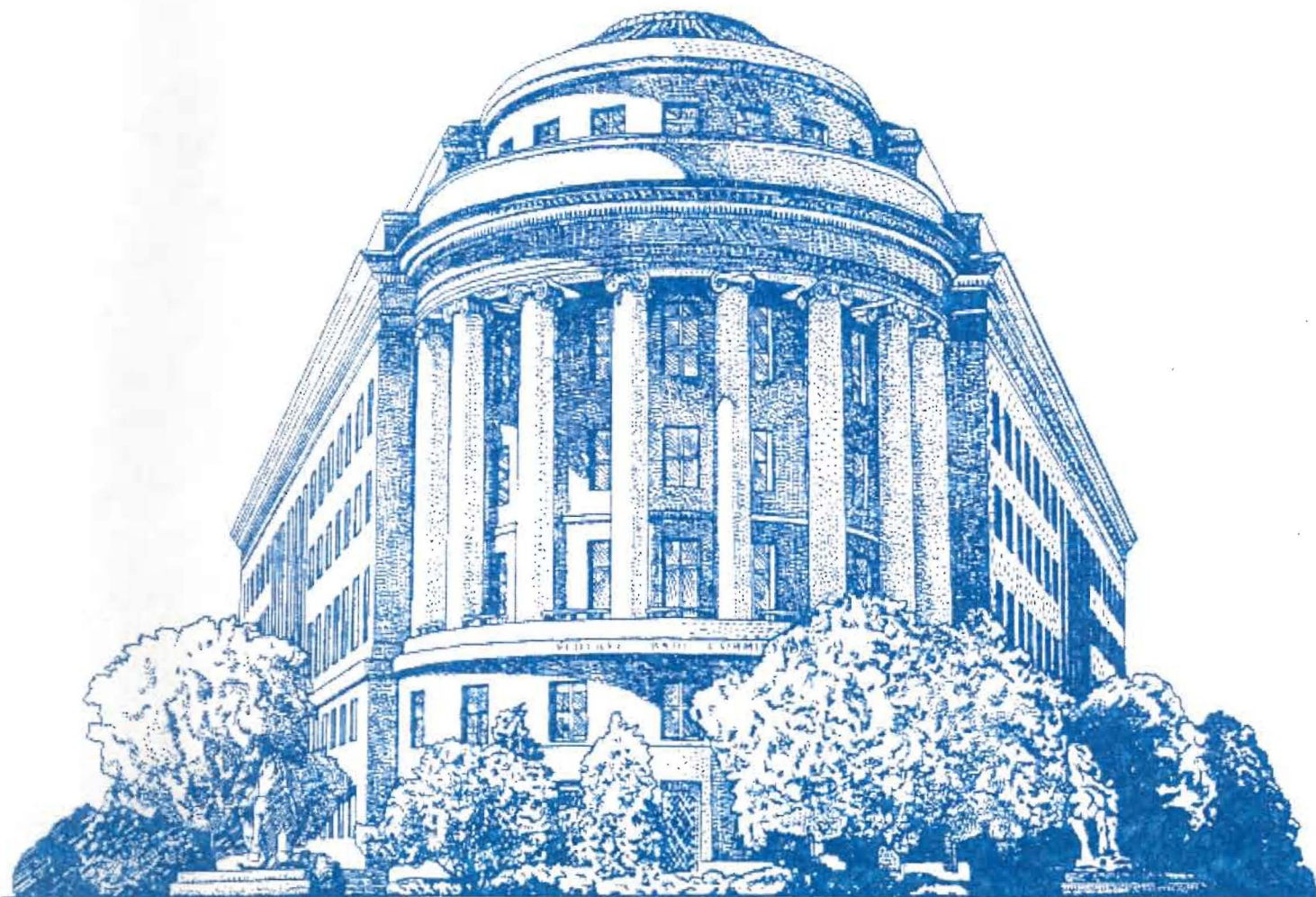


FEDERAL TRADE COMMISSION

PERFORMANCE REPORT FISCAL YEAR 2001



February 27, 2002

SUMMARY

The Federal Trade Commission (FTC) is charged with protecting consumers from fraud, deception, and unfair practices in the marketplace. The agency addresses current issues of importance to consumers, including identity theft, telemarketing fraud, Internet fraud, and credit reporting. The FTC uses targeted law enforcement actions and consumer and business education to protect the public. We work to ensure that consumers have accurate information for their purchasing decisions, and can have confidence in the traditional and electronic marketplaces.

The FTC also has a long tradition of maintaining a competitive marketplace for both consumers and businesses. We enforce the laws that prohibit anticompetitive mergers and business practices. Free and open competition is the cornerstone of our economy, bringing consumers the benefits of low prices, high quality products and services, and innovation. We work to remove restrictions on the engine of competition so that markets can function at their best. We focus particularly on market segments that matter most to consumers: health care, prescription drugs, grocery retailing, high tech, and energy. By promoting vigorous competition in these and other markets, we can help to ensure a strong economy.

Our educational materials, as well as information about the FTC's activities, can be found on our Web site, www.ftc.gov.

About the FTC

The FTC is an independent agency that reports to Congress on its actions. It is headed by five Commissioners, nominated by the President and confirmed by the Senate, each serving staggered seven-year

terms. The President selects one Commissioner to act as Chairman. No more than three Commissioners can be of the same political party. The FTC has two major bureaus, Consumer Protection and Competition, supported by the Bureau of Economics and regional and mission support offices.

The Bureau of Consumer Protection's charge is to protect consumers against fraudulent, deceptive, or unfair practices. This Bureau enforces a variety of consumer protection and credit laws enacted by Congress, as well as trade regulation rules issued by the Commission. Its actions include individual company and industry-wide investigations, administrative and federal court litigation, rulemaking proceedings, and consumer and business education.

The FTC's antitrust arm, the Bureau of Competition, seeks to prevent anticompetitive mergers and other anticompetitive business practices in the marketplace. This Bureau promotes consumers' freedom to choose goods and services in a competitive marketplace at price and quality levels that fit their needs. It also fosters opportunity for businesses by ensuring competitive markets.

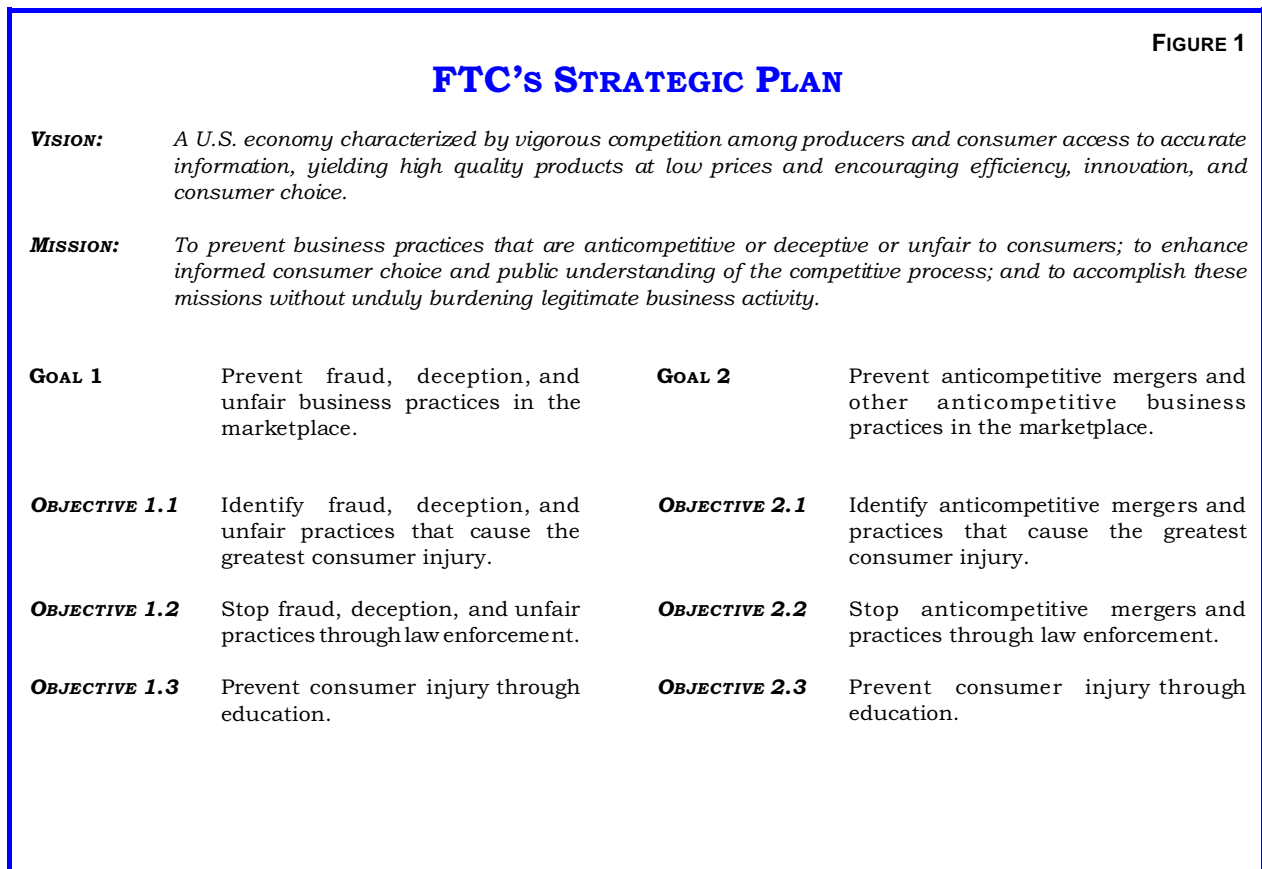
The Bureau of Economics helps the two mission bureaus evaluate the economic impact of their actions. To do so, this Bureau provides economic analysis and support to antitrust and consumer protection investigations and rulemakings. It also analyzes the impact of government regulation on competition and consumers and provides Congress, the Executive Branch, and the public with economic analysis of market processes as they relate to antitrust, consumer protection, and regulation.

The FTC’s regional offices cover seven geographic areas. The regional offices work with the Bureaus of Consumer Protection and Competition to conduct investigations and litigation; provide advice to state and local officials on the competitive implications of proposed actions; recommend cases; provide local outreach services to consumers and business persons; and coordinate activities with local, state, and regional authorities. FTC regional offices frequently sponsor conferences for small businesses, local authorities, and consumer groups.

The mission support offices consist of management and administrative functions; these offices provide needed services to support the operations of the agency.

Strategic Plan

Our Strategic Plan sets forth the FTC’s Vision and Mission with respect to two goals. These goals, and their corresponding objectives (see Figure 1), are the framework for the activities we pursue during the course of each year. Our performance measures help us assess the impact of our annual activities.



2001 Highlights

During 2001, the FTC's activities benefitted consumers and businesses. We were successful in achieving or exceeding the majority of the performance targets we use to measure our effectiveness. Highlights of our 2001 results include:

- Saving consumers an estimated \$3.1 billion¹ through law enforcement actions – a savings of over \$21 for each \$1 appropriated for FTC operations. In addition, the FTC's law enforcement activities and consumer education efforts deter many fraudulent or anticompetitive practices that likely result in substantial, though unmeasurable, consumer savings.
- Using the more than 430,000 consumer complaints we received in 2001 to target our law enforcement and education efforts to the most serious problems affecting consumers, and sharing these complaints with over 400 law enforcement partners.
- Providing access to the 131,000 identity theft complaints and inquiries to more than 235 law enforcement members to help them identify and target the most serious consumer problems in this area.
- Saving consumers more than \$2 billion dollars on fuel and utility bills through merger enforcement actions involving gasoline and other petroleum products, and electricity and natural gas transmission.
- Facilitating consumers' access to important medications - including taking actions resulting in the preservation of ongoing development of new drugs, blocking collusion among competitors, and removal impediments to the timely availability of lower-cost generic drugs.
- Identifying approximately 200 firms engaging in pretexting, a practice through which companies obtain and sell consumers' asset or bank account information to third parties. Firms were sent letters warning them to discontinue this privacy-related violation; we followed up by filing complaints in federal court charging some companies with continuing this practice despite the warning.
- Bringing the first cases enforcing the newly effective Children's Online Privacy Protection Rule that protects children under the age of 13; defendants paid fines totaling \$100,000.
- Securing a settlement to protect competition in the growing broadband market for Internet services.
- Expanding outreach to consumers by launching two new Web sites to collect and share consumer complaint information: *Public Sentinel*, to provide the public with consumer fraud and identity theft trend data and information; and *www.econsumer.gov*, to enhance consumer protection and confidence in global e-commerce. In addition, the FTC is in the process of launching another Web site, *Soldier Sentinel*, to permit military service members to enter consumer complaints and receive education materials online.

¹A preliminary consumer savings estimate of \$3.3 billion was included in the FY 2003 Congressional Budget Justification materials. However, after a final reconciliation of the data, the final consumer savings estimate is \$3.1 billion.

The FTC's 2001 performance provided significant benefits to American consumers, and the cost of the agency's operations is a sound investment for consumers and businesses. We effectively manage our resources and serve the pub-

lic. Our internal control review program, along with our Inspector General's audits and other independent reviews, plays a significant role in ensuring effective and responsive agency operations.

Figure 2

FY 2001 Performance Measures and Targets

GOAL 1

OBJECTIVE 1.1

Measure 1.1.1: Annual number of consumer complaints and inquiries entered into database.

Target: 350,000
Actual: 430,000 ✓

OBJECTIVE 1.2

Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud.

Target: \$400 million
Actual: \$487 million ✓

Measure 1.2.2: Total expenditures of deceptive or unfair advertising campaigns stopped.

Target: \$300 million
Actual: \$86 million

OBJECTIVE 1.3

Measure 1.3.1: Number of education publications distributed to or accessed electronically by consumers.

Target: 10 million
Actual: 15 million ✓

✓ met or exceeded target

GOAL 2

OBJECTIVE 2.1

Measure 2.1.1: Percent of HSR second requests resulting in enforcement action.

Target: 50%
Actual: 68% ✓

Measure 2.1.2: Number of nonmerger investigations opened per year.

Target: 45-70
Actual: 56 ✓

OBJECTIVE 2.2

Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.

Target: 80%
Actual: 94% ✓

Measure 2.2.2: Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.

Target: \$800 million
Actual: \$2.5 billion ✓

Measure 2.2.3: Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.

Target: \$200 million
Actual: \$157 million

OBJECTIVE 2.3

Measure 2.3.1: Quantify number of education and outreach efforts.

Determine baseline

Measure 2.3.2: Quantify number of hits on antitrust information on FTC Web site.

Determine baseline

2001 Assessment – Measuring Performance Through Results

A major feature of our strategic planning process is the continual reevaluation of our objectives, performance measures, and performance targets. This process gives us the opportunity to assess our impact on the marketplace and evaluate how well we are doing our job of protecting the American consumer. It also allows us to determine if our measures are accurate indicators of the results of our performance (see Figure 2).

As previously discussed, our Strategic Plan is based upon two goals: preventing fraud, deception, and unfair business practices in the marketplace (Consumer Protection), and preventing anticompetitive mergers and other anticompetitive business practices in the marketplace (Maintaining Competition). We have developed measures for both of our goals and their corresponding objectives.

Under Goal 1, the results of our efforts under the first objective are measured by the number of consumer complaints and inquiries added to the Consumer Information System database (Measure 1.1.1). The more data we have, the better able we can effectively spot wide-ranging trends, quickly identify emerging scams, and efficiently coordinate activities with other law enforcers. In 2001, we added more than 430,000 entries, exceeding our target of 350,000 by approximately 23%. This growth reflects the increasing interest of organizations in contributing complaint data to our database, which gives us a broader view of what consumers are experiencing.

The second consumer protection objective has two measures, one for our law enforcement efforts related to stopping

fraud and one for our other law enforcement or nonfraud efforts. The former is our key consumer protection measure (1.2.1). Our 2001 target was to save consumers over \$400 million by stopping fraud. We surpassed this target, with our actions saving consumers an estimated \$487 million. Our five-year goal for the period 2001-2005 is to save consumers \$2 billion, or an average of \$400 million per year.

Performance measure (1.2.2) addresses the law enforcement efforts to stop deceptive or unfair practices. In 2001, a new measure was used that looks at the value of the deceptive or unfair advertising campaigns we are able to stop. Our target, based on our year 2000 results, was to reduce consumer injury by stopping campaigns that had combined media expenditures totaling \$300 million. However, we stopped only \$86 million of expenditures of deceptive or unfair advertising campaigns in 2001, or 29% of our target, which led us to re-examine the measure and the target. We found that the base year 2000 included final orders halting several large national advertising campaigns. However, in 2001, nearly half of our advertising cases with final orders involved companies that used the Internet or other low-cost alternatives to conduct advertising campaigns. After studying these results and advertising trends in general, we have reset our target to \$100 million in 2002. Through our continuous self-evaluation process, we will closely monitor this area and explore whether there are other measures that will allow us to more effectively evaluate our impact in the nonfraud area, including our efforts to protect consumers' privacy.

Under the third consumer protection objective, we measure our impact by tracking the number of consumer and business education publications we distributed to the public (Measure 1.3.1). Tracking the distribution of publications in response to

consumer requests gives us an approximate idea of how many consumers believe our information will prove useful. In 2001, the FTC distributed approximately 15 million publications: 5.4 million print publications and 9.6 million through the FTC Web site. This is the second year in which electronic distribution surpassed print distribution. We exceeded our goal of 10 million publications by approximately 5 million, due primarily to an unexpected increase in the number of publications accessed online. Our reach nationwide was extended by aggressive outreach and promotion of FTC materials and our toll-free numbers.

Under Goal 2, we adopted a new measure under the first Maintaining Competition objective (Measure 2.1.1) that allows us to evaluate our effectiveness in screening HSR premerger notification filings to identify those that most likely present antitrust concerns. Success in this measure benefits consumers by targeting resources toward transactions most likely to have anticompetitive effects. Our preliminary target was that at least 50% of HSR requests for additional information would result in enforcement action. We exceeded that figure, with enforcement actions taken in 68% of the HSR investigations. We will continue to evaluate our target for this measure, and will make appropriate adjustments based on our ongoing experience.

The second measure under this objective (Measure 2.1.2) - the number of nonmerger investigations opened per year - helps us assess our efforts to broaden our identification of anticompetitive conduct in the market. Our goal has been to open 45 to 70 nonmerger investigations over the course of each year, a range reflecting the number of nonmerger investigations opened in years prior to 2000, when we diverted resources away from nonmerger work to respond to an unprecedented level of merger activity. We

met our target, opening 56 investigations, more than double the 25 investigations opened in 2000.

For the second objective, we use three measures to gauge our success in stopping anticompetitive mergers and practices through law enforcement. The first (Measure 2.2.1) addresses the percentage of anticompetitive mergers and practices in which we achieved relief through litigation, reached a successful settlement agreement, or persuaded parties not to proceed with an anticompetitive acquisition. We seek to obtain a positive result in at least 80% such matters in which we determine that a merger or a course of conduct is anticompetitive. We were able to exceed our goal in 2001, by achieving a positive result in approximately 94% of the matters in which we identified an antitrust problem. While we expect to prevail nearly all the time in our enforcement actions, we remain willing to undertake challenging cases that may result in losses.

Within the last year, we increased our annual target for dollar savings to consumers resulting from FTC merger actions (Measure 2.2.2) from \$500 million to \$800 million. In 2001, we saved consumers approximately \$2.5 billion, keeping us well on course to achieve our goal of \$4 billion in direct savings to consumers over the five-year period 2001-2005. In addition, we added a new performance measure in 2001 relating to consumer savings resulting from FTC nonmerger enforcement actions (Measure 2.2.3). Our goal for this measure is to achieve \$1 billion in direct savings to consumers over the five-year period 2001-2005 by stopping anticompetitive practices that would result in higher consumer prices if allowed to continue. Meeting the five-year goal requires an average of \$200 million per year in consumer savings. In 2001, we saved consumers \$157 million. Although the 2001 result is somewhat less than the yearly average of \$200 million needed to

achieve the five-year goal, we expect to reach the five-year goal by achieving greater savings in subsequent years.

Together, consumer savings resulting from merger and nonmerger enforcement represent our key maintaining competition measures. Actual results in any given year may vary based on the level of merger activity taking place, the nature of the transactions, and the industries in which we identify antitrust concerns. In 2001, our merger and nonmerger enforcement actions saved consumers a total of about \$2.6 billion, a significant portion of our combined five-year goal.

Under the third objective we replaced both performance measures for 2001. The new measures, relating to education and outreach activities by FTC personnel (Measure 2.3.1) and the frequency of the public's access to important antitrust-related content on the FTC's Web site (Measure 2.3.2), more directly reflect our success in preventing consumer injury through education of the public. Because we did not systematically collect this information before 2001, we have not yet set targets for these new measures but we have collected data to use as a baseline for evaluating future performance. In 2001, we completed a total of 141 public outreach efforts and received more than 2.6 million hits on antitrust information on the FTC's Web site. Through our outreach efforts, the FTC publicizes the antitrust law and our enforcement intentions, with the likely result of deterring future anti-competitive behavior.

Ongoing Challenges

The FTC is a small agency with a large mission. Demands on the agency have increased dramatically over the past decade as commerce has become increasingly electronic and the economy has gone high-tech and global. Although the FTC con-

tinues to be successful in protecting consumers, we face challenges in this complex, high-tech, global marketplace. Emerging issues such as enforcing the promises made to consumers about the privacy of their personal information and maintaining competition among companies operating in this expanding marketplace have risen to the forefront.

The FTC currently enforces a number of laws that address consumers' privacy. Privacy of personal information is important and companies that make specific promises to consumers about the privacy of their information need to live up to these promises. Doing so will enhance the confidence that consumers have in the marketplace. The FTC is concerned with the misuse of personal information and is committed to both law enforcement and education in this area. To meet this challenge, the FTC is increasing the resources dedicated to privacy protection. The areas of focus include: telemarketing, unsolicited e-mail (spam), ID Theft, and pretexting, as well as enforcement of the Children's Online Privacy Protection Act, the Gramm-Leach-Bliley Act, the Telemarketing Sales Rule, and Section 5 of the Federal Trade Commission Act.

A major privacy initiative is the FTC's proposal to establish a national Do-Not-Call list by amending its regulations under the Telemarketing and Consumer Fraud and Abuse Prevention Act. The purpose of a national list is to enhance privacy by protecting consumers from unwanted and often intrusive telemarketing calls. Currently, consumers who do not want telemarketers to call them must rely on a patchwork of do-not-call lists administered by states and the private sector. The FTC's national list would enable consumers, through one phone call, to remove their name from numerous telemarketing lists nationwide.

During the past several years, a staggering level of merger activity dominated our antitrust agenda, with the number, size, and scope of proposed mergers leaping to new highs year after year. Although the volume of mergers abated somewhat in 2001, the size, scope, and complexity of mergers continues to increase. For example, just three of the mergers we investigated in 2001 together were worth about a third of a trillion dollars. A single large transaction may involve dozens of overlaps in different combinations of products and geographic markets, each of which may require investigation.

In addition, as the economy evolves, we increasingly encounter mergers involving high-technology markets, complex scientific research and development, and intellectual property. This trend requires a commensurate expansion of our expertise in markets involving science and technology, along with thoughtful examination of the intersection of antitrust and intellectual property law. Thus, for example, the FTC and Department of Justice Antitrust Division have begun a series of hearings focusing on the implications of competition and patent law and policy.

Amendments to the Hart-Scott-Rodino Act (HSR Act), which require companies to report certain proposed mergers to the FTC

and Department of Justice (which jointly enforce the antitrust laws), took effect in 2001. The amendments raised the dollar thresholds determining which mergers are subject to the reporting requirement, but did not change the substantive standard of legality under the antitrust laws. As a result, fewer mergers are reported to us under HSR. Transactions that raise antitrust concerns are very likely to be among those reported. Nevertheless, we are increasing our efforts to monitor marketplace developments and take action on non-reportable mergers that could still harm consumers, and we will not hesitate to challenge an already-consummated merger where necessary.

Although the FTC faces challenges – especially addressing consumer privacy issues and maintaining competition in a growing global and electronic marketplace – we are able to address them more effectively through strategic planning, performance management, and results measurement. Using these processes, we will continue to assess and reassess the challenges and opportunities facing the FTC. Our aim is to continue as a citizen-centered and results-oriented agency positioned to be innovative and aggressive in protecting consumers and businesses from fraudulent, unfair, deceptive, and anticompetitive acts or practices.

THE RESULTS

GOAL 1 PREVENT FRAUD, DECEPTION, AND UNFAIR BUSINESS PRACTICES IN THE MARKETPLACE

Congress has charged the FTC with the broadest legislative mandate of any federal consumer protection agency. While most federal consumer protection agencies have jurisdiction over a specific market sector, we possess broad law enforcement authority that encompasses significant segments of the economy, including business and consumer transactions on the Internet. Our goal is to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace. We implement three related objectives to achieve this broad-reaching goal.

1. Identify fraud, deception, and unfair practices that cause the greatest consumer injury.
2. Stop fraud, deception, and unfair practices through law enforcement.
3. Prevent consumer injury through education.

First, we identify practices that cause consumer injury by analyzing the consumer complaint data collected in our Consumer Information System database, holding public discussions, and monitoring the marketplace, including the Internet. Next, we use this information to target law enforcement efforts. Our law enforcement program aims to stop and deter fraud and deception, protect consumers' privacy, and increase compliance with our consumer protection statutes to ensure that consumers have accurate information for their purchasing decisions. Finally, we target our education efforts to give

consumers the information they need to protect themselves from injury.

One of the greatest challenges we face as the nation's leading consumer protection agency is safeguarding consumers in the new electronic marketplace so they will have the same confidence that they enjoy in the traditional marketplace. Online commerce has the potential to deliver goods and services, often more conveniently, faster, and at lower prices than traditional bricks and mortar operators. Online commerce promises enormous benefits to consumers and the economy. Moreover, the Internet is stimulating the development of innovative products and services that were barely conceivable just a few years ago and is enabling consumers to tap into rich sources of information that they can use to make better informed purchasing decisions.

There is real risk, however, that these benefits may not be realized if consumers associate the Internet with fraud operators. The boom in e-commerce has opened up fertile ground for fraud. In the FTC's experience, fraudulent operators are always among the first to appreciate the potential of a new technology to exploit and deceive consumers. Of particular concern is that Internet health fraud continues to plague consumers looking for solutions to serious health-related illnesses. In sum, we are using all the tools at our disposal, such as our consumer complaint database to help us target areas of consumer problems, and our law enforcement and

education efforts to respond quickly and vigorously to these problems.

Privacy of personal information is important and companies that make specific promises to consumers about privacy need also to live up to those promises. This adds to the confidence consumers have in the marketplace. The FTC is concerned with the misuse of personal information and is fully committed to both enforcement and education in this area. For example, in the area of children's privacy, the FTC is charged with enforcing the Children's Online Privacy Protection Act and its implementing Rule which was effective in April 2000. In 2001, we brought our first cases challenging alleged

rule violations. The FTC also continued an extensive education campaign on children's privacy directed to businesses, parents and educators.

The FTC's comprehensive review of the Telemarketing Sales Rule revealed widespread consumer frustration over unwanted telephone solicitations, which some see as a violation of privacy in their home. To address this concern, the FTC has proposed amendments to the Rule to establish a National Do-Not-Call Registry. If the proposal is adopted, consumers would be able to make one call to register their preference not to receive numerous telemarketing calls.

OBJECTIVE 1.1 IDENTIFY PRACTICES THAT CAUSE CONSUMER INJURY

To prevent fraud, deception, and unfair business practices in the marketplace, we first must identify such practices, especially those that cause the greatest consumer injury, where we can make the greatest impact.

Strategies

To identify consumer protection problems, the FTC collects and analyzes data from many sources. Our Consumer Response Center now receives roughly 10,000 consumer complaints and inquiries a week via a toll-free number (1-877-FTC-HELP), mail, and the Internet. Partners such as the National Fraud Information Center of the National Consumers League, the Internet Fraud Complaint Center, Better Business Bureaus, and the Canadian fraud database, PhoneBusters, also provide us with the consumer complaint data they collect. All of this information is entered into the Consumer Information System database and analyzed by FTC staff to identify trends and target fraudulent, deceptive, and unfair business practices. We share the fraud complaints that we collect with more than 400 other law enforcement agencies across the United States, Canada, and Australia via an encrypted Web site called Consumer Sentinel. Although the FTC is not empowered to act on behalf of individual consumers, consumer complaint data obtained through Consumer Sentinel enables the FTC and its other law enforcement partners to coordinate their enforcement efforts, and to spot trends and target the most serious consumer problems. Summary and trend data are shared with the public on our Public

Sentinel Web site (consumer.gov/sentinel) created in 2001. The constant input and analysis of fresh complaint data have allowed the FTC to move quickly – in some instances in a matter of weeks – to stop illegal practices before they cause more harm to consumers.

In 2001, we created a public Web site for Consumer Sentinel, consumer.gov/sentinel, that provides consumer fraud and identity theft trend data and information on how Consumer Sentinel serves the public. We are also working with the Department of Defense to launch a new site that will allow military service members to enter complaints online and receive consumer education materials. This complaint data will be added to our Consumer Sentinel database and will be tracked by the Defense Department, which will then be able to address the most prevalent forms of consumer harm affecting its personnel.

Consumers can call our toll-free number, 1-877-ID-THEFT, to get information on and report identity theft and receive guidance on the steps they can take to resolve credit and other problems that may have resulted from identity theft. By the end of 2001, we received approximately 4,000 calls a week, nearly double the amount we received in 2000. The FTC will use the data it collects from consumers to spot patterns that can help criminal law enforcement agencies prosecute perpetrators and help businesses avoid the financial consequences of identity theft. To further help consumers deal with the crime, the FTC released a universal *ID Theft Affidavit* that victims of identity theft can submit to many

Performance Measure 1.1.1

Annual number of consumer complaints and inquiries entered into database.

FY 2001 Target: **350,000**
FY 2001 Actual: **430,000**
Met or Exceeded: ✓

companies, simplifying the process of alerting companies when a fraudulent account has been opened in their name. Although most ID theft cases are criminal, the FTC staff systematically examines complaint data for civil cases within its jurisdiction and will bring those cases where appropriate. Criminal cases are identified by our joint FTC/U.S. Secret Service Case Referral Program and strong leads are referred to regional task forces, many led by the Secret Service Financial Crimes Division.

Besides receiving and analyzing consumer complaints, we monitor the growing online marketplace through "Surf Days," when we and partner organizations systematically surf the Internet to identify Web sites engaged in questionable practices. To date, the FTC has led or coordinated 34 Surf Days. As a result of these Surf Days, more than 4,800 warning letters have been sent to Web operators with questionable business practices. If a Web operator ignores the warning, we may file suit. The FTC also hosts public workshops to explore cutting-edge issues. In 2001, we held 17 such conferences and workshops on a variety of consumer and business issues. For example, we hosted a highly successful Identity Theft victims workshop with more than 170 participants - victims, consumer advocates, representatives of the financial services industry and credit bureaus, and law enforcement agencies - to discuss key problems faced by identity theft victims and to develop joint initiatives addressing those problems.

Performance Measure and Results

To assess our effectiveness in identifying fraudulent and deceptive practices, we measured the number of consumer complaints and inquiries added to the Consumer Information System database. The more data we have, the better able we

are to effectively spot wide-ranging trends, quickly identify emerging scams, and efficiently coordinate activities with other law enforcers. In 2001, we added more than 430,000 entries, exceeding our target of 350,000 by approximately 23%. This reflects the increasing interest of organizations in contributing complaint data to our database, which gives us a broader view of what consumers are experiencing. The database allows us and our law enforcement partners to identify and develop cases against fraudulent operators and leverages our impact on practices that cause the greatest consumer injury. By analyzing consumer complaints, we can identify and refine our enforcement and education efforts to target the most serious consumer problems. These include: identity theft, online auction fraud, Internet service provider scams, unauthorized billing scams, pyramid and other investment schemes, travel and vacation fraud, pay-per-call solicitation frauds, high-tech Internet-based fraud, and health care fraud.

Performance Assessment and Future Trends

Not only does our database help us identify the most serious consumer protection problems, it quickly informs us of emerging scams so that we can move rapidly to stop consumer injury. In addition, by collecting data from consumers and other sources and sharing it with our law enforcement partners, we are able to coordinate and, thus, augment the effectiveness of law enforcement agencies across the country and in Canada and Australia. To make the database even more valuable, we continue to pursue enhancements to increase our collection of information from consumer agencies in other countries. For example, we launched a Web site named econsumer.gov with our partners in the International Marketing Supervision Network, an international

group that identifies and shares information about worldwide consumer protection issues. Through econsumer.gov, consumers in the 15 participating countries can file complaints using an online form and obtain consumer education materials. Law enforcement members can access a nonpublic site to obtain specific information about the complaints that consumers have filed.

We continue to increase our capacity to analyze data quickly through database enhancements that improve our ability to respond to frauds and identity theft earlier, and thus prevent greater consumer injury. For example, Consumer Sentinel, our law enforcement encrypted Web site, contains a new “alert” function that flags suspects under investigation for other Sentinel members. Other new features provide greater flexibility in sorting and viewing search results, and contact information for domestic financial task forces and international consumer fraud agencies. We also have enhanced our database to track and analyze privacy-related complaints more effectively. These new tools will help law enforcers more effectively and successfully investigate fraud and pursue illegal activity.

In FTC’s experience, assessing our performance using the number of entries added to our consumer complaint database is a reasonable indicator of our ability to identify consumer problems. For example, we use consumer complaint data in all of our fraud cases to identify, initiate, and develop investigations. In 2001, we changed this measure from the cumulative number of consumer complaints and inquiries to an annual count of entries added to our database. This change was based on our observation that constantly adding fresh information to the database is critical to its effectiveness and its value to law enforcement. As described previously, the more information we have, the better we and our Sentinel partners can do our jobs. Collecting data from diverse sources in one central location also increases the value of the data by giving us an even broader view of what consumers are experiencing.

In 2002, we will continue to explore emerging privacy issues and work with industry, consumer groups, and other stakeholders. We also will enhance our consumer complaint database to track and analyze privacy-related complaints more effectively. In 2002, we will explore creating a new performance measure that will help us evaluate our results in the privacy arena.

OBJECTIVE 1.2 STOP PRACTICES THAT CAUSE CONSUMER INJURY

Once we identify fraud, deception, and unfair business practices in the marketplace, we focus our law enforcement efforts on areas where we can have the greatest impact for consumers.

Strategies

The FTC plays a vital role in protecting consumers' privacy, emphasizing both enforcement and education. We focus on telemarketing, unsolicited e-mail (SPAM), identity theft, and pretexting, as well as enforcement of the Children's Online Privacy Protection Act, the Gramm-Leach-Bliley Act, and the Telemarketing Sales Rule as well as Section 5 of the Federal Trade Commission Act. Obtaining consumers' private financial information under false pretenses - a practice known as "pretexting" - violates the Gramm-Leach-Bliley Act. In 2001, the Commission filed its first actions in U.S. District Courts to halt the operations of information brokers who use false pretenses, fraudulent statements, or impersonation to illegally obtain consumers' confidential information - such as bank balances - and sell it. In each of the cases, the court temporarily enjoined the defendant from continuing the illegal practices and imposed an asset freeze pending final resolution of the cases.

In 2002, the FTC will receive and review comments on proposed amendments to the Telemarketing Sales Rule. Two of these proposals relate directly to privacy. First, the FTC has proposed establishing a National Do-Not-Call

Registry. If the proposal is adopted, consumers would be able to make one call to register their preference not to receive telemarketing calls. Telemarketers would be prohibited from calling consumers who had registered their telephone numbers with the FTC without specific approval from the consumer. A second proposed amendment to the Telemarketing Sales Rule would address the use of "pre-acquired account information." Account information "pre-acquired" from sources other than the consumer can be misused, causing consumers to incur unauthorized charges on their accounts.

Telemarketing fraud continues to be a law enforcement priority, as does protecting consumers from more traditional scams that have moved to the Internet, including health-related fraud. In 2002, we also intend to increase our enforcement activities against fraudulent and deceptive spam (unsolicited e-mail) promoting

chain letters, pyramid schemes, or other kinds of "get-rich-quick" schemes that can cause substantial economic injury to consumers.

One of the most effective tools in the battle against fraud has been the law enforcement sweep - simultaneous law enforcement actions by federal, state, and/or local partners against numerous defendants nationwide that focus on a particular, widespread type of fraud. Each sweep is supported by consumer education aimed at preventing future losses to the public. Since our first sweep in 1995, the FTC and its partners have brought 1,831 law en-

Performance Measure 1.2.1

Dollar savings for consumers from FTC actions which stop fraud.

FY 2001 Target: **\$400 million**
 FY 2001 Actual: **\$487 million**
 Met or Exceeded: **✓**

Performance Measure 1.2.2

Total expenditures of deceptive or unfair advertising campaigns stopped.

FY 2001 Target: **\$300 million**
 FY 2001 Actual: **\$86 million**

forcement actions in 60 sweeps against fraudulent operators. This total includes 410 cases brought by the FTC alone. In 2001, the FTC led 5 sweeps resulting in a total of 229 actions, including 39 FTC cases – for every case the FTC brought our partners brought almost 5 more. We will continue to use sweeps to leverage our resources not only by reducing fraud through additional law enforcement actions, but by further raising consumer awareness by generating more local, regional, and international interest.

In the nonfraud area, we work to ensure compliance with our consumer protection statutes. Given our broad jurisdiction and limited resources, we focus on the most serious problems, using varied enforcement tools and encouraging self-regulation in appropriate situations. Information obtained from our Consumer Information System database and from monitoring national advertising enables us to focus our law enforcement actions on areas that pose the greatest risks to consumer health, safety, and economic well-being. In lieu of regulation or law enforcement, we work with industry and interested groups to support private initiatives where appropriate.

Performance Measures and Results

Our goal in 2001 was to save consumers more than \$400 million by stopping fraud. We surpassed this target, with our actions saving consumers an estimated \$487 million. Consumer savings are measured on the basis of the estimated annual fraudulent sales of defendants in the 12 months prior to filing a complaint. The total dollar value of fraudulent sales is an approximate measure because in the majority of all fraud cases we pursue, the consumer pays money and receives nothing

of value in return. The savings calculation actually may underestimate the FTC's impact because it assumes that the fraud would have continued for only one more year; however, it provides a uniform method for calculating savings and minimizes speculation about the likely duration of the fraud. The law enforcement actions included in this measure were taken against fraudulent operators ranging from individuals or small companies to scam artists operating large schemes on the Internet. Our experience in most cases is that once we file a complaint in federal district court and obtain a court order, the defendants stop their fraudulent practices; if they fail to comply, they are subject to contempt actions. Thus, in stopping these frauds, we stop further consumer losses to these defendants. By publicizing these law enforcement actions and distributing consumer education materials, we seek to increase consumer confidence in the marketplace.

In the non-fraud area, our goal was to reduce consumer injury by stopping deceptive or unfair advertising campaigns with combined media expenditures totaling \$300 million. This measure is based on the assumption that advertisers seek to increase sales by at least as much as they spend on advertising, and that the more a company spends on an advertising campaign, the more widespread the deceptive or unfair message. We stopped \$86 million, or 29% of our goal. This is a new measure that was first implemented in 2001 and our target was set using data from the previous year. The base year 2000 included final orders halting several large national advertising campaigns. In 2001, nearly half of our nonfraud cases with final orders involved companies that used the Internet or other low-cost alternatives to conduct advertising campaigns. A proposed change in this measurement is discussed below.

Performance Assessment and Future Trends

Drawing on Consumer Sentinel data, Internet fraud is significant and growing. We are targeting the most pervasive online fraud and moving quickly to stop large, fast-growing Internet scams. In 2001, the Commission brought 50 cases involving fraudulent or deceptive marketing practices related to the Internet, bringing the total number of Internet cases filed by the FTC since 1994 to 200. We expect fraud to continue to grow as the use of the Internet rises and, in response, we will increase our efforts to slow online fraud and prevent consumer injury.

In our five-year strategic plan, our goal is to save consumers on average \$400 million a year, or \$2 billion over five years. We based this on savings achieved in 1999 and 2000 and the types of fraud we are observing in the marketplace. In particular, online fraud has the potential to reach consumers worldwide and cause great economic injury. As our expertise in high and new technologies develops, we will be better able to detect and deter online fraud before these schemes take hold. By stopping fraudulent operators early, measured savings in each case may fall; however, the quick response results in less injury to consumers. This effort, combined with strategies such as law enforcement sweeps, demonstrates our effectiveness in preventing consumer injury.

In addition to fighting fraud, we also focus on compliance with traditional advertising law and FTC Rules and Guides. We work cooperatively with our law enforcement partners, industry, and con-

sumer groups to extend the reach of our efforts to increase compliance. The scope of our current and upcoming priorities spans our broad jurisdiction, and this broad jurisdiction makes it difficult to measure the overall impact of our non-fraud activities. We are exploring using new performance measures focusing on our impact in more narrowly defined areas. Nonetheless, we will continue to use business and consumer education, as well as selective enforcement, to ensure broad compliance with the consumer credit statutes, the Mail and Telephone Order Rule, and other rules and regulations we enforce.

As stated, we did not meet our target of stopping \$300 million in deceptive or unfair advertising campaigns. We stopped \$86 million, or 29% of our goal. After studying those results and current industry practices, we have reset our target to \$100 million for 2002 and 2003 for the following reasons. First, since this measure was established, the FTC has increased its emphasis on taking action against deceptive Internet advertising claims. Internet advertising is broadly disseminated, but is considerably less expensive than traditional advertising. Second, a number of advertisers are now using many alternatives to traditional advertising and it is difficult, if not impossible, for us to measure the impact of these efforts. Finally, better monitoring has increased the FTC's effectiveness at stopping some large advertising campaigns early on. We will continue to closely monitor this area, and again, will explore whether there are other measures that will allow us to more effectively evaluate our impact in the nonfraud area, including our efforts to protect consumers' privacy.

OBJECTIVE 1.3 PREVENT CONSUMER INJURY THROUGH EDUCATION

Consumer and business education is the first line of defense against fraud and deception and a top priority of the FTC.

Strategies

The FTC is committed to using education and outreach as cost-effective methods of preventing consumer injury, increasing business compliance, and adding an extra dimension to our law enforcement program. Virtually every consumer protection effort contains an educational component, from compliance surfs and law enforcement sweeps to the announcement of new rules and regulations. Through reports, publications, Web sites, media events, speeches, and collaborative activities with other organizations, the FTC reaches tens of millions of consumers and businesses every year. In 2001, we conducted approximately 40 educational campaigns covering traditional subjects such as credit card protection, care labeling, direct mail, pyramid schemes, and scholarship scams; high-tech subjects such as online shopping, day trading, domain name registration, free PC offers, Internet service providers, and international modem dialing; and timely subjects such as cross-border fraud, virtual health treatments, predatory lending, energy efficiency, disaster plans, and charitable giving following the September 11th terrorist attacks.

Our Consumer Information System database helps us tailor our education efforts to areas where fraud, deception, unfair practices, and information gaps are causing the greatest injury. Consumers

are given the tools they need to spot potentially fraudulent and other illegal promotions, and businesses are advised as to how they can comply with the law. As with our law enforcement, more of our education efforts now involve the Internet. We not only address consumer issues involving the Internet, such as shopping online, but we also use the Internet as a tool to reach consumers, for example, through our Web sites, online banner public service announcements, and online distribution of “news” consumers can use.

We coordinate with hundreds of private and public partners to provide information about specific promotions, products, and services. The FTC also continues to manage the consumer.gov Web site and to recruit new agency members to participate in the site, which offers one-stop access to federal consumer information. In 2001, the FTC took the lead for the third consecutive year in organizing National Consumer Protection Week. This year’s theme campaign was abusive lending practices. Our partner organizers were the National Association of Consumer Agency Administrators, AARP, the National Consumers League, the Council of Better Business Bureaus, the Consumer Federation of America, the U.S. Postal Service, the U.S. Postal Inspection Service, the National Association of Attorneys General, and the Department of Justice. The FTC also continued to increase its federal agency partnership base for consumer.gov, with a total of 179 agencies now participating. In 2001, the Web site received more than 986,000 “unique visits” and nearly 2,050,000 “page views;” it also became the portal for

Performance Measure 1.3.1

Number of education publications distributed to or accessed electronically by consumers.

FY 2001 Target: **10 million**

FY 2001 Actual: **15 million**

Met or Exceeded: ✓

consumer information provided by the federal government through FirstGov, a public-private partnership.

Performance Measure and Results

We gauge our impact under this objective by tracking the number of consumer and business education publications we distributed to the public. Ideally, we would like to measure the extent to which our educational materials improve consumer understanding and help them get better value for their money. This would be extremely difficult to measure, but tracking the distributions of publications in response to consumer requests gives us a rough idea of how many consumers believe our information will prove useful. In 2001, the FTC distributed approximately 15 million publications: 5.4 million print publications and 9.6 million through the consumer protection Web page on the FTC Web site. This is the second year in which electronic distribution surpassed print distribution. We exceeded our goal of 10 million publications by approximately 5 million, due primarily to an increase of 4 million or 71% in the number of publications accessed online. Our reach nationwide was extended by more aggressive outreach and promotion of FTC materials and our toll-free numbers. We used information from our database to target our education campaigns to serious consumer problems.

Performance Assessment and Future Trends

The FTC seeks to alert as many consumers as possible to the telltale signs of fraud, deception, and unfair business practices, and other critical consumer protection issues. Use of the Internet to disseminate information about fraud and technology-related matters plays an inte-

gral role in the FTC's education, deterrence, and enforcement efforts, permitting the agency to reach vast numbers of consumers and businesses quickly, simply, and at low cost. As demonstrated by our online distribution total, the FTC has successfully promoted and led the use of the Internet to educate and empower consumers, a trend that we expect to accelerate in the future.

Our measure of the number of publications distributed by the FTC indicates our impact in educating consumers, although it does not fully capture the millions of FTC publications that are distributed to consumers by others. While the number of print publications we distribute remained relatively static, the number of publications accessed through the Internet has soared as more consumers and businesses go online. In 1996, we distributed only 140,000 publications online. In 2001, we distributed 9.6 million through our the Internet Web site alone. These statistics illustrate the Internet's coming of age as a mainstream medium and highlight its usefulness in any large-scale educational effort. Consequently, we will increase our use of the FTC's Web site, ftc.gov, and the multi-agency Web site, consumer.gov, to reach consumers, businesses, law enforcement officials, and the media more efficiently and effectively.

In the next year, we will continue to focus consumer and business education efforts on areas identified by our consumer complaint databases where information gaps cause the greatest injury, such as globalization, Internet scams, fraudulent schemes, and identity theft. In the privacy area, we will use an approach that has proven successful in the past by establishing an outreach program to increase consumer awareness of and business compliance with the privacy information required by the Gramm-Leach-Bliley Act. We will continue to creatively use technology, including new

interactive media, to extend the reach of consumer and business education.

Finally, Census data shows that the United States has a large and growing Spanish-speaking population. Because these consumers may not speak English or are non-native speakers of the language, they may be more susceptible to the nuances and complexities of disclosures, advertisements, or other aspects of consumer transactions. In order to meet the needs of this vulnerable group, the FTC will assess what areas of consumer educa-

tion would be most beneficial to them, and identify topics where Spanish language materials are not already provided by other government agencies.

Increasing the visibility of the FTC as the nation's consumer protection champion not only helps consumers better protect themselves, but also encourages consumers to provide the FTC with more and better complaint data. That, in turn, will make our law enforcement and education efforts even more effective.

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

Competition among sellers in an open marketplace results in lower prices for consumers, leads to high quality products and services, maximizes consumer choice, and spurs the discovery and development of beneficial new products and services. Anticompetitive mergers, and other practices that diminish competition, deny consumers these benefits, and are illegal under the antitrust laws. Thus, the FTC's goal is to promote vigorous competition by applying the antitrust laws to (1) prevent anticompetitive mergers and (2) stop business practices that diminish competition, such as agreements among competitors about prices or other aspects of competition. We refer to these two types of law enforcement as merger and nonmerger enforcement, respectively. We apply three related objectives to achieve this broad-reaching goal.

1. Identify anticompetitive mergers and practices that cause the greatest consumer injury.
2. Stop anticompetitive mergers and practices through law enforcement.
3. Prevent consumer injury through education.

First, we identify potentially or actually anticompetitive mergers and business practices by conducting thorough factual investigation and applying economic analysis to distinguish between actions that threaten the operation of free markets and

those that are benign or procompetitive. This step is critical because a merger or business practice may be either neutral, beneficial (by enabling sellers to be more efficient and pass those savings along to consumers), or harmful (by enabling sellers to reduce the output of their product and raise the price to consumers). Thus, indiscriminate or ill-considered intervention into the marketplace may do more harm than good.

Second, once we identify a potentially or actually anticompetitive merger or business practice, we take enforcement action under the antitrust laws to stop it, either through an administrative challenge or in federal court. In many instances, we are able to reach a consent agreement that remedies our competitive concerns while avoiding litigation.

Third, we seek to prevent anticompetitive activity by educating businesses and consumers about the antitrust laws and the FTC's efforts to ensure competitive markets. Increased knowledge and understanding on the part of businesses facilitate their efforts to comply with the law. Increased knowledge and understanding on the part of consumers enable them to identify anticompetitive activity more readily and to bring such activity to our attention for possible enforcement action.

OBJECTIVE 2.1 IDENTIFY ANTICOMPETITIVE MERGERS AND PRACTICES THAT CAUSE CONSUMER INJURY

To prevent anticompetitive mergers and anticompetitive business conduct, we must first determine which mergers and business practices are anticompetitive.

Strategies

To achieve this objective, the FTC identifies the mergers and business practices that should be examined as potentially anticompetitive, and conducts an inquiry to determine whether to pursue enforcement action. A collateral, but important, consideration is that we conduct our inquiry in a way that minimizes the cost or inconvenience to businesses.

The premerger notification requirements of the *Hart-Scott-Rodino (HSR) Act* are our primary means for identifying potentially anticompetitive mergers, acquisitions, and joint ventures (which we refer to collectively as mergers). The HSR Act requires companies to report certain proposed mergers to the FTC and Department of Justice (which jointly enforce the antitrust laws), and wait for a specified period (usually 30 days) to allow antitrust review. We examine each transaction reported under this requirement. We use various other means to identify potentially anticompetitive mergers that are not subject to the HSR reporting requirements.

After a decade of rapid growth, overall merger activity slowed somewhat during 2001, but the FTC's merger review workload remained very high. Amendments to

the HSR Act, effective in 2001, raised the thresholds that determine whether a transaction is subject to the notification requirement. This change, along with a slower pace of economic activity, significantly reduced the number of HSR filings, from an all-time high of 4,926 in 2000 to 2,376 in 2001.

The change in HSR filing thresholds did not change the standard of legality under the antitrust laws, however. While the vast majority of potentially problematic mergers continue to be subject to the revised HSR filing requirements, smaller merger transactions may still be anticompetitive. After the increase in reporting thresholds, we began to devote more effort to identifying non-reportable mergers that may harm (or have harmed) competition. We do this by monitoring the trade press and Internet resources to stay informed of industry developments, following up on case leads from Congressional offices, other

Executive branch agencies, and state and local governments, and encouraging consumers, businesses, and the bar to notify the FTC of possibly anticompetitive mergers. Despite the change in reporting thresholds, the number of proposed mergers requiring investigation did not fall appreciably. We opened 195 merger investigations in 2001, a decrease of less than eight percent from 2000.

The abatement in the pace of merger activity in 2001 was more than offset by the continuing increase in the size, scope,

Performance Measure 2.1.1	
Percent of HSR second requests resulting in enforcement action.	
FY 2001 Target:	50%
FY 2001 Actual:	68%
Met or Exceeded:	✓
Performance Measure 2.1.2	
Number of nonmerger investigations opened per year.	
FY 2001 Target:	45 - 70
FY 2001 Actual:	56
Met or Exceeded:	✓

and complexity of merger transactions. Large, multifaceted transactions - the ones that remain subject to HSR - are more likely to raise antitrust issues, and those issues may involve a number of separate product and geographic markets, each requiring separate analysis.

We work to complete the review of each filing as quickly and as efficiently as possible, both to conserve our available resources to devote to other work, and to minimize the delay imposed on businesses by the HSR requirements. In most cases, we can make a reasonable judgment about whether a merger has the potential to be anticompetitive or not within a few days of a filing, based on materials filed with the HSR notification. The staff further examines transactions that raise more difficult questions, and may present the matter to the FTC's Merger Screening Committee, comprising senior officials of the Bureaus of Competition and Economics. If the Committee determines that more information is needed in a matter, it authorizes a more extensive investigation, generally including the issuance of a formal request under the HSR Act for additional information from the parties (a "second request").

The issuance of a second request extends the parties' waiting period, usually until 30 days after they comply with the request for information. Following an internal review of the agency's second request process, called for by the amendments to the HSR Act, the Commission adopted measures to reduce burden and delays in second request matters. The new measures include a process for seeking modifications or clarifications of second requests, and expedited senior-level internal review of disagreements between merging parties and agency staff; streamlined internal procedures to eliminate unnecessary burdens and undue delays; and implementation of a systematic management status-check on the progress

of negotiations on second request modifications. These measures were reported by the FTC to Congress on June 19, 2001.

Because of the typical complexity of the second request issues, and the fact that the statute contemplates only one such request per filing, an investigation extended by the issuance of a second request almost always requires significantly more investment of resources, by both the agency and the parties. Thus, we seek to identify as many of the competitively harmless transactions as possible within the initial waiting period. In 2001, the FTC and the Department of Justice permitted more than 95% of the reported transactions to proceed by the end of the initial waiting period.

Performance Measures and Results

We used two performance measures to gauge how well we achieved this objective in 2001, one of which - the percentage of matters involving a second request that resulted in enforcement action - was new this year. Previously, we measured our success in identifying anticompetitive mergers in terms of the average number of days we devoted to reviewing actions reported to us under the HSR premerger notification program. This measure reflected the *efficiency* with which we conduct these reviews, but not our *effectiveness*. While efficiency is important - quick completion of our reviews of reported transactions helps to conserve FTC resources, reduces associated burden on businesses, and allows beneficial mergers to proceed sooner - we sought a measure that would relate more directly to the core objective.

We strive to determine which of the many merger transactions we encounter are likely to cause consumer injury - and

therefore warrant full investigation. When we issue second requests and investigate thoroughly, we can determine the effect of a transaction on competition with greater confidence. But given the level of FTC resources necessary for such an investigation, and the cost and delay imposed on businesses, we must select the transactions to review with great care. If we do this successfully, the resulting outcome will be enforcement action (consent agreement, preliminary injunction, or the parties' abandonment of the transaction in light of antitrust concerns) in a significant percentage of the merger investigations in which we issue a second request. At the same time, we recognize that too narrow a focus – pursuing only those transactions in which an antitrust problem is relatively obvious – could allow other transactions that may be similarly harmful, but in more subtle ways, to proceed unchallenged.

Thus, our aim is to achieve balance. To make the best use of our resources, we seek to limit the issuance of second requests only to those few transactions that we believe are likely candidates for enforcement action. To gauge our success, we measured the percentage of matters involving a second request that ultimately resulted in enforcement action. A percentage of at least 50% indicates that we succeeded in identifying problematic transactions without casting our net too widely. At the same time, a very high percentage of second requests resulting in enforcement action might suggest that we need to review our policies and practices to ensure that we are not applying too restrictive a standard. In 2001, we believe we achieved the desired balance. We issued second requests in 34 merger transactions, and 23 of those 34 matters, or 68%, resulted in enforcement action.

In addition to mergers, the FTC focuses on anticompetitive practices that cause consumer injury. We measure our success in identifying possibly illegal conduct by

counting the number of nonmerger investigations opened. While, the mere opening of a formal investigation does not signal the presence of anticompetitive conduct, we do require preliminary evidence and a viable legal/economic theory of consumer harm as a prerequisite to opening an investigation. We screen hundreds of allegations of illegal conduct each year, but few present sufficient grounds for formal investigation. Therefore, the number of investigations we open reflects our ability to identify conduct that may be anticompetitive, along with the level of resources we are able to devote to this area.

The year 2001 was successful in terms of identifying anticompetitive conduct in the market. Our goal has been to open 45 to 70 nonmerger investigations over the course of each year, a range reflecting the number of new nonmerger investigations opened in recent years. We met this goal, opening 56 nonmerger investigations (more than double the 25 investigations opened in 2000).

Performance Assessment and Future Trends

Our initial experience with our new performance measures revealed some methodological issues. For example, second request investigations often extend beyond fiscal year boundaries - investigations of about half of the 27 second requests issued during 2001 were still pending at the end of the year. In addition, counting only those investigations in which a second request was issued and the matter was concluded within the same year could skew the results, because matters ultimately resulting in enforcement action frequently require a more lengthy investigation. We believe that basing the measure on the universe of investigations completed during a fiscal

year, regardless of when the second request was issued, is most logical.

In 2001, the FTC took enforcement action in 68% of the second request merger investigations concluded during the year. We initially set a target of at least 50%, which we exceeded by a significant margin. Since our goal, however, is to balance the need to identify all potentially anticompetitive mergers, while also minimizing the burdens that the second request imposes on businesses, a percentage approaching 100% would be cause for concern because that would suggest the possibility of our having failed to pursue illegal mergers.

Upon review, we have realized that merger matters concluded in 2001 included many that were very difficult and complex. Thus, we do not believe that our having taken enforcement action in 68% of the matters involving a second request is the result of having selected only simple cases to pursue. It is more likely that our initial target was too cautious. We make significant efforts to "clear" mergers, where possible, during the preliminary waiting period, to avoid encumbering businesses with costs and delays associated with a second request in competitively benign transactions. We will continue to assess our performance target under this measure during 2002.

Following 2000, a year with an unprecedented level of merger activity, 2001 marked the restoration of our historic balance of resource allocations between merger and nonmerger activity. The 56 new nonmerger investigations opened in 2001 are particularly significant when compared to the 25 new nonmerger investigations opened in 2000. The restoration of resources that had been diverted to merger work allowed us to take

a more proactive approach to identify possible source of anticompetitive conduct in 2001. As in the past, we focused our efforts on sectors of the economy that most affect consumers. Thus, we focused on likely anticompetitive patent extension strategies in the pharmaceutical industry, a practice that can deny consumers significant cost savings from generic drugs. We also began to look more systematically at the possibility of restraints on competition among groups of professionals resulting from practices of professional associations. Possible anticompetitive abuse of the standard setting process in the computer technology and other sectors was an additional priority area. Finally, the agency established two task forces to examine the scope of exemptions to the antitrust laws to identify possible categories of harmful conduct that may purportedly be, but are not in fact, exempt from the antitrust laws.

More generally, we improve our ability to identify anticompetitive mergers and practices that harm consumers by expanding our knowledge and understanding of new and evolving antitrust policy issues. As the economy evolves - with new products and services, as well as new methods of conducting commercial activity - so must antitrust. In 2001, for example, the FTC conducted a second public workshop to explore competition policy issues related to business-to-business (B2B) and business-to-consumer (B2C) electronic commerce, continuing the dialog begun at a prior workshop. The agency also held a conference in August 2001, focusing on factor that affect the price of refined petroleum products. We also held a roundtable with prominent Industrial Organization economists to identify empirical economic research that could be done to help us better protect consumers and competition.

OBJECTIVE 2.2

STOP ANTICOMPETITIVE MERGERS AND PRACTICES THROUGH LAW ENFORCEMENT

Law enforcement represents the most direct method by which the Commission pursues its goal of preventing anticompetitive mergers and anticompetitive business practices.

Strategies

To stop potentially anti-competitive mergers and practices through law enforcement, we seek legal remedies under the antitrust laws, through federal court action, administrative proceedings, or negotiated settlements. For mergers, our preferred strategy - that is, the most effective and cost-efficient strategy - is to prevent such mergers before they occur. We implement this strategy primarily through our authority to seek a federal court injunction preventing the transaction. In many cases, we are able to resolve a competitive concern by negotiating a consent agreement before having to seek an injunction. In some instances, such as when a merger has already been consummated, we can rely on the FTC's internal administrative remedial powers to restore competition lost as a result of the merger. In many cases, the competitive problem relates to only a portion of the transaction, so a divestiture of assets sufficient to preserve or restore competition, which will allow other, competitively neutral or beneficial aspects of the merger to go forward, is frequently a successful remedy.

In nonmerger matters, we seek to stop ongoing activity that harms competition. To do so, we may ask the Commission to initiate administrative proceedings before an Administrative Law Judge to challenge the conduct and establish a basis for an order that the respondents (the parties to the proceeding) "cease and desist" the conduct. The Commission also has authority to seek relief in federal courts, though this is rarely used in nonmerger matters. Again, we are often able to negotiate a consent agreement with the respondents that remedies the problem without resort to litigation.

In both merger and non-merger matters, we emphasize thorough investigation, as well as sophisticated legal and economic analysis, to ensure we accurately assess the potential for competitive harm resulting from the transaction or conduct in question. When the Commission concludes that the

likelihood of such harm indicates a law violation, and no settlement is possible, the Commission authorizes the staff to litigate the matter. We prepare thoroughly for litigation, whether before an Administrative Law Judge or in federal court. The high percentage of settlements in FTC antitrust cases (or, in the case of mergers, the parties' abandonment of the anticompetitive transaction) results, in large measure, from our readiness to

Performance Measure 2.2.1

Positive outcome of cases brought by FTC due to alleged violations.

FY 2001 Target: **80%**

FY 2001 Actual: **94%**

Met or Exceeded: **✓**

Performance Measure 2.2.2

Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.

FY 2001 Target: **\$800 million**

FY 2001 Actual: **\$2.5 billion**

Met or Exceeded: **✓**

Performance Measure 2.2.3

Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.

FY 2001 Target: **\$200 million**

FY 2001 Actual: **\$157 million**

obtain the needed relief through litigation, if necessary.

We place increasing emphasis on crafting remedies that will successfully eliminate the anticompetitive effects of the activity in question, and do so in a timely fashion. As part of this strategy, we study and evaluate the remedies used in past antitrust cases, particularly divestiture orders used to resolve merger cases. This ongoing process focuses on what makes divestiture orders most effective in preserving or restoring competition, and on how to expedite the completion of curative divestitures.

We also study current or emerging topics involving possible antitrust enforcement to develop policy positions. For example, in early 2001 the FTC issued reports summarizing the results of workshops held in 2000 relating to two current antitrust topics, slotting allowances and business-to-business (B2B) electronic marketplaces. A second workshop to explore competition policy issues related to B2B and business-to-consumer (B2C) electronic commerce took place in May 2001. Additional work relating to slotting allowances is also underway. The learning derived from these workshops, as well as from economic research on various competition issues, will provide a foundation for future enforcement initiatives.

Other strategies include ongoing training programs for our attorneys to develop their skills and maximize their effectiveness in litigation, negotiation, and other areas. We also work to ensure that administrative litigation and adjudication reach a timely resolution, so that challenged restrictions on competition are removed without undue delay.

Finally, we make our law enforcement presence visible in order to serve our objective through deterrence. Each successful enforcement action not only

promotes competition in the specific market(s) at issue, but also serves to communicate to the business and legal communities that the FTC can and will move successfully to challenge the type of merger transaction or conduct at issue. We explain the relevant facts and issues in detail in settled cases in published "Analyses to Aid Public Comment" so the nature of the problem is clear. In addition, litigated decisions serve as legal precedent, upon which we can rely in future enforcement actions. This deterrent effect prevents many anticompetitive mergers and acquisitions from even being proposed.

Performance Measures and Results

We use three measures to gauge our success in stopping potentially anticompetitive mergers and practices through law enforcement. These measures include (1) the percentage of successful outcomes when we challenge anticompetitive mergers and practices, (2) the amount of savings to consumers resulting from our merger enforcement efforts, and (3) the amount of savings to consumers resulting from our nonmerger enforcement efforts, a new performance measure for 2001.

Economic theory and evidence demonstrate that competition results in lower prices, better quality, and more innovation in markets. Thus, we produce beneficial outcomes when we preserve competition by obtaining positive results. We seek to obtain a positive result in at least 80% of the matters in which we determine that a merger or a course of conduct is anticompetitive. Positive results include the parties' abandonment of an anticompetitive transaction after we identify antitrust concerns, a consent agreement to resolve antitrust concerns, or a successful challenge in court. A negative result occurs when parties refuse to settle antitrust

concerns raised by the agency and we are unsuccessful in obtaining relief through the courts.

Because positive results lead to beneficial outcomes, it is important that we usually succeed when we challenge anticompetitive mergers and practices. We do not help consumers if we do not succeed in persuading a court to block merger, for example, either because we failed to present our case adequately or because the merger turns out not to be anticompetitive. This is not to say that the FTC, or any law enforcement agency, should win every case. Some cases involve very close questions, on which reasonable minds can and do differ. Other cases may be very difficult from a litigation standpoint, and all of the FTC's antitrust challenges are defended by highly competent and well-financed counsel. The agency should not shy away from challenging cases that may result in occasional losses, as long as the overall record is successful.

We far exceeded our goal in 2001, achieving relief through litigation, reaching a successful settlement agreement, or persuading parties not to proceed with an anticompetitive acquisition in approximately 94% of the matters we challenged. The Commission approved 20 proposed administrative consent agreements and we obtained federal court approval of one additional settlement. We also obtained sought-after relief in four of six litigated matters, all of which were concluded in 2001. In addition, parties to proposed mergers abandoned their transactions in four instances following our investigation. Thus, we were able to obtain a positive result in 29 of the 31 instances in which we sought to stop or prevent adverse effects on competition in the marketplace.

In 2001, we stayed on course to achieve our goal of \$4 billion in direct dollar savings to consumers over the five-

year period 2001-2005 through prevention of anticompetitive mergers. Meeting the five-year goal requires an average of \$800 million per year in consumer savings. Merger enforcement saves consumers money by preventing price increases that likely would have occurred due to the loss of competition if the merger had gone forward unchallenged. In calculating these savings, we take into consideration the size of the markets involved, the percentage increase in price that would likely have resulted from the merger, and the likely duration of the price increase.² We exceeded our goal by a wide margin in 2001, saving consumers \$2.5 billion by stopping anticompetitive mergers or requiring divestitures to preserve competition.

We have decided to stop formally measuring the average time needed to complete divestitures required by consent orders. Timely completion of divestitures helps to ensure that the competition that existed before the merger continues, by

²We derive these estimates from a thorough analysis of company documents and detailed pricing data, which FTC attorneys and economists routinely conduct as part of their investigations. In some cases, the available information allows us to estimate with specificity the extent to which prices would rise as a result of an anticompetitive merger. Where we do not have such specific information, we conservatively estimate that an anticompetitive merger would lead to a price increase of at least 1%, absent enforcement action, lasting for two years. The methodology used is based on the analytical guidelines used by the FTC and the Department of Justice for the analysis of horizontal mergers. See U.S. Dept. of Justice and Federal Trade Commission, Horizontal Merger Guidelines §§ 1.1, 1.2. While we cannot predict price increases following a merger with absolute certainty, the data and analytical framework are the same as those that courts rely upon in deciding merger cases. Moreover, price increases greater than the conservative one percent estimate, in at least some cases (a highly likely scenario), would offset the occasional instance in which at least a one percent price increase would not have materialized.

avoiding delays that might deplete the viability of the assets to be divested. Policies and practices put in place in recent years to expedite divestitures have become accepted and well-established, however, so we believe that timely divestitures will continue to be the norm.

In 2001, to focus our renewed attention to nonmerger enforcement, we began to measure consumer savings resulting from nonmerger enforcement activities. The tracking of nonmerger consumer savings underscores the importance of our nonmerger enforcement work, which has been overshadowed somewhat by merger activity in recent years.

We base our nonmerger consumer savings estimates on industry and company data obtained in our investigations. Because the types of activity involved in nonmerger cases vary considerably, no one methodology represents an ideal way to compute consumer savings. Instead, we seek to develop a conservative estimate based on the specific facts and circumstances involved in each case. Each estimate is reviewed by at least one senior attorney and economist to ensure consistency, reasonableness, and accuracy. In cases where it is not possible to measure directly the amount of consumer savings resulting from enforcement action, we conservatively use a “default” estimate of 1% of the amount of sales (i.e., a 1% price increase multiplied by sales) in the affected market(s) for one year. Most often, the cost to consumers from anticompetitive activity exceeds 1% of the amount of sales, and the anticompetitive effect may continue well beyond one year in the absence of enforcement action.³

³For mergers, the default estimate is that an anticompetitive price increase would also amount to 1%, but would last for two years instead of one. While it would probably be defensible to use the two year standard for nonmerger matters, the decision to use only one year, at least initially,

Our goal is to achieve \$1 billion in direct dollar savings to consumers over the five-year period 2001-2005 by stopping anticompetitive practices that would cost consumers at least that much if allowed to continue. Meeting the five-year goal requires an average of \$200 million per year in consumer savings. In calculating these savings, we take into consideration the size of the markets involved, the percentage increase in price that would likely have resulted from the merger, and the likely duration of the price increase. In 2001, we obtained consumer savings of approximately \$157 million in nonmerger actions.

Performance Assessment and Future Trends

In 2001, we achieved a positive outcome in approximately 94% of the challenges initiated by the agency (e.g., court orders in litigated cases and negotiated settlements), exceeding by a significant margin our goal of an 80% success rate. This level of success was due, in part, to the high percentage of our cases that were resolved through consent agreement. This does not diminish the accomplishment, however, because we are more likely to obtain settlements when the parties see that our case would likely prevail in court. We realistically do not expect to succeed in every litigated case, however. A law enforcement agency that prevails in every litigated matter may do so because it pursues only the cases that are easiest to win. Particularly given the FTC’s responsibility to aid in antitrust policy development, we will sometimes undertake difficult cases with no clear precedent. The FTC will continue to bring law enforcement actions where it has reason to believe

reflects our cautious approach in measuring consumer savings, as well as the absence of an authority comparable to the *Horizontal Merger Guidelines* in the nonmerger area.

that the merger or practice in question is unlawful and harms consumers, even where litigation risks may exist. Thus, in years in which litigated cases make up a larger proportion of the total number of resolved cases, our success rate may be closer to the target of 80%.

Our consumer savings of \$2.5 billion in merger cases exceeded by a substantial margin the \$800 million in average annual savings needed to reach our five-year goal of \$4 billion. We raised the annual target from \$500 million to \$800 million last year, and this year's performance suggests that a further increase may be in order. As noted in our last performance report, however, the amount of consumer savings achieved in any one year is highly dependent on the pattern of corporate merger activity, including the size and nature of transactions proposed in that year.⁴ For example, a single case accounted for more than half of the consumer savings figure in 2001. Accordingly, we do not anticipate further raising the annual average performance target on this measure at this time.

We obtained \$157 million in consumer savings in nonmerger matters in 2001. Again, we cautioned last year that differences in opportunities from year to year would likely result in variable results on this measure.⁵ Although the 2001 result is somewhat less than the yearly average of \$200 million needed to achieve the five-year goal, we will still reach that goal with a slightly higher average savings rate over the remaining four years. The result for

2001 is consistent with the necessary shift in focus toward mergers in recent years due the record-setting number and dollar value of proposed transactions. With the merger/nonmerger balance shifting back toward historical norms, we expect greater nonmerger savings in 2002 and beyond. As explained elsewhere, the level of merger activity in 2000 resulted in the opening of only 25 nonmerger investigations that year. We record consumer savings only when a final result is achieved. Since nonmerger antitrust matters typically take as much as a year or more to complete (more if litigation is involved), fewer investigations begun in Year 1 will likely result in fewer completed cases in Years 2 and 3. Thus, the nonmerger consumer savings achieved in 2001 resulted from only five cases, an unusually low number. With more investigations "in the pipeline," we anticipate a larger number of concluded nonmerger cases (and associated consumer savings) in 2002. We will reevaluate our target as our experience with this new performance measure grows.

Overall, we obtained a total of \$2.65 billion in combined merger and nonmerger savings, a figure that places the FTC well on track to achieve the combined five-year goal of \$5 billion. While shifting patterns of merger activity may affect how FTC antitrust resources are utilized, and consequently the output according to merger and nonmerger measures, what remains unchanged is that the FTC's antitrust enforcement program returns to consumers many dollars in savings for every dollar in agency operations.

⁴See *Federal Trade Commission Performance Report for Fiscal Year 2000* at 23 (Mar. 31, 2001).

⁵*Id.* at 24.

OBJECTIVE 2.3 PREVENT CONSUMER INJURY THROUGH EDUCATION

In addition to its law enforcement activity, the FTC provides substantial information to the business community and consumers about the role of antitrust laws, and businesses' obligations under those laws.

Strategies

The FTC uses education and outreach to help prevent consumer injury, increase business compliance, and augment our law enforcement efforts. We pursue this strategy 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. Through these mechanisms, we publicize the antitrust law and our enforcement intentions, with the likely result of deterring future anticompetitive behavior.

Our law enforcement efforts are also made more effective by public awareness of what types of conduct are likely to be challenged as law violations. Through press releases of FTC actions and publication of related materials on the agency Web site, the public facts underlying FTC actions provide bases for companies to evaluate the likelihood that other transactions would likely face challenge.

In addition, the FTC educates the public through Congressional testimony (such as the Commission's May 2001 testimony on the effect of patent settlements on competition in the pharma-

ceutical marketplace); conferences, hearings, and workshops (such as the August 2001 conference on factors affecting the price of refined petroleum products); advisory opinions (such as a December 2000 letter to a hospital group advising on the applicability of the Robinson-Patman Act to hospital sales of pharmaceuticals to their retired employees); economic research papers (such as a January 2001 study of geographic markets in hospital merger cases); and reports (such as a September 2001 report on competition and consumer protection issues arising from electricity deregulation).

As a complement to our enforcement activity, we also advise other federal and state government officials about the possible effect that various regulatory proposals may have on competition (such as a recent letter commenting on the effect of restricting non-attorneys from participation in real estate

closings). This approach is broader than antitrust because it involves persuasion on policy issues where competition is involved, but the antitrust laws may not necessarily reach.

Performance Measures and Results

In 2001, we used two new performance measures to more directly reflect our effectiveness in preventing consumer injury through education and outreach to the public. Education serves to leverage the FTC's enforcement resources by explaining

Performance Measure 2.3.1

Quantify number of education and outreach efforts.

FY 2001 Target: **Determine baseline**

FY 2001 Actual: **141**

Performance Measure 2.3.2

Quantify number of hits on antitrust information on FTC web site.

FY 2001 Target: **Determine baseline**

FY 2001 Actual: **2.6 million**

the scope of the antitrust laws, demonstrating that the FTC is active in bringing enforcement actions against certain types of mergers and practices, and signaling future enforcement intentions – all of which serve to deter harmful marketplace activity. Just as citizens benefit from the effect of the local “cop on the beat” in deterring crime, consumers ultimately benefit when the FTC makes its presence visible.

We measured our effectiveness in educating the public about the antitrust laws and the FTC’s enforcement activities, policies, and priorities by tracking the number of public outreach efforts in written (e.g., guidelines and policy statements) or oral (e.g., speeches and testimony) form. Although this measure of activity does not directly relate to outcomes in the marketplace, there is evidence that success in communicating enforcement priorities has a strong impact on the level of anticompetitive activity taking place.⁶ Because we did not systematically collect this information before 2001, we have not set a target yet but have collected data to use as a baseline in evaluating future performance. In 2001, we completed a total of 141 separate public outreach efforts.

Second, with the importance of the Internet as a vital source of information in today’s society, we believe that the number of “hits” on antitrust education and outreach material on the FTC’s Web site is an important indicium of our success in educating the public and in stimulating public interest in our work. Use of the

⁶See American Bar Association Section of Antitrust Law, *The State of Federal Antitrust Enforcement - 2001*, 11 (Jan. 2001) (“... private compliance efforts are a critical prophylactic against anticompetitive behavior, and the effectiveness of private compliance efforts is directly affected by the nature and clarity of the communication of enforcement priorities.”).

Internet to disseminate information about antitrust and other competition-related matters plays an integral role in the FTC’s education and deterrence efforts, permitting the agency to convey a wealth of information quickly, simply, and inexpensively to the business and legal communities, and to consumers. This measure more directly reflects our effectiveness because it is not based on FTC actions, but on the actions of our constituencies. That is, the level of activity on our Web site depends to a large degree on the scope, utility, and reliability of the information made available there. People will revisit the site to the extent that what they find there is of value. But if the material presented were irrelevant, difficult to understand, or misleading, then interest in the site inevitably would diminish. Because we did not systematically collect this information before 2001 we have not set a performance target yet, but we have collected data to use as a baseline in evaluating future performance. In 2001, we recorded more than 2.6 million hits on antitrust information on the FTC’s Web site.

Performance Assessment and Future Trends

We will compare future performance on the two new measures against the performance in 2001. Based on experience, we may refine one or both measures to increase their utility in measuring and motivating our performance. As described above, our public education efforts take many different forms, and thus are not fully revealed by the summary statistics. The FTC is strongly committed to the importance of education and outreach and will continue to place emphasis on and expand our activities in this area in future years.

Appendix FY 2001 Performance Measures

	FY 2001 Target	FY 2001 Actual	Met or Exceeded
Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.			
<i>Objective 1.1—Identify fraud, deception, and unfair practices that cause the greatest consumer injury:</i>			
Measure 1.1.1: Annual number of consumer complaints and inquiries entered into database.	350,000	430,000	✓
<i>Objective 1.2—Stop fraud, deception and unfair practices through law enforcement:</i>			
Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud.	\$400 million	\$487 million	✓
Measure 1.2.2: Total expenditures of deceptive or unfair advertising campaigns stopped.	\$300 million	\$86 million	see text
<i>Objective 1.3—Prevent consumer injury through education:</i>			
Measure 1.3.1: Number of education publications distributed to or accessed electronically by consumers.	10 million	15 million	✓
Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.			
<i>Objective 2.1—Identify anticompetitive mergers and practices that cause the greatest consumer injury:</i>			
Measure 2.1.1: Percent of HSR second requests resulting in enforcement action.	50%	68%	✓
Measure 2.1.2: Number of nonmerger investigations opened per year.	45 to 70	56	✓
<i>Objective 2.2—Stop anticompetitive mergers and practices through law enforcement:</i>			
Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.	80%	94%	✓
Measure 2.2.2: Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.	\$800 million	\$2.5 billion	✓
Measure 2.2.3: Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.	\$200 million	\$157 million	see text
<i>Objective 2.3—Prevent consumer injury through education:</i>			
Measure 2.3.1: Quantify number of education and outreach efforts.	determine baseline	141	✓
Measure 2.3.2: Quantify number of hits on antitrust information on FTC Web site.	determine baseline	2.6 million	✓