

# **FEDERAL TRADE COMMISSION**

## **OFFICE OF INSPECTOR GENERAL**



## **SURVEY REPORT**

**REVIEW OF SYSTEMS USED TO CAPTURE  
ANNUAL PERFORMANCE MEASURES UNDER THE  
GOVERNMENT PERFORMANCE AND RESULTS ACT**



OFFICE OF  
INSPECTOR GENERAL

FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

January 31, 2000

**MEMORANDUM**

TO: Henry Hoffman  
Chairman, GPRA Task Force

Rosemarie Straight  
Executive Director

FROM:

*Frederick J. Zirkel*  
Frederick J. Zirkel  
Inspector General

SUBJECT: Transmittal of OIG Analysis of Selected GPRA Performance Measures

The Office of Inspector General (OIG) has reviewed the agency's performance measures for FY 2000 that were contained in the FY 2001 proposed OMB budget request. The objective of our review was to determine whether systems are in place to capture performance information both accurately and timely.

Our review of nine of the agency's thirteen performance measures as contained in the agency's FY 2001 Budget Request found that generally, systems are in place to collect and process data and to report it in a timely manner. We also found that the methodology to be used for accumulation of selected performance data was not sufficiently defined to allow for the reporting of measures in an accurate and consistent manner. Our concerns were discussed with representatives of each of the principle bureaus and efforts are now underway to better define precisely what data elements are to comprise each performance measure. The OIG believes that the best way to attack this weakness is for the GPRA task force to define the rationale behind each of the thirteen performance measures; i.e., clearly articulate how consumers/businesses are better off when the FTC meets or exceeds its performance targets.

In reviewing the measurement systems, we did not opine on whether the measures best reflect the mission and outcomes of the agency's performance, nor do we endorse any or all of the measures. Our observations and analysis are being provided to management without detailed recommendations as no transaction testing was performed by the OIG.

My staff is available to answer any questions the GPRA task force may have.

Attachment

**Office of Inspector General Survey Report**  
**Review of Systems Used to Capture Annual Performance Measures**  
**Under the Government Performance and Results Act**

The Government Performance and Results Act (GPRA) of 1993 (P.L. 103-62) seeks to improve the effectiveness, efficiency and accountability of Federal programs by focusing management practices on program results. GPRA looks to help managers improve program performance through better information on program effectiveness and costs; it also seeks to make performance information available for congressional policy-making, spending decisions and program oversight. GPRA requires Federal agencies to develop strategic plans, prepare annual plans that set performance goals, and report annually on actual performance relative to those goals, with the first report due by March 31, 2000.

Performance measurement is the ongoing monitoring and reporting of program accomplishments, particularly progress toward preestablished goals. It is typically conducted by program or agency management, and focuses on whether a program has achieved its objectives, expressed as measurable performance standards. In the agency's own words, performance measures answer the question *how do we know we've done what we set out to do?*<sup>1</sup> For performance measures to be useful, they should:

- be clearly set forth
- be objective and quantifiable
- be meaningful and relevant
- relate to measures developed in the agency's strategic plan, and
- present the outputs and outcomes of the program.

The Office of Inspector General (OIG) has reviewed the agency's performance measures to determine whether systems are in place to accurately capture this information for external reporting. Specifically, the OIG (i) verified the existence of measurement systems; (ii) determined whether the measures themselves are quantifiable; and (iii) assessed whether system controls are in place to provide for the maintaining of accurate data.

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<sup>1</sup> Agency-wide guidance on the FTC Intranet at <http://intranet/pap/gpra/guidance.htm>

## Background

Office of Management and Budget (OMB) Circular No. A-11, Part II, *Preparation and Submission of Strategic Plans and Annual Performance Plans*, provides guidance to Federal departments and agencies on GPRA requirements and time frames. The circular identifies agency strategic plans as integral to the effort to improve performance of government programs and operations. Strategic plans include annual performance plans that set annual goals with measurable target levels of performance, and annual program performance reports that compare actual performance to the annual goals. Together these form the basis for the Federal Government to “manage for results.” FTC internal guidance notes that *GPRA is supposed to help OMB and Congress make decisions about whether there is enough “bang for the buck” in spending the tax payers’ money on FTC activity; OMB and the Congress want to know the results of their investment in the FTC.*

The OIG’s role in the GPRA performance measurement process is derived in part from our responsibilities to conduct financial and program audits. For example, OMB Bulletin 97-01, *Form and Content of Agency Financial Statements*, states that each annual financial statement shall include a brief narrative overview of the reporting entity (agency). Beginning in FY 1999 and beyond, agencies are to include performance goals and results in the overview section of the financial statements. The reported measures of program and financial performance should be consistent with information on major goals and objectives from the agency’s strategic plan and should be linked to the programs featured in the Statement of Net Cost. Both measures and dollars are then subject to audit.

The OIG has chosen to review GPRA performance measurement systems before performance reports are due to OMB to provide agency managers an opportunity to consider our observations and analysis. Although we did not apply the rigorous audit procedures that would be applied in our annual review of the agency’s financial statements, we did perform sufficient tests to draw conclusions that, we believe, would help management improve its reporting of its performance measures.

To collect information for the survey, the OIG reviewed agency performance plans for fiscal year 2000, including the GPRA five-year strategies, implementation plan and performance measures, that were identified in the FTC’s fiscal year 2001 proposed budget request to OMB. We met with Bureau of Competition (BC) and Bureau of Consumer Protection (BCP) officials responsible for planning activities and the preparation of the annual performance plans. We reviewed systems used to capture performance information and discussed with system managers how the information is collected, summarized and reported. Where applicable, we met with FTC staff attorneys and analysts to better understand data collection processes when manual systems were used. We also met with the Bureau of Economics’ (BE) representative on the agency’s GPRA task force to discuss BE’s role in establishing and collecting data for performance measurement purposes.

In performing our analysis, the OIG assumed the following:

- ❑ Performance measures as developed with the involvement of senior management represent a valid starting point for this process.
- ❑ Performance measures should stand on their own; i.e., detailed analysis should not be required of a reader to understand a measure.
- ❑ Changes in the numbers from year-to-year (either up or down) actually reflect changes in agency performance.
- ❑ Systems are in place to provide for consistent accumulation of data and reporting of results.

## **Observations and Analysis**

The OIG reviewed nine of the thirteen agency performance measures – four that apply to the Consumer Protection Mission and five that cover the Maintaining Competition Mission.<sup>2</sup> Our results present the mission objective followed by the associated performance measure(s). The performance measure numbering follows the presentation in the agency's FY 2001 Budget Request. Overall, the agency has made strides toward developing performance measures that are objective and quantifiable. However, both missions should better relate how consumers benefit when the FTC achieves its performance goals. For example, in Performance Measure 2.1.1 below, the Maintaining Competition Mission has identified 20 days as a goal to review all Hart-Scott-Rodino (HSR) transactions. The rationale for this goal, the OIG believes, is that the faster a request can move through the review process, the sooner the economy will experience the benefits of a competitive merger. By identifying the rationale, the performance measure will be more meaningful. OIG analysis of specific performance measures follows.

### **Consumer Protection Mission**

**Objective 1. Identify fraud, deception, and unfair business practices that cause the greatest consumer injury.**

*Performance Measure 1.1.1 Increase the number of consumer complaints and inquiries in the FTC's databases to at least 500,000.*

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<sup>2</sup> The four measures not reviewed by the OIG had not been finalized by the conclusion of our fieldwork.

The FTC seeks to focus its law enforcement resources on the most serious consumer protection problems identified with the help of its consumer complaint databases. To augment its databases, the agency recently established a toll free Consumer Help Line. It is believed that the help line will make the agency more accessible to consumers who want to report fraud.

Consumer complaints are logged in the Consumer Information System (CIS), an Oracle database managed by BCP staff. Complaints are aggregated and organized by numerous attributes, including product, vendor, and consumer demographic data. A query by company name, for example, can produce a sort of all consumer complaints against the company, enabling the agency to determine, among other things, whether a pattern exists, and identify potential witnesses should the agency open an investigation. During the period October 1, 1997 through August 18, 1999, there were approximately 394,000 entries (complaints and inquiries) in the database. Since the installation of the toll free number and other outreach efforts designed to alert consumers to the CIS, an average of 6,000 entries have been made to the database monthly.

Our concern with this measure is twofold. First, complaints made by consumers to other participating law enforcement organizations, such as local Better Business Bureaus, State Attorneys General, etc., will be double counted when these databases are downloaded into the CIS. Hence, one consumer could complain to five organizations and be counted five times in FTC's complaint total. BCP staff was aware of this shortcoming of the system, but stated that existing software in use does not enable them to easily draw distinctions by complainant when the data is downloaded. When the system is upgraded, however, this capability will be considered.

Second, BCP's approach to reporting cumulative statistics as opposed to yearly activity is not in keeping with the spirit of GPRA where yearly performance is being measured. For example, if 72,000 entries were entered in the data base in FY 1999, then this total would be added to the universe of all complaints and inquiries in the database, and not be reported separately. OMB Circular No. A-11, *Preparation and Submission of Strategic Plans and Annual Performance Plans*, states that performance goals and indicators should present a complete picture of the performance related to the resources available *for the fiscal year covered* (emphasis added). Other OMB guidance, including OMB Circular 97-01, *Form and Content of Agency Financial Statements*, stresses the importance of relating costs to performance over an *annual period*. Cumulating overall results does not permit the user to determine whether agency efforts are resulting in increases or decreases in complaint activity without having access to prior year(s) statistics.

The OIG questions whether analyzing three or four year-old complaint data is necessarily going to help accomplish Consumer Protection Objective 1.1.1. Furthermore, by looking several years into the future, we also question the marginal effect "thousands" of annual complaints will have on a data base with millions of entries and the information this will provide to the agency's stakeholders. At a minimum, BCP should consider reporting both annual and cumulative figures in its performance plan to allow for the evaluation of current performance.

**Objective 2. Stop fraud, deception, and unfair practices through law enforcement.**

*Performance Measure 1.2.1 Save consumers over \$250 million by stopping consumer fraud.*

The BCP estimates total savings conservatively, and although it relies entirely on the records seized directly from fraudulent businesses, the OIG feels that these are the best available source documents to begin to understand the dollar impact that the FTC has made by stopping fraud.

Among the records the FTC seizes or voluntarily obtains from suspected fraudulent businesses are sales lists.<sup>3</sup> These lists serve a variety of uses, including identifying potential witnesses and providing a starting point to consider redress. For GPRA purposes, the lists also provide the agency a basis to calculate the financial harm resulting from fraud, and to estimate future scam profits had the FTC not come on the scene. The agency uses one year old sales data as its estimate of future revenues, and assumes that the fraudulent business would have remained in operation at the same sales level for another year before closing down.<sup>4</sup> Although scam life cycles are not clearly understood, we have no basis to dispute this assumption. However, since only those cases where sales records are available are factored into its savings estimate, total savings are likely to be underestimated.

To compile data to develop this estimate, BCP operations staff rely on responses to the BCP questionnaire, which tracks cases from complaint through redress and disgorgement. One parameter is annual sales, which attorneys estimate based on company sales records. Sales figures from all cases opened that year are combined and reported. BCP relies on the attorneys' completion of the questionnaire for this measure.

The OIG observed controls in place to ensure (i) completion of the questionnaire and (ii) follow up when information gaps are found. When a case is filed in Federal District Court, BCP Operations must assign an "X" number. Attorneys then charge time to this number. It also establishes the case in the tracking system. Once in, BCP Operations staff regularly cross checks the data base against signed copies of complaints it receives to ensure the tracking system contains the universe of cases.

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<sup>3</sup> Only sales from fraud are counted. BCP believes that in non-fraud sales, although potentially deceptive, something of value was obtained.

<sup>4</sup> For savings estimation purposes, businesses in operation for less than a year are assumed to be at the midpoint of their life cycle when closed by the FTC; e.g., sales from the first half constitute the agency's estimate for future savings.

While we believe that BCP's system to aggregate data is materially complete, staff told us that sales data entered by attorneys is not verified. We recognize the burden verifying sales information would place on operations staff. However, we also recognize the ease with which data entry and transposition errors occur.

***Performance Measure 1.2.4 Percentage of targeted industries brought into compliance through law enforcement or self regulation (FY 2000 target 50%-75%).***

When the OIG began its review of this performance measure, we had questions regarding how (i) data for this measure was collected, (ii) industries were targeted, and (iii) the performance measure was calculated. Although the first two questions have been satisfactorily answered by BCP program staff, questions remained regarding how the performance measure was calculated. When brought to the attention of BCP operations staff, it agreed that the wording of the performance measure was ambiguous. BCP asked the OIG to temporarily suspend our review of this performance measure until modifications were made in its presentation. Because we gained assurances that data collection systems were in place, we agreed to BCP's request.

### **Objective 3. Prevent consumer injury through education.**

***Performance Measure 1.3.1 Number of education publications distributed to or accessed electronically by consumers (FY 2000 target 8.7 million).***

The agency's education messages are relayed through two mediums: (i) brochures and pamphlets, and (ii) on-line (Internet); users have the option to request information on line, or to view it directly on the FTC's web page.

To track its outreach activities, the agency maintains an inventory of all paper publications on an Excel file (ATREX). Hard copy documents are provided in bulk to requesters (libraries, better business bureaus, schools, etc.), and the inventory is correspondingly reduced when these requests are made. When the inventory of any single publication drops below a certain threshold, more copies are printed. To determine the number of pamphlets mailed out during any time period, the agency simply identifies the documents that were released from inventory. This information is tracked monthly by staff in BCP's Office of Consumer and Business Education. OCBE tracking forms show that for fiscal year 1999, there were just over six million FTC educational pamphlets distributed.



Recently, the agency has experienced a surge in on-line requests for information over the Internet. These requests are tracked by *Netracker* software. Data collected by the OIG regarding website activity shows that “hits” to the FTC consumer page increased by 136 percent in the last year (from 1.1 million hits in fiscal year 1998 to 2.6 million hits in fiscal year 1999).

The OIG did not perform detailed testing to verify the accuracy of these measures. However, we did review the lists for any unusual activity that appeared, and sought an explanation for staff regarding possible reasons. For example, we noted that the brochure *Site-Seeing on the Internet* showed nominal increases in requests over the first several months of the fiscal year. However the number of requests (rounded) for this brochure showed the following activity:

<b>Month (1999)</b>	<b>Site Activity</b>
<b>March</b>	7,400
<b>April</b>	32,000
<b>May</b>	10,500
<b>June</b>	42,700
<b>July</b>	59,400
<b>August</b>	30,000

The OIG questioned the spike in the number of “hits” during the months of April, June, July, and August.<sup>5</sup> An official in OCBE explained that oftentimes, major search engines (such as Yahoo) will pick up the document (as it did this one) and make it available to its subscribers, which explains at least some of the increase in demand. Another possible explanation is that the search engine continuously “hits” the web page until it is successful. It could be that Yahoo had trouble accessing the FTC website, and required repeated “hits” to do so. We did not attempt to sort this out, as this activity was only observed on one of hundreds of pamphlets issued (although it was 9 percent of all hits in FY 1999). We believe that management should be alert to such spikes and take the necessary steps to determine their cause(s) if they increase beyond a management-established threshold.

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<sup>5</sup> September data was unavailable at the time of our fieldwork.

## Maintaining Competition Mission

**Objective 1. Identify anticompetitive mergers and practices that cause the greatest consumer injury.**

*Performance Measure 2.1.1 Complete the review of all HSR-reported transactions, on average, within 20 days.*

Performance measure 2.1.1 assumes that the faster an ET request transaction can move through the HSR review process, business will experience less government burden and the economy will experience the benefits of a competitive merger sooner. Thus, this performance measure is intended to show how effective the agency is at processing legal transactions when filers let the agency know that a turnaround of less than 30 days is important to them. For transactions in which no early termination is requested, the 30-day waiting period is considered appropriate.

To collect performance data on HSR-reported transactions, the agency relies on the premerger notification data base. When a filing is received in the premerger notification office (PNO), it is date stamped. Soon after, one of four data entry staff records the receipt date into the PNO database. All filings are reviewed by both staff in the FTC premerger notification office and the Department of Justice (DOJ) Antitrust division. Either agency can request clearance from the other to open an investigation, resulting in the requesting agency assuming sole responsibility for reviewing the filing. Generally, clearance is sought because the requesting agency has expertise in the area being reviewed. Requests for and the granting of clearance is routine. The number of clearance requests directly impacts the agency's workload.

Most HSR filings are accompanied by a request for ET, or early termination of the statutorily-determined 30-day waiting period. The vast majority of filings raise no competitive concerns and, thus, ET is usually granted. The number of days lapsed between receipt of the filing and the later of the FTC/DOJ review completion dates is tracked and reported to, among others, the Congress and OMB.

If filers do not request ET, PNO staff simply add 30 calendar days to the date received and enter this calculated "end waiting period" date in the system. Actual review days are not recorded.

The performance measure is calculated by summing (combining) all review times for both ET and "non-ET" requests (in days), and dividing by the total number of filings, resulting in average days per filing, or the performance measure.

The OIG believes that this calculation potentially distorts the agency's performance for the following reasons. First, it includes a number (30 days) that bears no relation to actual performance as merging parties are allowed to proceed automatically after 30 days. On the other hand, ET requests are made, presumably, because an expedited review of the filing is beneficial to businesses and consumers (efficiencies leading to lower prices). Hence, tracking the agency's performance regarding ET reviews is important to individuals and firms seeking ET. We believe that since ET and "non-ET" request review times tell a different story and are both important in their own right, they should not be combined.

Second, the measure can fluctuate inversely to performance when the two filings are combined if the number of ET filings either decrease or increase as a percentage of the total filings. Table 1. presents one decrease scenario that illustrates this point.

<b>Table 1. HSR Filings Assumptions</b>		
	<b>Year 1</b>	<b>Year 2</b>
Number of Filings	4000	3500
Percent ET Requests	50%	40%
Number ET Requests	2000	1400
Ave. Days to Review ET	10 days	8 days
Ave. Days to Review All Filings	20 days	21.2 days

In year one, there are 4,000 filings, half (2,000) request ET. Assume further that the average processing time for ET requests is 10 days. The average time to process "non-ET" requests is assumed to remain constant at 30 days. The average time to process all premerger requests (ET and non ET) would then be 20 days.<sup>6</sup> In year two, filings decrease to 3,500 while the percentage requesting ET declines to 40 percent (1,400). Assume further that the agency has become more efficient in processing ET transactions and has reduced the time required to review them to 8 days. "Non-ET" requests remain at 30 days. It would seem that the agency should be reporting an improvement in average processing time, but the opposite occurs. Average processing time *increases* to 21.2 days.<sup>7</sup>

<sup>6</sup> (2000 ET filings @10 days) + (2000 non-ET filings @ 30 days) / 4000 filings = 20 day ave.

<sup>7</sup> (1400 ET filings @ 8 days) + (2100 non-ET filings @ 30 days) / 3500 filings = 21.2 day ave.

The performance measure implies that reviews are taking longer; (21.2 days vs. 20 days). Yet, in reality, staff has *improved* its performance by 20 percent (from 10 days to 8 days). The direction of the measure runs contrary to the direction of performance. But, because fewer filers requested ET, a circumstance out of the control of the FTC, the agency's performance appears to have decreased. The reverse is also true. Performance could decrease but because more filers are requesting ET, the average days to process could fall. In conclusion, when both types of filings are combined for performance measurement purposes, users of the information (stakeholders) could draw the wrong conclusion depending on the mix of ET requests received during that period.

Third, the measure also incorporates DOJ review times into the FTC's performance measure for ET requests. Only the longer of the FTC/DOJ review time periods for ET requests is entered into the PNO database and reported. BC staff told the OIG that this measure is important because, to the stakeholder, it doesn't matter what the breakout is between the two reviewing agencies; rather its how long does the *government* take to process an ET request.<sup>8</sup> However, to the extent DOJ review times exceed those at the FTC, then DOJ's performance will negatively impact the FTC's performance measure; alternatively, DOJ could also improve FTC's performance if its review times are less than the FTC's. In either case, DOJ will impact the FTC's performance measure. The OIG believes that the agency should, for GPR purposes, report both measures; i.e., total review time (DOJ and FTC combined) and also FTC review time.

***Performance Measure 2.1.2 Maintain the number of new nonmerger investigations opened during fiscal years 1991 - 1996 (from 45 to 70 new investigations per year), if that number of nonmerger investigations continues to be appropriate in light of marketplace conduct and the need to deter anticompetitive business practices.***

Performance measure 2.1.2 focuses on the nonmerger side of the maintaining competition mission. Before either the FTC or DOJ opens an investigation, it is required to obtain clearance from the other. When clearance is granted to the FTC by DOJ to open an investigation of a potentially anticompetitive transaction, a seven digit number is automatically assigned to the

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<sup>8</sup> Performance measures that reflect the combined performance of both the FTC and DOJ are quite valuable to both management and Congress as they best depict the final outcomes being experienced by the public. On the other hand, the FTC should be held accountable for its own performance and report its individual contribution to any combined performance measure. For example, whenever a combined performance measure reflects improvement, stakeholders need to know who specifically is responsible for this outcome -- FTC, DOJ, or both parties. Consequently, a combined performance measure needs to provide for the overall outcome and each agency's contribution to the final result.

investigation by staff in BC's operations division. These "case" numbers are entered into the matter management system (MMS), and attorneys then charge their time spent investigating the case. Consequently, a system exists to track the number of new nonmerger cases. Summary reports are generated on a monthly basis and reviewed for accuracy. The number of investigations is totaled to arrive at outcomes to be reported as the performance measure.

The OIG's concern with this performance measure is that, once again, DOJ's performance could impact the FTC's achievement of its objective. For example, taken to the extreme, DOJ could deny all or many of the staff's clearance requests resulting in the FTC missing its performance goal. If the reasons for denial concern the merits of the case (DOJ questions the FTC's interpretation of the facts), refusal may, in fact, be warranted, and the statistics would accurately reflect the agency's performance. On the other hand, if the refusals are made for other reasons, (for example, DOJ agrees with the merits of the case, but chooses to perform the investigation itself) then the FTC would miss its performance goal even though its requests for clearance had merit. Instead, the agency should report on the number of clearance requests made, as well as clearances received and cases pursued by DOJ as the result of an FTC clearance request.

Agency officials told the OIG that DOJ is unlikely to deny FTC clearance requests because of the mutually dependant nature of the FTC/DOJ antitrust relationship; e.g., the FTC could simply deny all DOJ requests for clearance. The OIG did not review this relationship and presents this view as management's observation. We continue to believe, however, that the agency should only consider and report measures that, at least, reflect FTC performance alone.

## **Objective 2. Stop anticompetitive practices and mergers through law enforcement.**

***Performance Measure 2.2.1 Achieve a positive result in at least 80 percent of the cases in which the Commission finds reason to believe a violation has been committed (including consent orders, litigation victories and, for mergers, transactions abandoned after a recommendation of a complaint).***

The Bureau of Competition relies on the MMS to track case outcomes. The MMS contains a field to identify abandoned HSR transactions and the outcomes of consent orders and litigated matters. According to agency staff, less than 10 cases annually are litigated.

The OIG believes that the performance measure, as written, will be achieved every year because potential positive results are much more prevalent than potential negative results. We therefore question its utility as a performance measure. For example, if a firm chooses not to merge based on a likely complaint filed by the FTC, the agency notes this as a "positive result."

But companies refusing to withdraw in light of a potential complaint are not counted as a “negative result.” Further, if the parties do not face a complaint, but are required to divest and agree to do so, once again, only one outcome is possible: a “positive result.” The companies’ refusal to divest assets is not counted as a “negative result.” If the company chooses litigation, only then can a “negative result” be noted. In short, there are too many opportunities to achieve a “positive result” and too few opportunities to obtain a “negative result.” The OIG believes that, to the extent that these parties see the world as we do at decision junctures, then we should count that as a “positive result”. To the extent parties differ with us at juncture points, we need to note that too. The results should be separately identified and statistics reported.

Further, the measure could potentially understate the effort and resources required to “achieve a positive result.” For example, if a company unsuccessfully appeals a litigated decision, first by the Commission, then the administrative law judge, the courts and ultimately the Supreme Court, the FTC would only recognize one positive outcome - the first decision. A basic tenet of GPRA is to match costs with outcomes. Even though the bulk of the costs could occur during the end stages of the appeal, the FTC would only recognize the outcome at the front end. Alternatively, recognizing the final stage only would, in the case of a lost appeal, potentially risk spending resources for years with nothing to show for it. The OIG believes that, because resources are expended at each stage, the agency should track each litigated decision in its favor as a “positive result.” Potentially, one case could result in several “positive results.” To be consistent, a negative result should be noted when a case is lost on appeal, even though previous positive outcomes have been identified.

***Performance Measure 2.2.2 Maintain pace to save consumers at least \$500 million during fiscal year 2000 by taking action against anticompetitive mergers that would otherwise increase prices.***

The Bureau of Competition tracks estimated sales information on the MMS. Sales data is often readily available on merger investigations and, on occasion, on nonmerger investigations. To derive its estimate of consumer savings, the agency combines total sales within the market in question with two other internally-derived indices: an estimated price increase that would have occurred if the FTC had not stopped the action (conservatively estimated at one percent)<sup>9</sup>, and an estimated time that competitors would have been excluded from entry into the market – two years. A simple formula is applied to each estimated sales figure where data is available:

*Dollar Volume of Commerce x 1% x 2 yrs. = Consumer Savings*

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<sup>9</sup> Merger guidelines use five percent as the recommended price increase before considering enforcement action. Hence a one percent estimate is conservative.

For example, if sales (volume of commerce) in the market are estimated to be \$5 million, then estimated consumer savings by preventing the anticompetitive act is \$100,000.

The OIG believes that the agency has developed a conservative approach to calculating savings that is also auditable.

### **Objective 3. Prevent consumer injury through education.**

*Performance Measure 2.3.2 Pursuant to the Health Care policy statements, issue advisory opinions in the health care area within 90 days from the receipt of all necessary information from the requesting party.*

The OIG was told by BC staff that this is a low volume- low resource area - approximately 10 requests per year. While this measure is auditable, it appears to be more process-oriented than outcome-focused; and, thus, we believe provides little insight into agency performance.

### **Summary**

Even before enactment of the Government Performance and Results Act of 1993, the agency, on an annual basis, provided OMB and Congress with detailed information on the outputs of its labor: millions of dollars returned to consumers; law violators forced to pay huge fines, and hundreds of anticompetitive practices stopped. The OIG believes that the agency needs to take the next step and explain to its stakeholders how the achievement of the performance measure addresses not only the agency's performance goals, but how consumers directly benefit from FTC's achievement of its performance goals.

Since the advent of GPRA, the agency has shifted its focus to reporting on the outcome of its actions, and measuring that outcome as a way to illustrate to Congress, OMB and the American public the results of their investment in the FTC. The development of a performance plan and measures to assess achievement of the plan's goals and objectives, are an integral first step toward providing financial accountability. The next step is to tie performance to costs through the avenue of the agency's audited financial statements.

Beginning in FY 1999, the agency is to include performance information in the overview to the financial statements. Therefore, it is important that the agency build a firm foundation to capture accurate and timely performance results.