerger Notification Act provides the FTC an effective starting point for identifying anticompetitive mergers before they are consummated. The FTC administers the HSR program both for itself and for the Department of Justice's (DOJ) Antitrust Division, which shares authority to challenge anticompetitive mergers. Mergers reported to the FTC vary tremendously in their complexity and potential anticompetitive effect. In most cases, the agency can make a reasonable judgment within a few days of filing about whether a merger has the potential to be anticompetitive, competitively neutral, or procompetitive, simply by reviewing materials filed with the notification or after a brief inquiry within an initial 30-day waiting period. In a relatively small percentage of cases, an investigation can take months and require a major commitment of resources. Taken overall, the HSR program generates a portion of the cases identified for review and that may lead to an enforcement action.

In addition to HSR notifications, the FTC also uses trade press articles, consumer and competitor complaints, and other means to identify potentially anticompetitive mergers that were not required to be reported under HSR, or that were not reported in violation of HSR. Moreover, the agency continues to monitor consummated mergers to ensure that transactions do not generate unexpected anticompetitive consequences.

There is no comparable statutorily mandated program to help identify anticompetitive business practices. The FTC must instead employ a variety of methods to identify potentially anticompetitive practices (for example, consumer and competitor complaints, referrals from other government agencies, and monitoring the trade press).

## Strategies

- Continue to make efficient use of the initial 30-day period after HSR filings (or 15 days for a cash tender offer or certain bankruptcy transactions) to determine whether a more detailed investigation is needed to assess whether a merger is likely to harm competition, and to avoid unnecessary extended investigations, including prompt inter-agency clearance and timely review.
- Use trade press articles, consumer and competitor complaints, and other means to identify potentially anticompetitive mergers that were not required to be reported under HSR, or that were not reported in violation of HSR, and potentially anticompetitive nonmerger business practices.
- When appropriate, issue requests for additional information under HSR to determine whether a merger is likely to be anticompetitive.
- When appropriate, use compulsory process in merger and nonmerger investigations to obtain additional information needed to make an informed judgment about the anticompetitive potential of mergers and nonmerger practices.
- Apply merger process reforms to conduct investigations more efficiently, in order to enhance enforcement outcomes while minimizing burdens on business.
- Employ integrated teams of lawyers, economists, and other professionals to conduct an economically sound, fact-based analysis of mergers and other potentially anticompetitive business practices. Retain outside experts and consultants in relevant fields of expertise, as needed, when specialized supplementary resources would enhance enforcement outcomes. Promote increased utilization of paralegals in identifying potentially anticompetitive mergers

and conduct, especially with regards to document intensive searches that have become more dependent on advanced technological applications.

- Work with state or local officials, other federal agencies, or international agencies to maximize resources in identifying anticompetitive mergers and business practices, and to minimize, to the extent possible, burdens on enforcers and business and duplication of effort, and to avoid conflicting remedies.
- Track and maintain the timeliness of investigations and merger review under the HSR program.
- Refine the investigative and decisional tools used in both merger and nonmerger investigations through continuous learning.
- 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, drawing upon the results of hearings, task forces, agency studies and reports, and other means.
- Continue to monitor past volume, format, and duration of productions and evaluate current document review practices (internal and outside feedback), and available hardware and software tools as appropriate.
- Identify and adopt appropriate technological solutions to deal with increasingly sophisticated document production and modernize the Premerger Notification and Clearance systems while continuing to integrate e-government initiatives, such as electronic premerger filing, into the Commission's activities.

## FY 2010 Implementation Plan

- Continue to improve the investigative skills and antitrust analysis training programs and provide adequate training in the professional skills needed to deal with the increasingly technologically based document submissions.
- Identify “best practices” used by government and private antitrust attorneys and use this knowledge in training FTC staff.
- Continue effective screening of mergers under the HSR program so that all reported mergers that raise potentially significant competitive issues undergo an appropriate investigation.
- Continue to monitor the merger review process to determine if additional changes are needed to improve the effectiveness and efficiency of investigations.
- Continue to use and improve existing techniques for identifying anticompetitive business practices, such as monitoring the trade press, responding to and following up on case leads by Congressional offices, other Executive Branch agencies, and state and local governments, and informing potentially aggrieved parties that they can lodge complaints with the agency by “getting FTC’s message out” through speeches and electronic and other publications for consumer, bar, and business groups (including those representing specific industries), and general public outreach.
- Continue effective administration of the review of nonmerger practices so that the FTC may investigate those that raise potentially significant competitive issues.
- Apply to FTC practices the results of hearings, conferences, reports, studies, and workshops on significant competition issues.

- Continue discussions among attorneys in the FTC's regional offices and in the nonmerger divisions on ways to improve techniques for monitoring business practices and for identifying anticompetitive practices.
- Collect data, for management review, regarding the FTC's efficiency in conducting investigations, such as the amount of time required to complete the HSR review process, the number of HSR matters requiring issuance of an investigative second request, the number of HSR and significant nonmerger investigations that result in enforcement action, the number of hours of staff time spent on investigations, and other costs associated with investigations.
- Review significant deviations from the statistical benchmarks for timely and efficient review of merger transactions and take corrective action where necessary.

## FY 2010 Performance Measures

- Continue effective administration of merger review under the HSR program so that at least 90 percent of HSR requests for additional information result in a positive outcome, which includes Commission authorization of a complaint for preliminary injunction in federal court, issuance of an administrative complaint, acceptance of a consent agreement, the parties' voluntary abandonment or restructuring of a proposed transaction based on FTC antitrust concerns, and closing of an investigation without subsequent events indicating that the transaction injured competition.
- Continue effective administration of the nonmerger activity so that at least 90 percent of significant nonmerger investigations (those with at least 150 hours of investigative effort) will result in a positive outcome, which includes Commission authorization to file a complaint in federal court, issuance of an administrative complaint, acceptance of a consent agreement,

resolution of antitrust concerns without enforcement action, or closing of an investigation without subsequent events indicating that the business practice injured competition.

Success on these measures will indicate that the FTC is effectively screening HSR-reported mergers and nonmerger investigations to identify those that raise significant anti-trust issues and warrant further investigation and possible enforcement action. Setting high goals for positive outcomes from these investigations demonstrates the FTC's commitment to targeting its enforcement resources effectively. Failure to meet these measures would result in an evaluation of the FTC's screening process used to identify potential competition problems and target investigatory resources.

## **FY 2010 Informative Measures**

Three additional measures under this objective require the Commission to report detailed supplemental information on its merger and nonmerger activities. These measures are directly related to the two key performance measures described above and are intended to facilitate the evaluation of performance results.

- Track the number of enforcement actions undertaken in Maintaining Competition and, separately, in the merger and nonmerger activities, including Commission authorization of a complaint for preliminary injunction or permanent relief in federal court, issuance of an administrative complaint, and acceptance of a consent agreement, and, for mergers, the parties' voluntary abandonment or restructuring of a proposed transaction based on FTC antitrust concerns.
- In conjunction with the prior merger review performance measure, report the number of second requests issued, the number of reportable transactions for which premerger notifications were received, the number of HSR investigations that resulted in enforcement action, the number of transactions in

which antitrust issues were resolved through voluntary abandonment or restructuring because of FTC concerns, and the number of investigations closed because the evidence indicated that a competitive problem was unlikely.

- In conjunction with the prior nonmerger measure, report the number of significant nonmerger investigations closed each year, with or without enforcement action.

## Evaluations

- Assess markets where investigations were closed without enforcement action, explore whether outcomes remain positive over time, and use this information to enhance the agency's ability to predict likely competitive consequences in future investigations.
- If there was a failure to investigate a merger or business practice, known to the agency, which had a significant potential for causing competitive and consumer harm, assess whether there were factors that indicated the presence of a competitive problem that the agency should have reasonably been able to identify.
- Assess the burden imposed on merger parties by the HSR merger investigation process, explore ways of reducing that burden without compromising effectiveness of investigations, and explore methods of measuring HSR compliance burden.
- Assess the FTC's efficiency in conducting antitrust investigations, explore ways to increase efficient use of investigatory resources and reduce burdens on business, and explore whether we can more meaningfully measure our efficiency in conducting investigations.

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

This enforcement objective includes both obtaining orders to stop anticompetitive activity (either through litigation or by consent) and ensuring that the remedies imposed by those orders are effective. Conduct that reduces competition is likely to cause consumers to pay higher prices or enjoy lower quality than they otherwise would. Antitrust enforcement provides substantial benefits to consumers by preventing anticompetitive mergers and other coordinated or unilateral conduct that is likely to lessen competition.

### Strategies

- Continue to benefit consumers in markets significant to them by challenging anticompetitive mergers and other nonmerger anticompetitive conduct, negotiating consent orders, and winning litigated orders, resulting in millions of dollars in consumer savings.
- Negotiate merger and nonmerger consent orders and win litigated orders that have significant remedial, precedential, and deterrent effects.
- Improve negotiation and litigation skills through continuous learning.
- Apply the merger process reforms to conduct investigations more efficiently, in order to enhance enforcement outcomes while minimizing burdens on business.
- Improve the FTC's capacity to promote consumer welfare by applying the information gained through workshops, hearings, and research projects that improve its understanding of significant antitrust issues.



- Retain outside experts and consultants in relevant fields of expertise, as needed, when specialized supplementary resources would enhance enforcement outcomes.
- Increase the use of paralegal resources in challenging potentially anticompetitive mergers and conduct, especially with regards to document intensive searches that have become more dependant on advanced technological applications. Implement a rigorous paralegal training program to ensure that support staff possesses the necessary tools to deal with technologically sophisticated document submissions.
- Continue to integrate e-government initiatives into activities.
- Ensure that administrative litigation and adjudication reach a timely resolution. Identify and implement practices that promote a more effective utilization of Part 3 adjudicative proceedings in challenging potentially anticompetitive mergers and conduct matters.
- Improve the integration of budget and performance by linking goals and objectives to results; develop improved processes for use and analysis of management data.

### **FY 2010 Implementation Plan**

- Challenge anticompetitive mergers and business practices in federal court or through the increased recourse to administrative litigation, and obtain relief with significant remedial, precedential, and deterrent effects.
- Resolve anticompetitive mergers and practices, where possible, by negotiating consent orders that secure relief with significant remedial, precedential, and deterrent effects without the need for litigation.

- Retain outside experts and consultants in relevant fields of expertise, as needed, when specialized supplementary resources would enhance enforcement outcomes.
- Continue to improve negotiation and litigation skills through training programs. Ensure that lead attorneys and managers collect any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.
- Continue to monitor implementation of divestitures and other requirements of the FTC's merger consent orders. Seek civil penalties where appropriate if a respondent fails to fulfill its obligations under an order in a timely fashion.
- Continue to seek improvements in both the substantive aspects of remedies, as well as the process by which they are derived.

## **FY 2010 Performance Measures**

- Achieve a positive result (including consent orders, litigation victories, or, for mergers, transactions abandoned after recommendation of a complaint) in at least 80 percent of cases in which the FTC takes enforcement action.
- Take action against mergers likely to harm competition in markets with a total of at least \$25 billion in sales.
- Save consumers an estimated \$500 million through enforcement actions against mergers likely to harm competition.
- Achieve a level of consumer savings from merger enforcement that is at least six times the amount of agency resources (in dollars of total resources) allocated to the merger activity during that period.

- Take action against nonmerger anticompetitive conduct in markets with a total of at least \$8 billion in annual sales.
- Save consumers an estimated \$80 million through enforcement actions against nonmerger anticompetitive conduct likely to harm competition.
- Achieve a level of consumer savings from nonmerger enforcement that is at least four times the amount of agency resources (in dollars of total resources) allocated to the nonmerger activity during that period.

Because external factors may cause the results to fluctuate significantly from year to year, the latter six goals are to be evaluated in terms of an aggregate target for the five-year strategic plan period, rather than as a yearly target.

These measures evaluate agency performance in several ways: the percentage of enforcement actions that have successful outcomes, the volume of commerce affected (benefited) by merger and nonmerger enforcement action, the estimated dollar savings to consumers resulting from merger and nonmerger enforcement action, and the estimated dollar savings to consumers per dollar of enforcement resources. In the absence of case-specific information, the dollar savings to consumers is conservatively estimated as one percent of the volume of commerce in the affected markets (for two years in merger cases and for one year in nonmerger cases). This is not intended as a precise estimate of consumer savings, but, rather, as an indication of general magnitude, even though a more precise estimate based on case-specific information will be used whenever possible. The use of a volume of sales performance measure does not mean that the FTC will only investigate and take enforcement action in markets with large sales volumes. The FTC will continue to investigate and take enforcement action as necessary in all markets where considerable consumer harm is likely. The benchmarks for the estimated dollar savings to consumers per dollar of enforcement resources for merger and nonmerger actions are based on historical experience, reflecting the different mix of cases and the different investigative and enforcement processes.

These measures will help guide the agency in challenging conduct that causes substantial consumer injury through targeting of its resources effectively and efficiently. These measures provide a gauge of the appropriateness of case selection and resolution, whether through litigation or settlement, as well as of the crafting of sufficient and effective remedies.

## Evaluations

- Assess the scope of the FTC's annual merger enforcement activities, as reflected by the volume of commerce in markets in which the agency took merger enforcement action. Determine whether the total volume of commerce in such markets is likely to reach \$40 billion and determine whether the level of consumer savings is likely to reach \$800 million. Compare the likely consumer welfare impact in these markets to the resources spent on this goal.
- Assess the scope of the FTC's annual nonmerger enforcement activities, as reflected by the volume of commerce in markets in which the agency took nonmerger enforcement action. Determine whether the total volume of commerce in such markets is likely to reach \$20 billion and determine whether the level of consumer savings is likely to reach \$200 million. Compare the likely consumer welfare impact in these markets to the resources spent on this goal.
- Assess qualitatively the deterrence value and precedential significance of the enforcement actions brought during FY 2009.
- Where warranted, conduct periodic retrospective studies of past investigative and enforcement activity to determine the extent to which the FTC's case selection process is accurately identifying matters that require FTC intervention.
- Evaluate litigation performance for lessons that may be applicable to future litigation.

- Review the results of major competition research initiatives to identify their usefulness in guiding FTC decisions and influencing other policymakers' approaches to competition issues.
- Closely monitor the characteristics of individual merger and nonmerger matters that comprise the basis for estimating volume of commerce and consumer savings. Determine whether the anomalous nature of the relevant product market involved suggests excluding a specific matter or adjusting the targets.

### **Objective 2.3: Prevent consumer injury through education**

The FTC 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 Public Law No. 106-554) exceeds basic quality standards.

#### **Strategies**

- Educate consumers and businesses about antitrust issues through traditional means such as guidelines, advisory opinions, reports, articles in professional or other publications, speeches, and participation in professional organizations.
- Promote consumer focused policy studies in the health care and energy areas that consider the interrelation between competition and consumer protection.

- Conduct periodic conferences on relevant competition related topics and develop outreach programs targeted to antitrust practitioners and competition authorities, both domestic and international.
- Educate businesses through detailed information regarding agency actions on the FTC website, and in press releases, reports, articles, and other publications.
- Develop new print and online resources, with specific audiences in mind, to help consumers and business people better understand the work conducted by the Commission. Target schools, businesses, other federal agencies, the states' attorneys general, and other groups with large established constituencies.
- Continue to conduct and disseminate the results of public hearings, conferences, and workshops on practices and developments in the marketplace and the results of economic research on how markets operate.
- Continue to enhance avenues of communication with consumers and business, such as email and the FTC website.
- Ensure that the content of complaints, press releases, and analyses to aid public comment 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 requirements.
- Expand the use of other public statements to explain why the Commission elected not to take enforcement action in certain matters to further improve the public's understanding of the FTC's enforcement policies.
- Engage in outreach to lay groups such as schools to provide information about the work of the FTC and basic principles of economics and competition.

- Engage in outreach to foreign competition agencies to facilitate the agency's efforts to promote convergence toward sound consumer-welfare-based competition enforcement and policy.

## FY 2010 Implementation Plan

- Issue guidance to help businesses understand and comply with the application of the antitrust laws in certain areas, such as horizontal mergers, international operations, intellectual property, and health care.
- Continue to provide Commission and staff advisory opinions on various competition issues; continue to provide guidance in response to informal requests, particularly concerning HSR matters.
- Monitor the content of complaints, press releases, and analyses to aid public comment to ensure they are "transparent," that is, that they explain in sufficient detail and with sufficient clarity the evidence and theory of a case, within the constraints of confidentiality requirements.
- Expand the use of press releases and other public statements to explain why the Commission elected not to take enforcement action in certain matters to further improve the public's understanding of the FTC's enforcement policies.
- Make available prepared texts of speeches and develop other materials that explain FTC policies and procedures.
- Continue to have Commissioners and staff speak at and participate in seminars, panel discussions, and conferences to explain how the FTC analyzes mergers and other business practices.

- Make available to the public the materials relating to public hearings, conferences, and workshops on practices and developments in the marketplace, including transcripts, written submissions, and reports.
- Make available on the FTC's website the guidance issued by the FTC, advisory opinions, advocacy comments, written releases, texts of speeches, Bureau of Economics reports, and other materials that explain the FTC's policies and procedures.
- When opportunities arise, engage in outreach to lay groups to provide information about the work of the FTC and basic principles of economics and competition.
- Engage in outreach to foreign competition authorities and international competition organizations.
- Develop and implement increasingly sophisticated web metric and analytical tools that will allow for a more accurate and representative view of the volume of traffic on the Commission's antitrust related web pages. Monitor the results generated by the new web metric applications and, where necessary, make adjustments to the corresponding target.

## **FY 2010 Performance Measures**

- Track volume of traffic on the FTC website on anti-trust-related pages that are relevant to policymakers, the business and legal communities, and the public at large to determine if the site receives at least 15 million visits.
- Determine if external print media, such as newspapers, magazines, business and trade journals, and professional journals, publish at least 2,700 articles that refer to FTC competition activities and track the circulation of the media that publish those articles.



## Evaluations

- Evaluate what antitrust content on the FTC website generates the largest amount of public interest, and why, and use this information in setting future priorities.
- Seek input from consumer groups, business groups, bar groups, international competition organizations, and other FTC “customers” on the effectiveness of FTC educational efforts.
- Evaluate the transparency of FTC merger review policy by assessing the extent to which we communicate significant changes in such policy to stakeholders.

### **Objective 2.4: Enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange**

In addition to its enforcement authority, the FTC has unique jurisdiction to gather, analyze, and make public certain information concerning the nature of competition as it affects U.S. commerce. The FTC uses that authority to hold public hearings, convene conferences and workshops, conduct economic studies on competition issues of significant public importance, and issue reports of its findings. This authority advances the competition goal in numerous ways.

The agency uses the information internally to refine the theoretical framework for analyzing competition issues and the empirical understanding of industry practices, which contributes substantially to an effective response to changing marketplace conditions. The information gained through this authority, combined with the agency’s professional expertise on competition issues, also contributes to a better understanding of business practices and their competitive and economic implications by various entities, including the business sector, the legal community, other enforcement authorities, the judiciary, foreign competition agencies, and governmental decision makers and policymakers at the federal, state, and local levels. In particular, the agency testi-

fies before Congress on competition issues. The FTC uses its expertise to encourage governmental actors at all levels to evaluate both the costs and the benefits of their policies for consumers, and to ensure such policies promote consumer welfare. This advocacy includes formal and informal dialogue with state and federal policymakers and amicus curiae briefs filed with state and federal courts.

In addition, dialogues with competition authorities of other countries and international organizations, and, in some cases, technical assistance to other competition authorities, promotes procedural consistency and the adoption of competition policies that protect and enhance consumer welfare, which will ultimately benefit American consumers as well as consumers in other countries.

## Strategies

- Conduct public hearings, conferences, and workshops that bring together interested parties to enhance understanding of various practices and developments in the marketplace.
- Conduct studies as requested by Congress and other studies as appropriate.
- Conduct economic studies of the effects of business actions on competition and consumer welfare in accordance with agency data quality standards, as applicable, to ensure the quality of information that may be disseminated publicly.
- Target advocacy activities to encourage state, federal, and foreign government policymakers to evaluate both the costs and the benefits of their policies for consumers, emphasizing the impact on consumers of policies that unnecessarily restrict competition.
- File amicus curiae briefs with state and federal courts deciding important competition policy issues urging them to adopt legal rules that benefit consumers by promoting competition.

- Participate in dialogue with competition authorities of other countries and international organizations on trans-national competition issues that affect American consumers and businesses and to promote sound consumer-welfare-based competition policy.
- Participate in technical assistance missions to countries with new competition regimes.

## FY 2010 Implementation Plan

- Conduct hearings, conferences, and workshops on significant competition issues.
- Continue to support outreach efforts to international bodies to explain U.S. antitrust perspectives on competition theories and approaches; participate in dialogue with competition authorities of other countries and international organizations on trans-national competition issues that affect American consumers and businesses; continue to aid the development of antitrust laws and programs in developing nations by participating in technical assistance missions.
- File comments or otherwise engage in advocacy with state, federal, and foreign government policymakers to encourage them to adopt policies that maximize consumer welfare by evaluating both the costs and the benefits of their policies for consumers.
- Prepare amicus briefs addressing important competition policy issues under consideration in court proceedings.

## Performance Measures

- Track if FTC website pages relating to research, reports, advocacy, and international cooperation and exchange are accessed 700,000 times.

- Convene, or participate substantively in, at least four workshops, conferences, seminars, and hearings involving significant competition-related issues.
- Issue at least eight studies, reports, working papers and issues papers on significant competition-related issues.
- Make at least six advocacy filings with other federal and state government agencies urging them to assess the competitive ramifications and costs and benefits to consumers of their policies.
- Issue at least two to three advisory opinions to persons seeking agency review of proposed business actions.
- File at least two to three amicus briefs with courts addressing competition-related issues.
- Cooperate on 30 cases with foreign competition authorities, provide 25 consultations with or comments to foreign competition authorities, submit seven written submissions to international fora, and attend eight international events. FTC staff should hold five leadership positions in international organizations.

Because external factors may cause the results to fluctuate significantly from year to year, the latter five goals are to be evaluated in terms of an aggregate target for the five-year strategic plan period. These measures will help ensure that the agency is engaging in appropriate types and sufficient levels of research, reports, advocacy, and international cooperation and exchange to ensure that they are relevant to consumers, policymakers, business, and the legal community.

## Evaluations

- Include evaluation forms with workshop and conference materials to help assess whether the workshops and conferences are an effective means of joining the debate relating to these issues.

- Seek input from consumer groups, business groups, bar groups, international organizations, and others on the value of the agency's research, reports, advocacy submissions, and international activities relating to Maintaining Competition.
- Evaluate whether the FTC is filing comments or otherwise engaging in advocacy with state, federal, and foreign government bodies on competition policies that will have a significant impact on consumers and whether the recipients of these comments have given weight to the views expressed in these comments in making policy decisions that affect consumers.
- Develop and implement increasingly sophisticated web metric and analytical tools that will allow for a more accurate and representative view of the volume of traffic on the Commission's antitrust related web pages. Monitor the results generated by the new web metric applications and, where necessary, make adjustments to the corresponding target.

