

FEDERAL TRADE COMMISSION

STRATEGIC PLAN FISCAL YEARS 2003 -2008



**UNDER THE
GOVERNMENT PERFORMANCE AND RESULTS ACT**

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Overview of the FTC Strategic Plan

Statement of Vision: A U.S. economy characterized by consumer access to accurate information and vigorous competition among producers, yielding high-quality products at low prices and encouraging efficiency, innovation, and consumer choice.

Statement of Mission: To prevent business practices that are anticompetitive, deceptive, or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish these goals without unduly burdening legitimate business activity.

FTC Goals and Objectives

Goal 1: Protect Consumers

Prevent fraud, deception, and unfair business practices in the marketplace.

Goal 2: Maintain Competition

Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

The agency will achieve these goals by accomplishing the following objectives:

Objective 1:

Identify fraud, deception, and unfair practices that cause the greatest consumer injury.

Objective 1:

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

Objective 2:

Stop fraud, deception, and unfair practices through law enforcement.

Objective 2:

Stop anticompetitive mergers and practices through law enforcement.

Objective 3:

Prevent consumer injury through education.

Objective 3:

Prevent consumer injury through education.

The FTC: Past, Present, and Future

The Federal Trade Commission (FTC) is an independent law enforcement agency with both consumer protection and competition jurisdiction over broad sectors of the economy. We enforce laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers. We also promote informed consumer choice and public understanding of the competitive process. The work of the FTC is critical in protecting and strengthening free and open markets in the United States and, increasingly, the world.

The FTC is headed by five Commissioners, who are nominated by the President, confirmed by the Senate, and serve staggered seven-year terms. No more than three Commissioners may be from any one political party. In 2003, the Commission includes Chairman Timothy J. Muris – designated by President George W. Bush – and Commissioners Mozelle W. Thompson, Orson Swindle, Thomas B. Leary, and Pamela Jones Harbour.

Past: Why the FTC Was Created

Congress created the FTC to ensure that free markets work. Although the FTC originally was proposed as an administrative agency to study, report, and make recommendations to policymakers on competition and other economic issues, over the years Congress has broadened the FTC’s mandate. The FTC Act gives the Commission power to act against unfair methods of competition and unfair or deceptive acts or practices. (See section on “Laws Enforced by the FTC” for a description of the agency’s statutory mission, page 39.)

To understand the FTC’s broad legislative mandate, it is useful to recall that, at the turn from the 19th to the 20th century, big business trusts – large combinations of companies, such as the railroad trust, the oil trust, and the steel trust – dominated the economic landscape. Although Congress enacted the first federal antitrust law, the Sherman Act, in 1890, the Supreme Court’s interpretations of that statute, along with a tremendous merger wave in the early 20th century, left some concerned that trusts still could charge monopoly prices and cause other types of economic harm. Congress created the FTC as a bipartisan tribunal that could develop a body of administrative law enabling businesses to better understand the line between vigorous competition and unlawful restraint of trade.

The legislative history of the FTC Act reveals that Congress had both consumer protection and competition in mind when it created the FTC in 1914. In that year, Congress also passed the Clayton Act, through which the FTC plays a central role in prohibiting anti-competitive stock acquisitions.¹

Congressional representatives viewed competition, not monopolies, as “the best environment for the advancement and the welfare of mankind in the individual initiative, the individual independence, and the individual responsibility.”²

¹ See, e.g., 51 Cong. Record 13164 (1914) (remarks of Sen. Lippitti).

² 51 Cong. Record 9167 (1914) (remarks of Rep. Nelson).

Present: The Role of the FTC in Consumer Protection and Maintaining Competition

At the start of the 21st century, global markets, high-technology innovation, and markets in transition to new ways of competing dominate the economic landscape. The FTC continues to adapt its strategies and workforce in response to these marketplace forces.

Consumer protection and antitrust law enforcement have played an important role in maintaining the competitiveness of U.S. markets. The FTC ensures that free markets work – that competition among producers and accurate information in the hands of consumers create the incentives to generate the best products at the lowest prices, spur efficiency and innovation, strengthen the economy, and produce benefits for consumers, workers, and investors alike.

For competition to thrive, consumers must receive accurate information about products and services. Through our Consumer Protection goal, the FTC protects consumers from fraud, deception, and unfair practices in the marketplace. We work to foster the exchange of accurate, non-deceptive information, allowing consumers to make informed choices in their purchasing decisions and to participate with confidence in the traditional and electronic marketplaces. The FTC addresses current issues of importance to consumers, including identity theft, consumer privacy, telemarketing fraud, Internet fraud, healthcare, and consumer credit.

At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from unreasonable restrictions on competition. Through our Maintaining Competition goal, we enforce the laws that prohibit anticompetitive mergers and business practices. We promote free and open competitive markets which bring consumers lower prices, innovation, and choice among products and services. Our focus is on market segments that matter most to consumers, including energy, health care, prescription drugs, grocery retailing, and high tech. We work to remove restrictions on competition so that markets can function at their best.

Five principles guide the development of the FTC's strategies for consumer protection and competition activities:

- Stop conduct that most threatens consumer welfare, such as anticompetitive horizontal agreements and fraudulent and deceptive practices;
- Employ a systematic approach for identifying and addressing serious misconduct, with special attention to harmful behavior in key economic sectors;
- Apply all elements of the agency's distinctive portfolio of policy instruments to address consumer protection and competition issues – e.g., investigations, litigation, rule promulgation, research, studies, workshops, advocacy, and education;
- Improve the institutions and processes by which consumer protection and competition policies are formulated and applied; and
- Promote competition and the unfettered exchange of accurate, non-deceptive information through strong law enforcement and focused advocacy.

The two complementary parts of our mission make the FTC the only federal consumer protection agency with jurisdiction over a wide spectrum of consumer issues. In addition to enforcement authority, the FTC has unique jurisdiction to gather, analyze, and make public

certain information concerning the nature of competition as it affects U.S. commerce. We also contribute to the policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments.

The FTC's legislative mandate to serve as a locus of professional expertise on competition and consumer protection issues makes the FTC highly distinctive among antitrust and consumer protection agencies worldwide. To position ourselves to make intelligent contributions to consumer protection and competition policy through litigation or non-litigation instruments, we must make substantial investments in what might be called "policy research and development." Our capacity to enforce the antitrust and consumer protection laws, and our credibility as a voice for sound public policy, require a continuing commitment to conduct research that increases our understanding of how markets and firms operate, the conditions under which business conduct is likely to harm consumers, and the effects of the agency's previous enforcement efforts.

Future: Key External Factors in the FTC's Environment

The FTC's dynamic enforcement and education approach positions the agency to respond effectively and efficiently to the rapid changes occurring in many sectors of the economy. We continually review law enforcement policies, target law enforcement actions and education campaigns to prevent the most egregious consumer harm, modify or eliminate orders and regulations that place unwarranted burdens on business, and work to ensure that law enforcement and education activities are effective. Policy research and development activities that refine our theoretical framework or our empirical understanding of industry practices contribute substantially to an effective response to changing marketplace conditions.

The explosive growth of electronic commerce has greatly affected the FTC's mission. According to the U.S. Census Bureau, total e-commerce sales for 2002 were \$46.6 billion – an increase of nearly 27 % over 2001.³ This rapid expansion of e-commerce affects both of the FTC's overall goals, as the FTC aims to protect consumers from fraud and the abuse of their privacy in the electronic marketplace, and to secure the competitive promise of this new way of doing business.

A number of other marketplace forces are at work as well. Companies are restructuring and merging, seeking new ways to market both new and old products to a growing consumer market. During the 1990s, the number of mergers reported to the FTC tripled, and the dollar value of commerce affected by those mergers increased eleven-fold. While merger activity has eased considerably since 2000, those trends suggest a renewed upward trajectory in merger activity – particularly the size and complexity of individual merger transactions. The continuing transition to a knowledge-based economy from a primarily manufacturing-based economy highlights important questions about the relationship between the antitrust and intellectual property laws. Continuing technological developments and regulatory reform in certain industries are resulting in competition supplanting regulation as the primary means of protecting consumers' interests in some markets. Separately, the restructuring of financial markets is raising concerns about the privacy of personal financial information.

³ U.S. Census Bureau, Retail 4Q E-Commerce Report 2002 (Feb. 24, 2003).

In addition, the increasing globalization of commerce and communications also affects the FTC's mission. More merger investigations involve companies with international ties, and more consumer fraud is being perpetrated across international borders, requiring cooperation with foreign authorities to resolve concerns. When appropriate, the FTC also helps foreign authorities with technical assistance.

Changing technology, globalization, and increased complexity mean that many FTC decisions occur under conditions of significant uncertainty. Research, workshops, and hearings that refine our theoretical framework or our empirical understanding of industry practices can increase the odds that our decisions promote consumer welfare. Spam (unsolicited commercial e-mail), privacy, health care quality, petroleum pricing, e-commerce, deceptive lending, and intellectual property are just a few of the topics on which the FTC seeks to develop a significant knowledge base to guide future decisions.

Consumer Protection

Ongoing globalization and new information technologies create potentially enormous benefits for consumers, but continue to raise new consumer protection concerns. Examples include opportunities for online fraud, identity theft, loss of privacy, and cross-border frauds, such as international telephone and foreign lottery scams. Our experience demonstrates that fraudulent operators often are among the first to take advantage of new technologies. The Internet already has become an especially fertile ground for scam artists who can reach vulnerable consumers easily and cheaply online and immediately access both a national and an international marketplace. The use of fraudulent spam highlights this problem. Similarly, telemarketing fraud and Internet fraud are increasingly cross-border phenomena.

To combat fraud, we monitor all marketplaces – traditional and electronic – and focus on the areas identified through our Consumer Information System (CIS) database to be most harmful to consumers. Attacking telemarketing and business opportunity fraud continues to be a priority, as does protecting consumers from more traditional scams that have found new life on the Internet, including pyramid schemes and health-related fraud (such as bogus anthrax remedy and protection cases). We also have a review program (Project Scofflaw) through which we monitor compliance with our outstanding court orders and take appropriate action to ensure compliance.

The law enforcement challenges in this global marketplace are considerable. We have little evidence that traditional scams will go away. More than likely, high-tech scams will grow and be more difficult to detect and pursue as they cross national borders.

Thus, it is not surprising that our future efforts will include significant activity to combat spam and cross-border fraud. In the spam arena, we work to protect consumers from fraudulent spam and reduce the impact of deceptive spam by bringing law enforcement actions to stop deceptive or unfair spam practices, conducting research on this topic to assist consumers, businesses, and public policy efforts, and teaching consumers and businesses how to avoid and deal with unwanted spam. Our continuing international efforts include conducting workshops and cultivating public/private partnerships to fight cross-border fraud, reporting to Congress on legislative changes that would strengthen our ability to fight cross-border fraud, and pursuing bilateral and multilateral cooperation arrangements with international agencies.

To reflect growing consumer concerns, the FTC has made the general and financial privacy of consumers a top priority. Over the next several years, we will continue to take enforcement action to stop deceptive lending practices, improper usage of pre-acquired account information, and violations of the Children's On-Line Privacy Protection Act (COPPA), and to implement the Telemarketing Sales Rule, as amended in December 2002, establishing a National Do Not Call Registry, pending the outcome of court challenges to the amended Telemarketing Sales Rule.

We also will take action to target fraud more effectively through analysis of the consumer complaint data we gather. Our databases – *Consumer Sentinel*, Identity Theft Data Clearinghouse, Consumer Information System, and spam database – enable us and our law enforcement partners to detect fraudulent trends and problems as they occur. Our prospective challenges include maintaining a rich array of data, ensuring that our systems are fully utilized by us and our law enforcement partners, and ensuring that the information we collect is reliable. We also continually strive to identify new methods of mining the data and sharing the results in innovative ways to assist our law enforcement partners. These efforts bear fruit in the cases brought by the FTC and other law enforcement agencies who have access to this data. In addition to targeting the most serious problems for law enforcement action, we also encourage non-regulatory solutions that are effective but do not impede legitimate business activity.

Maintaining Competition

The ongoing globalization of the economy and new information technologies have a significant impact on Maintaining Competition activities. The continuing growth of commerce beyond national boundaries has resulted in myriad antitrust enforcement regimes in various jurisdictions, and variations in these regimes can interfere with the common goal of promoting a competitive economy. In addition, the increasingly technology-driven and knowledge-based economy has both policy and practical implications.

Maintaining Competition activities no longer stop at our shorelines. Antitrust enforcement that involves activity in many different jurisdictions, with varying sets of competition statutes, can be costly and inefficient. For example, the number of jurisdictions with merger enforcement regimes has grown from just a handful in 1990 to over 65 today. The resulting costs include the cost of complying with different regulatory mechanisms as well as the risk of differing outcomes. Consumers ultimately bear the costs and burdens of multiple antitrust enforcement regimes. Consequently, the FTC and the Department of Justice are involved in several formal and informal efforts to increase and improve bilateral and multilateral cooperation in antitrust enforcement.

The continuing development of high-tech industries and the significance of intellectual property rights influence the FTC's merger and nonmerger activities. While the fundamental principles of antitrust do not differ when applied to high-tech industries, or other industries in which patents or other intellectual property are highly significant, the issues are often more complex, take more time to resolve, and require different kinds of expertise. The FTC now requires expertise in patent law, as well as antitrust law, and sometimes must hire technical consultants in areas such as electrical engineering or pharmacology. In addition, the increased significance of intellectual property concerns in merger and nonmerger cases raises issues about the appropriate interaction of antitrust and intellectual property laws.

Recent economic conditions affecting merger activity and changes in Hart-Scott-Rodino Premerger Notification Act (HSR) filing thresholds have permitted the agency to pursue a broader agenda of initiatives to aid consumers in the nonmerger area. In 2000, the aftermath of the merger wave peak, essential resources began to be shifted to the nonmerger program. The agency invested significantly in nonmerger enforcement in 2001 and 2002, and, for the most part, the enforcement actions resulting from those matters will be completed in 2003 or later.

The Agency's Goals, Objectives, Strategies, and Performance Measures

Goals, Objectives, and Strategies: Development, Resources, Implementation, and Evaluation

Development

The goals, objectives, and strategies identified in this plan reflect the FTC's cumulative experience in identifying efficient ways to implement our consumer protection and competition goals, while also eliminating or minimizing burdens on legitimate business activities. The original strategic plan, written in 1997, represented the cooperative work of the entire Commission, including Commissioners, senior managers, agency staff, and external stakeholders such as private business, consumer, and professional organizations.

The current plan was developed, as were the original and 2000-2005 plans, with substantive input by each key organization. It was reviewed by the Commission and stakeholders, including specified Congressional committees (see "Congressional Consultation List," page 46).

This strategic plan builds on the original 1997-2002 and the 2000-2005 plans. We consider the original agency vision, mission, and goals to be as critical and relevant as they were in 1997. However, as in 2000, we have made some modifications to the plan's performance measures and strategies. These modifications reflect lessons learned from working with prior plans, as well as changes in external factors that may affect the way the agency needs to work to meet our goals. The modifications are discussed under "Performance Measures: Progress, Changes from the 2000-2005 Plan, and Challenges," page 11.

A major part of our strategic planning is to continually reevaluate our Objectives, Performance Measures, and Performance Targets to ensure that we are measuring the most appropriate indicators of performance and that we are correctly capturing supporting data. Also, as part of our strategic planning, our Inspector General (IG) reviews our performance measures and the methodology used for performance data. Prior IG concerns about methodology have been addressed, and we have reexamined our measures and made changes to our plan.

Resources

The strategic plan relies on two basic assumptions. The first is that the FTC will maintain our current operational efficiencies. The second is that the strategic plan may assist the agency in identifying possible areas for additional efficiencies. Although the plan anticipates that agency budget levels will be adjusted upward each year at least to the extent of inflation, the operational processes, skills and technologies, human capital information, and other resources to be used under this plan are similar those identified in the FTC's fiscal year (FY) 2004 Congressional budget submission.

To ensure that the goals in this draft strategic plan are realistic in light of the expected resources, the FTC plans to continue to use two strategies that have significantly increased its productivity over the last several years: (1) directing agency enforcement efforts to those

areas most likely to cause consumer harm, and (2) making creative use of new technologies to identify emerging problems, extend the reach of consumer and business education, and deter newly created means of stifling healthy competition.

The FTC also plans to continue the work it has undertaken to leverage our resources by extensively cooperating with state law enforcement offices, other federal agencies, consumer and business groups, and international partners. The stakeholders include the many governmental and private organizations with which the agency works. The stakeholders help us ensure that our efforts are aimed at the areas of most importance to consumers and are undertaken in cost-effective ways that eliminate or minimize burdens on legitimate business activity. The FTC will continue to increase its work with international partners, such as the European Commission, the International Competition Network (ICN), and the International Consumer Protection Enforcement Network (ICPEN) (formerly the International Marketing Supervision Network), to help maintain competition and protect consumers in the expanding global marketplace.

Human Resources

The FTC is currently addressing the management of our human resources to ensure we have the staff needed to fulfill our missions. While the FTC historically has had an enthusiastic and highly capable professional staff, we currently face significant competitive pressures from the private sector, particularly for professionals with experience in mergers and Internet-related issues. For example, the high salaries paid by the private sector for attorneys, economists, and information technology specialists cannot be matched by the compensation scales available to most Government agencies. We are leveraging our available resources to recruit and retain highly qualified individuals by offering hiring and relocation bonuses, moving expenses, cash and time-off awards, telework and other family-friendly work environment opportunities, training and career development, assignments to high-profile cases, and other non-monetary benefits.

To continue to attract and retain talented professionals, the FTC has formed a human resource task force consisting of professional staff from across the agency. The task force's overall purpose is to maintain and enhance the agency's high-quality workforce by evaluating the impact on FTC staff of a variety of human resource issues. As solutions are identified and approved, they will be integrated into the FTC's human resource management, budgeting, and strategic planning processes. For example, we recently completed a study of our performance management system. The study involved four steps: collecting information from inside and outside the FTC, identifying issues and possible solutions, obtaining input from FTC managers and employees on the identified solutions, and preparing a report with findings and recommendations. The FTC issued the final report in August 2002, with the recommendation that the current system be retained with minor improvements. The study also served to focus managers on good performance management.

The FTC also is engaged in a systematic program to improve training at all levels – professional, managerial, technical, and clerical. Training is a key component to working smarter and improving productivity. It is also critical in managing FTC attrition, especially in the ranks of lawyers and economists, where career training and professional development are valued highly. As part of our initiative to reinforce our management training and development, we implemented three training programs focused on leadership issues and best practices, including employee relations, performance management, and labor relations.

E-Government Resources

The FTC has been a leader in the use of technology and the Internet to share knowledge of its mission with citizens and businesses alike without having to enlarge its workforce significantly. Starting in the mid 1990s, the FTC began building interlinked public consumer protection Web sites, many in connection with other domestic or foreign law enforcement agencies, to educate consumers and to collect and analyze data on a broad range of consumer protection issues, including high-tech fraud and identity theft. Descriptions of these efforts can be found throughout this document, providing evidence of the broad expanse of our e-government activities and their integration into FTC's goals, objectives, and strategies. The FTC will continue to use the Internet and electronic systems to reach the public and more effectively accomplish our consumer protection and competition missions.

The growing use of sophisticated electronic systems and software in law enforcement requires us to keep our technology current, not only to be competitive in the courtroom, but also to reduce the paperwork burden on the public. The FTC has developed the ability to interface with computerized document production systems that allow law firms to provide documents and information to the agency more efficiently. We also are developing a process that will permit electronic filing of required information related to proposed mergers and acquisitions under the Hart-Scott-Rodino Premerger Notification Act. This system will be deployed in 2003 and shared with the Department of Justice. Electronic options will allow businesses to select the submission method that is most effective and efficient for them and will reduce our administrative cost of reviewing and analyzing the filings.

Implementation

As the FTC continues to update our strategic plan and implement our annual performance plans, staff are made aware of the goals, objectives, strategies, and performance measures contained in the strategic plan and the expectations regarding staff's role in implementing the strategic plan. The FTC's annual performance plans identify one-year performance measures that are used to assess the agency's progress toward its five-year strategic goals. Public performance information and reports, such as the FTC's Annual Performance Report, are available at our Web site, *ftc.gov*, and nonpublic information is available to our staff via our Intranet.

Evaluation

The FTC will continue to review our programs on an annual basis. The program assessments use information available from one-year performance measures, as well as a variety of other factors, including whether programs address emerging consumer concerns resulting from changes in the marketplace. These evaluations are used to revise current performance measures or develop new measures. Specific evaluations are listed in the "Implementation" section, under each objective.

Performance Measures: Progress, Changes from the 2000-2005 Plan, and Challenges

Progress

The FTC continues to work on developing outcome-based, results-oriented performance measures that reflect our strategic goals. Our annual performance plans contain performance measures and targets that lead us to our five-year goals. The annual performance plans reflect the impact of the appropriations process and any new legislation. If significant impacts occur, we will continue to update our strategic plan.

The Government Performance and Results Act has provided a useful opportunity to find better ways to demonstrate, evaluate, and improve our performance and the results we achieve. For example, in the course of working to develop the original strategic plan, the FTC determined that a new, more comprehensive consumer complaint database would facilitate the FTC's efforts in identifying appropriate areas for law enforcement and education. Since then, the CIS complaint database and *Consumer Sentinel* have become critical tools.

CIS, which now contains approximately 1.2 million complaints, is accessed through *Consumer Sentinel* by more than 835 law enforcement agencies in the United States, Canada, and Australia through a secure Web site to determine whether a particular fraudulent scheme is local, national, or cross-border in nature, and to help spot larger trends for law enforcement action. Law enforcers also access the Identity Theft Clearinghouse via *Consumer Sentinel*. 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 and mitigate consumer injury. For example, several features have been added to *Consumer Sentinel* to assist law enforcement personnel. An "alert" function allows *Consumer Sentinel* users to place a tag in the database on companies and individuals that are under investigation to inform other law enforcers using the database. The "alert" function thus has enhanced coordination of law enforcement efforts. New reports, including top violator reports and Internet-related complaint trend data, are posted on *Consumer Sentinel*. *Consumer Sentinel* also added information to assist law enforcers with coordinating cross-border investigations. Examples include a list of contacts in the countries participating in *Consumer Sentinel* and tips on how to determine the business, domain, and postal box registration in 19 countries. *Consumer Sentinel* soon will offer additional tools to assist coordination of investigations.

In 2001, the FTC and 12 other ICPEN countries and the Organization for Economic Cooperation and Development (OECD) launched *econsumer.gov*, a public Web site where consumers can file cross-border e-commerce complaints with agencies around the world, access education materials, and contact consumer protection agencies. In 2002, the FTC and the Department of Defense launched *Military Sentinel* – the first online consumer complaint database specifically tailored to the unique needs of the military community.

Changes from the 2000-2005 Plan

Consumer Protection

Several consumer protection performance measures have been changed in this strategic plan. The measures still include the annual number of consumer complaints and inquiries added to CIS, dollar savings for consumers from FTC actions that stop fraud, and the number of educational messages disseminated. Beginning in 2003 under Objective 1, the FTC also will measure the annual number of consumer complaints and inquiries relating to identity theft that are entered into the database. This measure was added as a result of a training program initiated in March 2002 with the U.S. Secret Service and the Department of Justice (DOJ) to provide local and state law enforcement officers with practical tools to enhance our combined efforts to combat identity theft. Through September 2003, the FTC and our partners held nine such seminars and trained more than 1,000 persons from more than 165 agencies. Through this new measure, and a new performance measure under Objective 2 that will track the number of accesses by law enforcement personnel, we hope to be able to evaluate the usage of the identity theft system post-training and tailor future training to better meet law enforcement needs.

In 2002, FTC staff attorneys and economists began work with an outside contractor to design two surveys of several thousand consumers: one addressing fraud that they have experienced; the second addressing identity theft. Through these surveys, the FTC seeks to learn whether complaints in the database are representative of most consumers' actual experiences. The FTC also expects that the survey results will help determine whether certain classes of consumers are not represented in the database, so that it can target those populations with information on the fraudulent scams they may encounter and on how to submit complaints to the FTC through either our toll-free numbers or *Consumer Sentinel*. After reviewing the survey results, the FTC will analyze its enforcement efforts to ensure that it is addressing through legal action the most costly and prevalent forms of fraud. The identity theft survey will allow us to assess the nature and prevalence of identity theft more completely and to judge the effectiveness of FTC efforts to assist and educate consumers, identity theft victims, law enforcement officials, and industry representatives. Indeed, preliminary identity theft survey results obtained in September 2003, showed that 27.3 million Americans have been victims of identity theft in the last five years, including 9.9 million in the last year alone. Last year's identity theft losses to businesses and financial institutions totaled nearly \$48 billion and consumer victims reported \$5 billion in out-of-pocket expenses. Based on the information received through these surveys, we also intend to review and, if appropriate, revise our performance measures.

Under Objective 2, we established two new measures to report the number of data searches by FTC and other law enforcement personnel of the FTC's *Consumer Sentinel* and the identity theft complaints. As explained above, this information will be used to evaluate the usefulness of the data to our agency and our law enforcement partners. In particular, the measures of data searches by other law enforcement personnel will allow the FTC to

monitor the success of our training programs and determine how such training should be modified to better meet the needs of our partner agencies.⁴

After careful consideration, we eliminated the performance measure reporting the total expenditures of deceptive or unfair advertising campaigns stopped because it has not proven to be useful in measuring performance. Since we first created this measure, the FTC has increased its focus on deceptive Internet advertising, which is very broadly disseminated, but is considerably less expensive to business than traditional advertising campaigns. Therefore, calculating the total dollar volume of deceptive advertising stopped is no longer a useful measure.

Under Objective 3, our measure of the number of publications distributed by the FTC indicates our impact in educating consumers, but does not fully capture the millions of FTC publications that are distributed to consumers by others. For example, we provide CDs of our publications that are printed and distributed by other organizations. While the number of print publications we distribute remains relatively static, the number of publications accessed through the Internet has soared as more consumers and businesses go online. In 1996, we distributed 140,000 publications online. As a result of increased online use and FTC public awareness and educational campaigns, in 2002 we distributed more than 12 million publications through our Web site alone. These numbers illustrate the Internet's coming-of-age as a mainstream medium to the FTC and highlight its usefulness in large-scale educational campaigns. 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.

We established two new performance measures to report the annual number of education publications relating to identity theft distributed to or accessed electronically by consumers, and the annual number of Spanish-language publications distributed to or accessed electronically by consumers. These measures will highlight our outreach in the identity theft arena and our efforts to reach the nation's growing Hispanic population. The FTC will continue to work to identify and educate underserved consumer groups to help protect them from becoming victims of fraud.

Maintaining Competition

Under Objective 1 of our Maintaining Competition goal, we identify mergers and business practices, whether horizontal or vertical, that are anticompetitive. Here, we seek to focus our investigative resources on those activities most likely to harm consumers significantly. The goal is to avoid overlooking antitrust problems by focusing too narrowly, but also to avoid spending resources unproductively by investing in too many investigations that do not yield evidence of a problem. The two performance measures in use through 2003 under this objective – the percentage of HSR second requests resulting in enforcement action and the number of nonmerger investigations opened – provide useful information about the FTC's performance in identifying anticompetitive mergers and practices. The latter measure tells only a partial story, however, because the number of nonmerger investigations reveals

⁴ The FTC has learned from experience that hands-on information and training provided to its customer law enforcement agencies greatly enhances their abilities to mine the information in the complaint databases, and ultimately prosecute identity theft crimes more successfully. Thus, the agency instituted identity theft training for local, state, and federal criminal enforcement groups.

nothing about the results of those investigations. In addition, the former measure would be more informative if coupled with information about the number of HSR second request investigations.

We made two changes to address these issues. First, in lieu of the measure of the number of new nonmerger investigations, we will compute a ratio similar to that used to measure our success in identifying anticompetitive mergers. Specifically, we will compute the percentage of significant nonmerger investigations (i.e., those in which the Commission has authorized the use of its compulsory process authority) that ultimately result in enforcement action. Based on an assessment of agency experience and our best judgment, a percentage below 60% may suggest that the FTC is targeting enforcement resources ineffectively by investigating too many competitively benign practices (and unduly burdening businesses as a result). A percentage higher than 80% may suggest that we are focusing too narrowly and thus potentially allowing problematic business practices to go forward without sufficient review.⁵

Second, we will report, along with the ratios that constitute the formal performance measures, the underlying statistics – the number of HSR second requests, the number of significant nonmerger investigations, and the number of merger and nonmerger enforcement actions. When the percentage of HSR second requests or significant nonmerger investigations resulting in enforcement action is within the target range, we believe our resources will be effectively balanced between accomplishing a careful review of all potentially anticompetitive merger transactions and minimizing private sector burdens imposed by a second request. The additional information, which will show whether the level of activity is comparable to other years, will help to rule out alternative explanations, such as the fact that we issued a small number of HSR second requests in a particular year.

Under Objective 2, we seek to stop anticompetitive mergers and practices through law enforcement activities. We have retained one measure under this objective but have replaced the remaining two. Economic theory and evidence demonstrate that competition results in lower prices, better quality, and more innovation in markets.⁶ 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. 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, but still worth pursuing. Furthermore, many of the FTC's antitrust challenges are defended by highly competent and well-financed counsel.

⁵ The FTC also investigates mergers that are not subject to HSR reporting requirements. There is no benchmark directly comparable to the issuance of a second request in those matters, and the overall number of non-HSR merger investigations is too small to permit a meaningful statistical measure. Nevertheless, the FTC still requires significant resources to discover these nonreportable mergers.

⁶ The Sherman Act (as well as the other antitrust laws), according to the U.S. Supreme Court, rest on the premise that “the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality, and greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.” *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958).

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. Previously, we attempted to quantify the dollar savings to consumers resulting from specific merger enforcement actions. While the FTC's actions bring a significant benefit to consumers and competition alike, the precise calculation of the savings of a specific action can be subject to many variables. To minimize this effect, we will now gauge the scope of our merger enforcement contributions by measuring the amount of commerce involved in the markets in which the agency takes enforcement action.

Nonmerger enforcement similarly benefits consumers by stopping anticompetitive activity that raises prices or otherwise restricts competition. Because of the difficulty in reliably quantifying the consumer savings from nonmerger enforcement, we instead will report the amount of commerce affected by our nonmerger enforcement efforts. Besides directly protecting competition in particular markets, by halting specific conduct by specific parties, nonmerger enforcement actions also can benefit competition indirectly by communicating to similarly situated parties that they can expect to face FTC enforcement action if they engage in the same conduct. This deterrence effect is a very important outcome of FTC law enforcement. In some cases, for example, an illegal practice may already have ceased before final approval of an FTC order, but the entry of the order is nevertheless important, to prevent a recurrence of the illegal conduct and to signal to others that the conduct will not be tolerated.

While the deterrence effect of FTC law enforcement should be recognized, it is very difficult to measure. Many variables affect the deterrence effect of a given case. These variables may be divided into two groups: those relating to the *scope* of the deterrence effect in a given case (i.e., the size of the market(s) in which competition is improved because an FTC order deters anticompetitive conduct), and those relating to the *significance* of the deterrence effect in a given case (i.e., degree to which a case will deter illegal conduct in the market(s) affected). The scope variables include the geographic reach of the order's impact,⁷ how widely across the marketplace the effect is felt,⁸ and the kinds of conduct that the order would likely deter.⁹ The significance variables include probability of detection of the illegal conduct, the market participants' level of aversion to risk, the collateral costs of FTC enforcement,¹⁰ and the novelty of the challenged practice.¹¹

⁷ Many cases affect commerce nationwide, while others affect a narrower geographic area.

⁸ Some FTC actions have a broad deterrent effect across many industries, while the impact of others likely is limited to a single industry or industry segment.

⁹ For example, a case resulting in an order barring competitors' agreements to refrain from advertising prices may not necessarily deter agreements with competitors to limit non-price advertising.

¹⁰ For example, the announcement of an FTC enforcement action may spawn private damages suits.

¹¹ The deterrent effect is likely to be larger when the legality of the practice was ambiguous before the FTC challenge.

Given the variety and difficulty of measuring the relevant variables, the deterrence effect cannot be measured with precision. The alternative, however – not attempting to measure FTC enforcement actions’ deterrence effects at all – would clearly overlook an important part of the overall impact of FTC enforcement. Therefore, we will seek to estimate deterrence, using conservative assumptions, as described below. First, we will determine the volume of commerce in markets indirectly affected by a nonmerger enforcement action, using the “scope variables” described above. The ‘indirectly affected’ commerce may vary from case to case, but in general it means the volume of sales in markets where the participants are likely to be aware of and be influenced by FTC enforcement policy.

Second, we will discount the indirectly affected volume of commerce based on the “significance variables” described above. Based on experience, when the FTC successfully brings three cases challenging a particular practice, it often is enough to send an unequivocal signal about FTC enforcement intentions to others who may be engaging in the same practice, and consequently to put an end to the practice as a practical matter. This deterrence effect is particularly significant when an FTC enforcement action, or series of similar enforcement actions, creates new precedent involving a novel form of conduct. Three cases may not be enough, however, in situations where the risk and costs of detection are low and market participants choose to bear those risks. Accordingly, we will measure the deterrence effect of FTC nonmerger enforcement actions by multiplying the indirectly affected volume of commerce by one-third in most cases,¹² or a smaller fraction when appropriate to the circumstances. Because we lack sufficient experience with this type of measurement to predict with confidence that we can do so successfully, we will initially compile this information on a trial basis and report the results in our annual Performance Plans. Depending on our success, we will determine whether to incorporate the deterrence effect into the performance measure by adding the volume of commerce indirectly affected by nonmerger enforcement to the volume of commerce directly affected for each case to obtain an estimate of the total volume of commerce affected by FTC nonmerger enforcement actions.

Under Objective 3, we seek to prevent consumer injury by educating businesses, consumers, and policymakers about antitrust principles and enforcement standards. We have eliminated one of the previous measures and have divided the remaining one into two separate measures. A previous measure quantified the number of education and outreach efforts such as speeches, participation on panels, testimony, advisory opinions, advocacy comments, and amicus briefs. While these activities remain important, the performance measure did not effectively indicate the FTC’s performance in education and outreach for two reasons. First, the various items counted are not of equal weight: a speech describing a new policy initiative before several hundred antitrust lawyers at an ABA meeting has far more significance than a speech simply describing past actions before a much smaller group, for example, yet no effective way of distinguishing among different efforts has been identified. Second, measurements of activities, such as the number of speeches given, may indicate the level of effort put toward an objective, but not the FTC’s effectiveness in accomplishing it. Therefore, we have eliminated this measure.

¹² The percentage is based on the assumptions that (1) three enforcement actions targeting a practice should effectively eliminate the practice, and (2) each of the three actions should contribute equally to that result. In practice, one or two enforcement actions may be enough to end most of the challenged conduct in some cases, and in others it may continue even after three cases. We believe the one-third figure represents an acceptable, albeit rough, rule of thumb for most cases.

The second measure under this objective was based solely on the number of “hits” on relevant content on the FTC’s Web site. Since the FTC publishes virtually all significant public documents on its Web site, the volume of traffic on antitrust content on the agency’s Web site provides a good indication of the quantity of information provided to the public, as well as its quality (because visitors will stay longer and return more often if the information is helpful). This information is significant in that it represents the initiative taken by the public to seek out FTC information, rather than merely reflecting agency activities. However, because Objective 3 has two different components – (1) educating the legal and business communities about the applicable legal standards and enforcement policies that facilitate their compliance with the law, and (2) educating the public in general, as well as policymakers, about the benefits of competition – we will separate the Web traffic data in order to report under two different measures, each applicable to one of the two components of this objective.

Challenges

Given the nature and breadth of the FTC’s mission, designing meaningful measures of our performance is a formidable challenge. The vast scope of our ultimate goal – consumer welfare¹³ – discourages measurement. Moreover, it is difficult to isolate the results of our efforts for even the more tangible manifestations of our goal, such as the availability of goods and services in an open marketplace at a price and quality that fit the consumer’s needs. This is so because a host of other variables besides FTC consumer protection and antitrust enforcement significantly influence these results. Moreover, much of the positive impact of the FTC’s work is the deterrent effect of the agency’s readiness to enforce the law to protect the marketplace and consumers.

On the consumer protection side, it would be extraordinarily difficult to quantify the dollar benefits to consumers who were *not* deceived or misled because of the FTC’s role in deterring members of the \$100 billion national advertising industry from using deceptive or unfair ads. Similarly, on the competition side, it would be extraordinarily difficult to quantify the benefits to consumers who did *not* have to pay anticompetitive price increases because the FTC’s enforcement guidelines deterred companies from proposing certain anticompetitive mergers or engaging in certain anticompetitive practices. In a world in which economic growth continues to be heavily dependent on innovation,¹⁴ there are likely to be substantial

¹³ See Timothy J. Muris, Chairman, Federal Trade Commission, *Looking Forward: The Federal Trade Commission and the Future Development of U.S. Competition Policy*, Prepared Remarks Before the Milton Handler Annual Antitrust Review, New York, New York (December 10, 2002), available at <<http://www.ftc.gov/speeches/muris/handler.htm>>.

¹⁴ Many economists agree that the gains to society from innovation are substantial and, over the long run, are likely even greater than those associated with competitive pricing. For example, the Council of Economic Advisers (CEA) characterizes the economics growth literature as follows: “Over the past 50 years, more than half of all productivity gains in the U.S. economy, as measured by output per labor hour, have come from innovation and technical change.” *Economic Report of the President* (February 1999) at p. 171. “In the long run, productivity growth sets the pace for improvements in the quality of life.” *Economic Report of the President* (February 2000) at p. 50. As “new growth theory” economist Paul Romer has reportedly observed: “Competitive markets are, on balance, the best mechanism for guiding technology down a path that benefits consumers.” “Antitrust for the Digital Age,” *Business Week* (May 15, 2000) at p. 47.

consumer benefits from FTC actions such as those taken to prevent the monopolization of certain areas of research and development or to prevent the defrauding of consumers who are venturing into the new world of Internet commerce.

With respect to the maintaining competition goal, one specific difficulty involves the assumptions implicit in many possible measures of FTC performance. The implicit assumption that every FTC enforcement decision is correct is problematic because merger enforcement involves making predictions about the future performance of markets under complex alternative scenarios. While our predictions are informed by broad knowledge about economic theory as well as intensive investigation into every relevant facet of the transactions and relevant market(s) in question, predictions are, by their very nature, speculative.

Although some results of FTC actions are difficult to measure quantitatively, we can gain insight by performing case study assessments that identify the results of specific types of cases or major initiatives. Significant examples (detailed later in this plan) include retrospective analysis of mergers and national surveys to identify the actual incidence of consumer fraud and identity theft.

Cross-Cutting Functions

To carry out its mission effectively, the FTC must continually coordinate and cooperate with literally hundreds of other law enforcement and regulatory bodies, including other nations' competition and consumer protection authorities, state attorneys general, and multiple regulatory commissions, boards, and agencies in each state. Each of these entities has its own duly-granted government authority to make decisions in pursuit of its mission. The FTC also actively consults with other state, federal, and international agencies to coordinate matters of mutual interest and ensure that agency goals do not conflict. The FTC's study and reporting capabilities give it a unique opportunity to provide intellectual leadership in the consumer protection and competition communities, both at home and abroad.

Consumer Protection

On the consumer protection side, the FTC works closely with a wide variety of federal and state partners. To fight fraud and other unfair and deceptive practices, it pursues joint enforcement and education initiatives with the Postal Inspection Service, DOJ, Federal Bureau of Investigation, Federal Communications Commission, Securities and Exchange Commission, State Attorneys General, and numerous other federal and state agencies. The FTC also works closely with the DOJ's Office of Consumer Litigation to coordinate enforcement in areas of shared responsibility, including the enforcement of FTC rules and orders. In addition, the FTC partnered with the Department of Defense to launch *Military Sentinel*. In managing its identity theft program, the FTC works closely with the U.S. Secret Service to mine our clearinghouse database for case leads and to provide law enforcement training and assistance to prosecute and deter the crime of identity theft.

In addition, the FTC works cooperatively with a number of federal agencies in areas of shared (or overlapping) jurisdiction over advertising. Pursuant to a Memorandum of Understanding, it works with the Food and Drug Administration (FDA) to combat deceptive claims for over-the-counter drugs, devices, food, and cosmetics – with the FDA primarily responsible for labeling claims and the FTC primarily responsible for advertising claims. These two agencies also have instituted a Health Claims Initiative. In this program, the two agencies will work together to combat misleading claims made in dietary supplement product marketing and food advertising. This program will include enforcement actions, training, and outreach. The FTC also works with the FDA and the Surgeon General on weight loss issues.

Another cooperative program includes the agency's international work. The FTC works with international organizations such as the OECD and ICPEN. The FTC also works with international law enforcement agencies to combat cross-border fraud. In 2000, the FTC, the Toronto Police Service, the Ontario Ministry of Consumer and Business Services, and the Competition Bureau of Industry Canada formed the Ontario Strategic Partnership to work together and combat cross-border fraud. Another effort, Project Emptor, is a cooperative arrangement coordinated by the Royal Canadian Mounted Police that teams Canadian and U.S. law enforcers to target scams that emerge from Vancouver-area boiler rooms. In addition, through "Netforces" comprised of agencies that participated in the FTC's Internet training, the FTC partners with local, state, federal, and international partners to focus efforts on specific areas.

The FTC also works with the Consumer Product Safety Commission (CPSC) to address product safety, exchanging case referrals, collaborating on education projects, and relying on CPSC's expertise in evaluating the safety of products. We coordinate enforcement and education efforts with the Environmental Protection Agency in areas of shared interest, including products sold as effective agents against bioterrorism. And we collaborate with numerous other agencies on, for example, alcohol advertising (Alcohol and Tobacco Tax and Trade Bureau), and projects requiring the technical or scientific expertise of particular agencies (for example, the National Institute of Standards and Technology and the National Institutes of Health). The FTC is coordinating with state agencies regarding the National Do Not Call Registry to avoid duplication with state registries. All these efforts maximize impact and minimize duplication among partner agencies.

To educate consumers and businesses, the FTC led efforts to establish a "one-stop" government Web site (*consumer.gov*) in 1997 with four of our federal government partners, the CPSC, the FDA, the National Highway Transportation and Safety Agency, and the U.S. Office of Consumer Affairs. The FTC continues to manage the site, which links to consumer information, arranged topically, from more than 180 federal agencies. It also has become the consumer information portal for *firstgov.gov*. The FTC routinely works with other federal and state agencies on coordinated education campaigns.

Maintaining Competition

On the competition side, a particularly high level of consultation and coordination occurs with the DOJ, with which we share many areas of antitrust jurisdiction.¹⁵ As a result, consultation and coordination occur at both the policy level and the day-to-day working level. The agencies consult on matters of policy to ensure that both apply the same standards in analyzing business practices and that uniform standards are communicated to the business community. To that end, the FTC and DOJ's Antitrust Division have jointly issued antitrust guidelines on the analysis of horizontal mergers, vertical mergers, and joint ventures, the licensing of intellectual property, and international enforcement. At the day-to-day working level, the agencies maintain a liaison arrangement to ensure that there is no duplication of effort or conflict between the investigations of the two agencies. Under this liaison arrangement, neither the FTC nor the DOJ's Antitrust Division may initiate an investigation without first consulting with the other to determine whether there would be any duplication or conflict.

¹⁵ There are notable differences in the statutes the two agencies enforce, however. Most of the FTC's antitrust enforcement is conducted pursuant to Section 5 of the FTC Act, which governs "unfair methods of competition," and Section 7 of the Clayton Act, which governs anticompetitive mergers. Section 5 of the FTC Act is enforced solely by the FTC, but merger enforcement under Section 7 is shared with the DOJ, which also enforces the Sherman Act. The agencies' enforcement responsibilities differ in two principal respects. First, Section 5 of the FTC Act can reach certain anticompetitive practices that are beyond the reach of the Sherman Act or the Clayton Act, although Section 5 is coextensive with those statutes in many respects. Second, criminal antitrust jurisdiction is solely within the DOJ. The FTC Act also assigns important non-enforcement responsibilities to the agency. In particular, the FTC studies and reports on important competition and economic issues. For example, an FTC study led to the passage of important securities laws in 1933 and to the enactment of major amendments to the Clayton Act in 1950. Recently the FTC has held public hearings on competition in health care and workshops on anticompetitive restrictions on e-commerce.

The FTC also has working relationships with numerous other agencies. For example, the FTC has advised the FDA on aspects of its regulations and procedures that may deny consumers the timely benefit of lower-cost prescription medications.¹⁶ The FTC also consults with agencies such as the International Trade Commission and the Patent and Trademark Office on competition-related matters within their special expertise, as well as with the Department of State on international matters. On mergers and anticompetitive practices involving electric utilities, the FTC shares jurisdiction with the Federal Energy Regulatory Commission (FERC) and the DOJ. FTC staff also initiated and participates in an interagency working group with FERC and the DOJ on competition matters related to electricity restructuring and regulatory reform, and staff submits competition advocacy comments in response to rules proposed by FERC.

As our economy becomes increasingly worldwide in scope, transactions affecting competition in many countries raise a host of logistical and substantive difficulties for law enforcers and other parties involved. Thus, there is a growing need for antitrust agencies throughout the world to coordinate their actions in multi-jurisdictional antitrust matters to reduce transaction costs for both governments and private parties, and to improve enforcement decisions. Consequently, the FTC, along with the DOJ and key antitrust officials from foreign countries, announced last fall the formation of the International Competition Network (ICN), a forum for antitrust policymakers from around the world to confer and cooperate on mutual concerns. In particular, ICN will facilitate movement toward consensus or compromise on both procedural and substantive antitrust issues. Among other activities, the ICN will facilitate communications involving particular matters affecting markets in multiple countries, as well as on broader issues.

In addition to being actively involved in the ICN, the FTC continues to participate in other multinational initiatives such as the OECD, the World Trade Organization, and the Global Competition Initiative, all of which share the goal of reducing procedural burdens and exchanging knowledge about forms of analysis and policy choices.

¹⁶ President Bush prominently cited a recent FTC report, entitled *Generic Drug Entry Prior to Patent Expiration*, when he announced FDA regulatory measures to foster competition in the pharmaceutical industry in October 2002. The report suggested certain changes in balance between competition and intellectual property law, such as permitting only one automatic 30-day stay per drug product, per generic entry application pending patent infringement litigation, which the President adopted in his program.

FTC Strategic Plan Fiscal Years 2003-2008

Statement of Vision: A U.S. economy characterized by consumer access to accurate information and vigorous competition among producers, yielding high-quality products at low prices and encouraging efficiency, innovation, and consumer choice.

Statement of Mission: To prevent business practices that are anticompetitive, deceptive, or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish these goals without unduly burdening legitimate business activity.

Goal 1 – Protect Consumers *Prevent fraud, deception, and unfair business practices in the marketplace.*

As a consumer protection agency with jurisdiction over a wide range of consumer issues, the FTC is a small agency with a big mission. The FTC therefore must make effective use of limited resources by targeting its law enforcement and education efforts for maximum impact, and by working closely with federal, state, international, and private sector partners in joint initiatives.

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

To identify consumer protection problems and trends in the fast-changing, increasingly global marketplace, the FTC is using new technologies creatively and building on our broad base of private and public sector partners. We have expanded dramatically our capacity to collect consumer complaints through our toll-free helpline and online consumer complaint form, and in FY 2002 collected more than 680,000 complaints and inquiries. We have created a comprehensive information system with several integrated databases for consumer fraud complaints and identity theft complaints and continued to expand our ability to collect such information. In 2001, the FTC, 12 other ICPEN countries, and the OECD launched *econsumer.gov*, a Web site where consumers can file cross-border e-commerce complaints with agencies around the world, access education materials, and contact consumer protection agencies. In 2002, the FTC and the Department of Defense launched *Military Sentinel* – the first online consumer complaint database specifically tailored to the unique needs of the military community. In addition, the FTC’s spam database currently receives, on average, more than 100,000 new pieces of spam every day. The total number of spam emails in the database has grown from 700,000 in 1998 to more than 50 million. The fraud database is accessible online, through *Consumer Sentinel*, to more than 835 law enforcement partner agencies in the United States, Canada, and Australia.

1. Strategies

- Upgrade and enhance *Consumer Sentinel* to respond to increasing demands and make it the premier consumer protection law enforcement tool.
- Expand the FTC’s comprehensive information system (consumer complaint databases) to keep pace with the global marketplace.

- Strengthen capabilities to analyze the increasing volume of complaint data to develop case leads and identify trends.
- Ensure the security and integrity of database information.
- Improve information-sharing regarding consumer protection matters among international law enforcement partners.
- Conduct surveys regarding consumer fraud and identity theft.
- Continue to integrate e-government initiatives into the expanse of mission activities.

2. Year-by-Year Implementation Plans, FY 2003-2008

Each year the agency will work to:

- Upgrade and enhance *Consumer Sentinel* to maintain it as a premier law enforcement tool.
- Recruit state, local, federal, and international law enforcement agencies to join *Consumer Sentinel* and contribute complaint data, and train them to take full advantage of its features.
- Improve the capacity to receive and integrate complaints from U.S. and international sources.
- Facilitate the exchange of data with law enforcement officials in the U.S. and other countries through *Consumer Sentinel* or other means.
- Monitor the marketplace to identify illegal practices that may not be fully captured by the database, for example through the FTC Internet Lab and Web surveys (surfs).
- Increase the number of identity theft complaints in the database by increasing public awareness, and refer trend data and complaints to public and private sector partners such as credit bureaus and law enforcement partners.
- Mine the spam database to identify enforcement targets and provide pertinent information to public and private sector partners.
- Identify new consumer protection issues emerging as a result of changes in the marketplace (for example, growth in e-commerce, deregulation of industries, emergence of new products and services, globalization) and explore these issues through public workshops, hearings, and studies.
- Enhance the capabilities of *econsumer.gov*, an international complaint-sharing Web site, to improve cross-border consumer protection cooperation.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

3. Five-Year Performance Measures

Through 2008, the FTC will collect and enter into our comprehensive information system more than one-half million complaints and inquiries a year; each year increasing the prior year's collection by at least 50,000. In addition to identifying the total number of complaints and inquiries entered, the FTC also will identify and report the number that relate to identity theft. Through our databases and other data collection efforts, such as Web surfs, and systematic analysis of data, the FTC and our law enforcement partners are able to identify and target the most serious cases of fraud and deception, coordinate their efforts, and respond quickly to emerging problems.

4. Program Evaluations

- Assess whether the FTC's law enforcement and education efforts are addressing the leading complaint areas identified by *Consumer Sentinel*.
- Determine how to best assess the extent to which *Consumer Sentinel* is used by agency staff and our law enforcement partners and implement changes to increase usage to assist ongoing investigations and identify new targets.
- Review current functions, determine what changes or upgrades to the databases would be helpful, and implement those changes.
- Assess security and integrity protections for the database and proposed enhancements to the database and evaluate the policies in place.

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

Consumer fraud costs the public billions of dollars a year. Telemarketing fraud continues to be a leading cause of consumer fraud and remains a high priority for the FTC. In addition, the Internet is a fertile ground for fraud. It is cheap and easy to enter, and offers fraudsters a global market, anonymity, and easy exit. During calendar year 2002, 47% of consumer fraud complaints entered into *Consumer Sentinel* related to the Internet. The challenge for the FTC, working with our partners, is to stop online fraud before it further harms consumers and undermines their confidence in the electronic marketplace.

The FTC's broad consumer protection jurisdiction covers the \$100 billion national advertising industry, the direct marketing industry with sales of \$600 billion, and financial transactions affecting virtually every consumer in this country. Consumers also express concern about the security of their personal information in the marketplace. With the growth of e-commerce, newly deregulated telecommunications and electricity markets, and globalization, the FTC's jurisdiction is growing even broader. To achieve the broadest possible compliance in this vast marketplace, the FTC targets the most serious problems for law enforcement and, where appropriate, encourages non-regulatory solutions that are effective but do not impede legitimate business activity.

1. Strategies

- Lead and coordinate the nationwide attack on telemarketing fraud.
- Target high-tech frauds such as those that have moved to the Internet and those that exploit other new technologies.
- Implement a plan for fighting cross-border fraud through legislative changes, public-private sector partnerships, and bilateral and multilateral cooperation.
- Increase the capacity to respond rapidly, with enforcement and other approaches, to fast-moving technology-based scams.
- Ensure that basic consumer protection principles are applied in new markets such as the Internet, and in deregulated markets such as the electricity industry.
- Monitor national advertising in print, television, radio, and online to identify illegal practices that may not be fully captured by the complaint database.
- Focus law enforcement on violations that create the greatest risks to consumer health, safety, and economic well-being.

- Develop policies to address newly emerging consumer protection issues resulting from changes in the marketplace.
- Encourage self-regulation and private initiatives, where appropriate, in lieu of regulation or law enforcement.

2. Year-by-Year Implementation Plans, FY 2003-2008

Each year the agency will:

- Target for federal-state “sweeps” or other law enforcement initiatives the most significant areas of telemarketing fraud and other types of fraud, for example, direct mail scams, deceptive lending practices, and unauthorized telephone billing (“cramming”).
- Stop the most pernicious Internet-related scams as they are identified in the *Consumer Sentinel* database or through other monitoring, for example, Internet surfs by U.S. and global partners and review of our spam database.
- Recruit new local, state, federal, and international law enforcement partners for anti-fraud initiatives; provide international assistance where appropriate.
- Train staff and equip the FTC’s Internet Lab to keep pace with technology, and support electronic investigations.
- Target law enforcement efforts to stop advertising and marketing practices that are most injurious to consumers; identify targets based on complaint data and other forms of monitoring.
- Monitor the online market to ensure broad compliance with consumer protection laws, rules, and guides; target law enforcement to address the most serious violations.
- Continue to implement the December 2002 amendments to the Telemarketing Sales Rule creating a National Do Not Call Registry, pending the outcome of court challenges. The amended Telemarketing Sales Rules addresses unauthorized billing by telemarketers, imposing new restrictions on the practice of “call abandonment,” requiring telemarketers to transmit caller-ID information, and taking enforcement action when appropriate.
- Address cutting-edge consumer protection issues in emerging areas – e-commerce, globalization, and the marketing of new digital products and services and newly deregulated services (for example, telephone, electricity, and natural gas).
- Continue and improve investigative and litigation skills and analysis training programs and identify “best practices” used by government and private industry; use this knowledge in training FTC staff.
- Improve the integration of budget and performance by linking goals and objectives to results; develop improved processes for use and analysis of management data.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

3. Five-Year Performance Measures

Each year, the FTC will stop approximately \$400 million in Internet and other consumer fraud; by 2008, the FTC will have saved consumers at least \$2 billion through law enforcement actions stopping consumer fraud. The FTC also will measure performance by reporting the number of data searches by FTC and other law enforcement personnel of the FTC’s *Consumer Sentinel* fraud complaints and the number of data searches by law enforcement personnel of the FTC’s identity theft complaints. The latter measures will be used to evaluate the usefulness of the data to law enforcement efforts and the value of FTC training to our law enforcement partners.

4. Program Evaluations

- Assess the overall trends revealed by the database to determine whether the amount of resources dedicated to our programs should be altered or the programs' priorities modified.
- Determine the success of leveraging resources through coordinated joint law enforcement initiatives.
- Determine whether there are new industries or areas of marketing that require law enforcement or that may be appropriate for self-regulation.

Objective 3: Prevent consumer injury through education.

Consumer and business education serves as the first line of defense against fraud, deception, and unfair practices. Most FTC law enforcement initiatives include a consumer and/or business education component aimed at preventing consumer injury and unlawful business practices.

1. Strategies

- Focus consumer and business education efforts on areas where fraud, deception, unfair practices, and information gaps cause the greatest injury.
- Creatively use technology to extend the reach of consumer and business education.
- Increase public awareness of consumer protection problems and solutions by conducting and publishing studies and filing advocacy comments on changes in the marketplace and the impact of business and government actions on consumers.
- Encourage private and public partners to participate in education initiatives.
- Use the results of the consumer fraud and identity theft surveys to determine whether certain classes of consumers are not represented in the FTC database, and target consumer education to close any gaps.

2. Year-by-Year Implementation Plans, FY 2003-2008

Each year the agency will:

- Deliver information to more consumers, industry members, and law enforcement partners faster and more efficiently.
- Focus education on high-profile and emerging issues where consumer information gaps are greatest, for example, globalization, Internet scams, online privacy, identity theft, etc.
- Increase education efforts about frauds that cause consumers the greatest financial injury.
- Through greater outreach, lead more consumers to the FTC's Web site (*ftc.gov*) and the "one-stop" government Web site for consumer information (*consumer.gov*).
- Expand coverage of FTC messages, including the toll-free helpline, through marketing, new products, and technology, such as *econsumer.gov* and *Military Sentinel*.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

3. Five Year Performance Measures

By 2008, the FTC will provide more than 20 million education messages annually online and in print. As part of the larger total of education messages disseminated, the FTC will report separately the number of education publications relating to identity theft and the number of Spanish-language publications distributed to or accessed electronically by consumers.

4. Program Evaluations

- Determine the number of publications distributed or accessed online.
- Assess whether the appropriate mix of media is being used to communicate consumer education messages and whether the FTC is making the best use of the available media and technology.
- Assess the number and range of public and private organizations that partner with FTC to do outreach.
- Determine whether the FTC needs to reach new audiences, in light of any changes in demographics, advertising, and marketing practices.
- Review the focus of FTC education efforts and adjust them based on changing consumer and business needs.
- Continue to assess the educational needs of the Spanish-speaking population.

Goal 2 – Maintain Competition
Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

More than a mere collection of laws, the antitrust laws and the procompetitive ethic they embody serve as an organizing principle in our country's economy. Antitrust plays a major role in shaping our markets, our institutions, and the relationships among market participants. Antitrust contributes to a market system that provides lower prices, encourages greater innovation, and generates faster responses by business to changing consumer needs and desires. As stated by the U.S. Supreme Court, the antitrust laws rest on the premise

“that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.”¹⁷

The antitrust laws help maintain effective competition by prohibiting conduct that unreasonably restricts markets. The FTC's critical guideposts in its antitrust enforcement are economic efficiency and consumer welfare. The hallmark of modern antitrust has been the application of sophisticated economic analysis and thorough factual investigation to distinguish between conduct that threatens the operation of free markets and conduct that promotes and advances their operation. We are guided by both economic theory and firm empirical evidence in selecting and conducting investigations. Thus the FTC's enforcement program focuses closely on the transactions and kinds of practices that have been shown, over time, to pose the greatest threat of substantial consumer injury. In addition to the amount of direct consumer injury, the agency considers the deterrent effect of its enforcement actions, as well as whether there is an opportunity to improve the state of antitrust legal doctrines.

The FTC faces a number of challenges affecting its merger and nonmerger enforcement activities. Long-term trends toward more, larger, and more complex mergers, and toward increasingly sophisticated techniques in merger analysis, will require continued efforts to do more with less. Fluctuating merger workloads will likely affect resources available for nonmerger enforcement, hampering the FTC's efforts to maintain a consistent nonmerger enforcement presence. Questions concerning the scope of the antitrust laws, increasing litigation, and also the very nature of the FTC's work presents special challenges in measuring and assessing the agency's performance.

Most mergers are either competitively neutral or beneficial to consumers, as mergers can generate cost savings that result in lower prices. But mergers that are anticompetitive can raise consumer prices by hundreds of millions of dollars every year. Anticompetitive mergers also may reduce product quality and output, consumer choice, and innovation.

¹⁷ See *infra* note 6.

While the unprecedented merger wave of the 1990s has ebbed, the size, scope, and complexity of individual mergers continues to increase.¹⁸ The size of mergers affects the FTC's workload because mergers among large diversified firms are likely to involve more products than mergers among smaller firms, and thus generally involve more markets requiring antitrust investigation. In addition, larger firms are more likely to be significant players in the markets in which they compete, which, all else being equal, increases the likelihood of antitrust concerns. Finally, as new technologies continue to grow and as the economy becomes more knowledge-based, the resulting complexity of many mergers requires more extensive inquiry.

Amended statutory filing thresholds, effective in 2001, require fewer mergers to be reported to the antitrust enforcement agencies, but the standard of legality under Section 7 of the Clayton Act remains unchanged. Consequently, the FTC now devotes more effort to identifying (through means such as the trade press and other news articles, consumer and competitor complaints, hearings, and economic studies) those unreported, usually consummated, mergers that could harm consumers.

As with anticompetitive mergers, anticompetitive conduct by and among competitors also can cost consumers dearly, in the form of hundreds of millions of dollars annually in higher prices, lower product quality, fewer choices, and slower innovation. Among the challenges the FTC faces is maintaining a significant enforcement presence in the nonmerger area when the resources available for nonmerger work fluctuate depending on the merger workload facing the FTC at any given time. Because of the short statutory time frame set out for HSR investigations, the FTC must reallocate resources from nonmerger enforcement to merger enforcement during periods of peak merger activity to meet the statutory deadlines. The current lower level of merger activity has enabled a renewed focus on the nonmerger side, but this could change with a future upsurge in mergers.

While we enjoy a broad consensus in this country about the benefits of antitrust, the scope of antitrust – and its associated benefits – is sometimes less clear. Competitors often seek protection behind established exemptions to the antitrust laws. Although the core principles underlying those exemptions generally are unquestioned, pressure to expand their boundaries presents a challenge for antitrust enforcers. Regulation of economic activity grew substantially during the latter part of the 20th century.¹⁹ At the same time, some lower court decisions have expanded the reach of exemptions to the antitrust laws, well beyond the precepts originally articulated by the Supreme Court. These two

¹⁸ Despite the smaller number of planned mergers in the recent economic climate, the total dollar value of reported mergers in 2001 was about 82% higher, in nominal terms, than the 1995 total, even without any adjustment for the revised statutory filing thresholds. In fact, the \$1 trillion total in 2001 exceeded the average annual total dollar value of reported transactions during the booming 1991-2000 decade.

¹⁹ One-third of our GDP is government spending. Almost 20% is federal; the remainder is state and local spending. *A Citizen's Guide to the Federal Budget: Budget of the United States Government, Fiscal Year 2001*, available at <<http://w3.access.gpo.gov/usbudget/fy2001/guide01.html>>. See also Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* at 347 (1978) (referring to "an enormous proliferation of regulatory and licensing authorities at every level of government.").

phenomena together create substantial potential for abuse.²⁰ Businesses may invoke government processes for anticompetitive purposes, while claiming exemption from the antitrust laws. Through study and analysis, and by bringing carefully selected enforcement actions, we hope to ensure that the application of the antitrust exemptions remains true to the Supreme Court's historic interpretation.

Moreover, from time to time groups of competitors also seek new exemptions from the antitrust laws. The FTC regularly opposes efforts to achieve legally sanctioned cartel status. In addition, as markets and technology evolve, industries such as the electric power industry are undergoing transition from a regulatory model to a competition model. These developments bring new challenges, as market participants adapt to a new way of operating. During the transition period, the FTC plays an important role by advising regulatory bodies about competition principles and by analyzing various regulatory proposals.

Resource-intensive litigation is more frequently needed, particularly when the agency determines to challenge an already-consummated merger.²¹ Moreover, because the FTC has a unique responsibility to help shape antitrust law and policy, as well as enforce them, cases sometimes focus on areas in which the law is not clear cut. Currently, more antitrust cases are in FTC administrative litigation than at any time in the last decade, and that situation is likely to prevail throughout the strategic plan period. Antitrust litigation requires enormous resources. At the height of preparation, a single case often requires the full-time attention of numerous staff members – not only lawyers, but also economists, paralegals, and support staff.

All of these circumstances pose continuing challenges for the FTC as it fulfills its responsibilities to protect consumers and the marketplace from anticompetitive mergers and business practices.

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

Hart-Scott-Rodino Premerger Notification provides the FTC with an effective starting point for identifying anticompetitive mergers before they are consummated. Mergers reported to the FTC vary tremendously in their complexity and potential anticompetitive effect. In some cases, the agency can make a reasonable judgment within a few days of filing about whether a merger has the potential to be anticompetitive or procompetitive, simply by reviewing materials filed with the notification. In other cases, an investigation can take

²⁰ Bork *supra* note 19, at 347.

²¹ Before consummation of a merger, the FTC can seek a preliminary injunction to prevent it, or negotiate a settlement calling for divestitures as a condition to allowing the merger to go forward. After consummation, however, parties have less incentive to cooperate, and any effort to undo the completed merger is more difficult and time-consuming.

months and require a major commitment of resources. Far more transactions fall into the former category than the latter.²²

The FTC administers the HSR program both for itself and for the DOJ's Antitrust Division, which shares authority to challenge anticompetitive mergers. Through an informal clearance process, the two agencies ensure that only one agency investigates and, if necessary, challenges any given transaction. Assignment to one agency or the other takes place after preliminary review of a transaction, which identifies the likely markets, if any, in which anticompetitive effects may occur. The assignment is based principally on expertise in particular markets.

On the nonmerger side, there is no comparable FTC statutorily mandated program to help identify anticompetitive business practices. The FTC must employ a variety of methods to identify potentially anticompetitive practices (for example, consumer and competitor complaints, referrals from other government agencies, and monitoring the trade press). Here too, however, the informal clearance process avoids any duplication of investigation or litigation effort between the FTC and DOJ's Antitrust Division.

1. Strategies

- Continue to make efficient use of the initial 30-day period after HSR filings (or 15 days for a cash tender offer) to determine whether a merger is likely to harm competition, including prompt inter-agency clearance and timely review of filings to avoid unnecessary extended investigations.
- Use trade press articles, consumer and competitor complaints, and other means to identify potentially anticompetitive mergers that were not required to be reported under HSR, or that were not reported in violation of HSR.
- Track and maintain the timeliness of review under the HSR program.
- Refine the investigative and decisional tools used in both merger and nonmerger investigations through continuous learning.
- Identify emerging trends and focus on potentially anticompetitive business practices or other issues that need to be addressed because of changes in the economy, technology, and the marketplace through hearings, task forces, Bureau of Economics studies, and other means.
- Conduct public hearings, conferences, and workshops, bringing together interested parties to enhance understanding of different practices and developments in the marketplace and to identify needed antitrust enforcement initiatives from the information gathered.
- Continue to integrate e-government initiatives, such as electronic premerger filing, into mission activities.

²² In FY 2002, the FTC issued second requests for information in about 2.3% of the mergers reported under HSR.

2. Year-by-Year Implementation Plans, FY 2003-2008

Each year the agency will work to:

- Continue to refine the “model second request” and other model documents used by staff to further the FTC’s competition mission and avoid unnecessary burden on businesses.
- Continue to improve the investigative skills and antitrust analysis training programs. Identify “best practices” used by government and private antitrust attorneys and use this knowledge in training FTC staff.
- Review significant deviations from the statistical benchmarks for timely and efficient review of merger transactions and take corrective action where necessary.
- Continue to use and improve existing techniques for identifying anticompetitive business practices, such as (1) monitoring the trade press, (2) responding to and following up on case leads by Congressional offices, other Executive Branch agencies, and state and local governments, and (3) letting potentially aggrieved parties know they can lodge complaints with us by “getting our message out” through speeches to and electronic and other publications for consumer, bar, and business groups (including those representing specific industries), and general public outreach.
- Continue discussions among attorneys in the FTC’s regional offices and in the nonmerger divisions on ways to improve techniques for monitoring business practices and for identifying anticompetitive practices.
- Conduct hearings, conferences, and workshops on significant anticompetitive issues, such as the hearings held during 2002 on “Competition and Intellectual Property Law and Policy In The Knowledge-Based Economy,” the August 2001 and May 2002 conferences on “Factors That Affect Prices Of Refined Petroleum Products,” and the October 2002 workshop on “Possible Anticompetitive Efforts To Restrict Competition On The Internet.”
- Conduct economic studies of the effects of business actions on competition and consumer welfare.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

3. Five-Year Performance Measures

By 2008, the agency will:

- Continue effective screening of HSR premerger notification filings to identify those that most likely present antitrust concerns, so that between 60% and 80% of HSR requests for additional information result in enforcement action.²³ Success on this measure will indicate that the FTC is targeting enforcement resources effectively by avoiding

²³ The FTC will compute this measure by dividing the number of second request investigations that result in enforcement action during the relevant fiscal year (without regard to when the investigation commenced) by the total number of second request investigations that concluded during the year with or without enforcement action (again, without regard to when the investigation commenced). “Enforcement action” includes Commission authorization of a complaint for preliminary injunction in federal court, issuance of an administrative complaint, acceptance of a consent agreement, or the parties’ abandonment of a proposed transaction based on FTC antitrust concerns.

investigation of too many competitively benign transactions (and unduly burdening businesses as a result), but not focusing too narrowly and thus potentially allowing problematic transactions to go forward without sufficient review.²⁴ In conjunction with this measure, and to facilitate evaluation of results, the FTC will also report the number of second requests issued each year.

- Effectively target nonmerger investigative resources, so that between 60% and 80% of nonmerger investigations in which the Commission issues a resolution authorizing the use of compulsory process will result in enforcement action. Success on this measure will indicate that the FTC has effectively focused nonmerger resources on matters likely to result in enforcement action, while avoiding aiming too narrowly and overlooking activity that is competitively problematic, but less obviously so. In conjunction with this measure, and to facilitate evaluation of results, the FTC will also report the number of nonmerger investigations opened and the number in which the Commission authorizes the use of compulsory process each year.

4. Program Evaluations

- Assess the significance (quantitatively in terms of the volume of commerce affected by FTC antitrust enforcement, and qualitatively in deterrence value and precedential significance) of the top 20% (measured in terms of hours spent) of matters in the investigational stage each year.
- Assess the burden imposed on merger parties by the HSR merger investigation process, explore ways of reducing that burden without compromising effectiveness of investigations, and explore methods of measuring HSR compliance burden.

Objective 2: Stop anticompetitive mergers and practices through law enforcement.

This enforcement goal includes both obtaining orders to stop anticompetitive activity (either through litigation or by consent) and ensuring that the remedies imposed by those orders are effective. Antitrust enforcement saves consumers money by preventing price increases that likely would have occurred due to the loss of competition if an anticompetitive merger had gone forward unchallenged, or by stopping anticompetitive conduct that raises prices. In past years, as a very rough proxy, we estimated the dollar savings to consumers resulting from our enforcement actions by applying an arbitrary percentage to the volume of commerce in the affected markets (one percent of the market, for two years in merger cases and for one year in nonmerger cases). As some stakeholders have noted, however, this methodology suffers from significant flaws, not the least of which is that the resulting figures imply a greater degree of accuracy in measuring consumer benefit than realistically is possible.

Based on a careful review of our performance measures during the preparation of this plan, we have concluded that the disadvantages of the consumer savings measures outweigh their advantages. Accordingly, we are replacing them with new indicators, described below, that also seek to reflect the scope of our activities, but do not seek to quantify the specific

²⁴ See *supra* note 5.

benefit to consumers. With respect to designing effective remedies, the FTC will continue to seek improvements in both the substantive aspects of remedies, as well as the process by which they are derived.²⁵

1. Strategies

- Continue to benefit consumers in markets involving billions of dollars in annual sales by challenging anticompetitive mergers, negotiating consent orders, and winning litigated orders.
- Continue to benefit consumers in markets involving billions of dollars in annual sales by challenging other (nonmerger) anticompetitive conduct, negotiating consent orders, and winning litigated orders.²⁶
- Negotiate merger and nonmerger consent orders and win litigated orders that have significant remedial, precedential, and deterrent effects.
- Improve negotiation and litigation skills through continuous learning.
- Continue to implement findings from a series of informal discussions with outside parties on improvements to the FTC's merger investigation process and the negotiation of remedies.
- Improve the FTC's capacity to promote consumer welfare by conducting workshops, hearings, and research projects that improve our understanding of significant antitrust issues.
- Ensure that administrative litigation and adjudication reach a timely resolution.
- Improve the integration of budget and performance by linking goals and objectives to results; develop improved processes for use and analysis of management data.

2. Year-by-Year Implementation Plans, FY 2003-2008

Each year the agency will work to:

- Estimate the annual sales in markets in which the FTC took merger or nonmerger enforcement action.
- Continue and improve negotiation and litigation skills training programs. Ensure that lead attorneys and managers collect any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.
- Continue to monitor implementation of divestitures and other requirements of the Commission's merger consent orders. Seek civil penalties where appropriate if a respondent fails to fulfill its obligations under an order in a timely fashion.

²⁵ See FTC Press Release, FTC Competition Director Announces Guidelines for Negotiating Merger Remedies (April 2, 2003), available at <http://www.ftc.gov/opa/2003/04/mergerremedies.htm>.

²⁶ The agency may prevent a harmful result from anticompetitive conduct by (1) conducting successful litigation to obtain a court or FTC administrative order barring the conduct, or (2) negotiating a settlement to eliminate the anticompetitive conduct. Consumer harm from anticompetitive conduct most often takes the form of higher prices. In some cases, however, the harm may take some other form, such as curtailment of innovation that would otherwise result in new or better products in the future.

- Monitor the timeliness of administrative adjudication, including issuing to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.
- Continue to seek changes in the merger review process that improve the effectiveness and efficiency of investigations. In 2002, for example, the FTC conducted a series of national public workshops to obtain information and ideas from a broad range of knowledgeable parties, including corporate personnel, outside and in-house attorneys, economists, and consumer groups. The workshops addressed topics such as using more voluntary information submissions before issuance of a second request, reducing the scope and content of the second request, negotiating modifications to the second request, and focusing on special issues concerning electronic records and accounting or financial data. As an initial result of the workshops, the FTC announced a number of procedural reforms to improve the merger review process by expediting the gathering of relevant information and reducing the burdens on parties. The FTC will continue to collect public input to assist it in enhancing and refining the process.
- Collect data, for management review, regarding the FTC's efficiency in conducting investigations, such as the amount of time required to complete the HSR review process, the number of HSR matters requiring issuance of an investigative second request, the number of HSR and significant nonmerger investigations that result in enforcement action, the number of hours of staff time spent on investigations, and other costs associated with investigations.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

3. Five-Year Performance Measures

By 2008, the agency will:

- Achieve a positive result (including consent orders, litigation victories, and, for mergers, transactions abandoned after recommendation of a complaint) in at least 80% of cases in which the FTC takes enforcement action.
- Take action against mergers²⁷ likely to harm competition in markets with a total of at least \$200 billion in annual sales. To meet this goal, the FTC will need to take action each year against mergers likely to harm competition in markets with an average total of \$40 billion in annual sales. Because external factors, such as level of merger activity, may cause the results to fluctuate significantly from year to year, we have expressed this goal in terms of an aggregate target for the five-year strategic plan period, rather than as a yearly target.

²⁷ The FTC may prevent an anticompetitive result from a proposed merger by (1) conducting successful litigation to block the merger, (2) negotiating a settlement to resolve anticompetitive aspects of the merger while allowing the underlying transaction to go forward, or (3) identifying antitrust concerns sufficient to cause the parties to abandon the transaction without court action. The volume of affected commerce measure does not include transactions abandoned by the parties for business considerations unrelated to antitrust. Settlements are subject to Commission approval, and require sufficient supporting evidence for the Commission to have "reason to believe" that the transaction is unlawful.

- Take action against anticompetitive conduct in markets with a total of at least \$100 billion in annual sales. To meet this goal, the FTC will need to take action each year against anticompetitive conduct affecting markets with an average total of \$20 billion in annual sales. Because external factors may cause the results to fluctuate significantly from year to year, we have expressed this goal in terms of an aggregate target for the five-year strategic plan period, rather than as a yearly target.

4. Program Evaluations

- Assess the scope of the FTC’s annual merger enforcement activities, as reflected by the volume of commerce in markets in which the agency took merger enforcement action. Determine whether the total volume of commerce in such markets is likely to reach \$200 billion over the five-year strategic plan period. Compare the likely consumer welfare impact in these markets to the resources spent on the mission.
- Assess the scope of the FTC’s annual nonmerger enforcement activities, as reflected by the volume of commerce in markets in which the agency took nonmerger enforcement action. Determine whether the total volume of commerce in such markets is likely to reach \$100 billion over the five-year strategic plan period. Compare the likely consumer welfare impact in these markets to the resources spent on the mission.
- Assess the deterrence value and precedential significance of the enforcement actions brought during each year.
- Explore methods of identifying when we have achieved effective deterrence of anticompetitive practices in a market and tracking progress over time.
- Conduct periodic retrospective studies of past investigative and enforcement activity to determine the extent to which the FTC’s case selection process is accurately identifying matters that require FTC intervention.
- Assess the FTC’s efficiency in conducting antitrust investigations, explore ways to increase efficient use of investigatory resources, and explore whether efficiency in conducting investigations can meaningfully be measured.
- Review the results of major competition research initiatives to identify their usefulness in guiding FTC decisions and influencing other policymakers’ approaches to competition issues.
- Estimate the deterrence effect of FTC nonmerger enforcement by computing the volume of commerce indirectly affected by FTC nonmerger enforcement actions.

Objective 3: Prevent consumer injury through education.

Educating consumers and businesses about competition law and policy is a critical part of our mission. Informing businesses and their legal advisers about potential antitrust violations deters anticompetitive mergers and other practices from being proposed and reduces businesses’ cost of compliance. Educating consumers to know their rights, and to bring violations to the FTC’s attention, reduces the cost of identifying anticompetitive conduct. Providing consumers and businesses with information about how antitrust enforcement benefits the common good also encourages cooperation with the FTC’s investigations and enforcement actions. Educating governmental bodies helps avoid governmental conduct that can have anticompetitive consequences.

In addition, as an adjudicative body, the FTC is especially well suited to explore complex competition issues and to engage academicians, practitioners, and business persons in that process.

1. Strategies

- Continue to educate consumers and businesses about antitrust issues through traditional means such as guidelines, advisory opinions, speeches, studies, and other publications.
- Continue to enhance avenues of communication, such as e-mail and the FTC Web site.
- Continue to provide advice about the competitive implications of proposed government actions to other governmental bodies upon request.

2. Year-by-Year Implementation Plans, FY 2003-2008

Each year the agency will work to:

- Issue guidelines to help businesses understand and comply with the application of the antitrust laws in certain areas, such as horizontal mergers, international operations, intellectual property, and health care.
- Continue to provide Commission and staff advisory opinions on competition issues; continue to provide guidance in response to informal telephone requests, particularly concerning HSR matters.
- Prepare advocacy comments to inform other governmental entities about competition issues, upon their request.
- Prepare amicus briefs addressing important competition policy issues under consideration in court proceedings.
- Monitor the content of complaints, press releases, and analyses to aid public comment to ensure they are “transparent,” that is, that they explain in sufficient detail and with sufficient clarity the evidence and theory of a case, within the constraints of confidentiality. Expand the use of press releases and other public statements to explain why the Commission elected *not* to take enforcement action in certain matters to further improve the public’s understanding of the FTC’s enforcement policies.
- Make available prepared texts of speeches; as appropriate, develop other materials that explain Commission policies and procedures.
- Continue to have Commissioners and staff speak at and participate in seminars, panel discussions, and conferences to explain how the Commission analyzes mergers and business practices.
- Continue to conduct economic research to develop knowledge about how markets operate.
- Continue to support outreach efforts to international bodies to explain U.S. antitrust perspectives on competition theories and approaches; continue to aid the development of antitrust laws and programs in developing nations by participating in technical assistance missions.
- Make available on the FTC’s Web site the guidelines issued by the FTC, advisory opinions, advocacy comments, written releases, texts of speeches, Bureau of Economics Reports, and other materials that explain the FTC’s policies and procedures.

- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

3. Five-Year Performance Measures

For each year 2003-2008:

- Measure the volume of traffic on the FTC Web site on antitrust-related pages that are relevant to the business and legal communities. In 2003, identify an appropriate baseline for this measure for future years.
- Measure the volume of traffic on the FTC Web site on antitrust-related pages that are relevant to policymakers and the public at large. In 2003, identify an appropriate baseline for this measure for future years.

Successful outreach and education efforts, as reflected by both of these measures, will help consumers because increased knowledge and understanding of the antitrust laws will help businesses stay in compliance.

4. Program Evaluations

- Assess whether education and outreach efforts target the right audiences and address the issues that have the most impact on the marketplace.
- Evaluate what antitrust content on the FTC Web site generates the largest amount of public interest, and why, and use this information in setting future priorities.
- Seek input from consumer groups, business groups, bar groups and other FTC “customers” on the effectiveness of FTC educational efforts.
- Evaluate the transparency of FTC merger review policy by assessing the extent to which significant changes in such policy are communicated to stakeholders.

Laws Enforced by the FTC

The FTC is an independent agency established by Congress in 1914 to enforce the FTC Act.²⁸ Section 5 of the FTC Act prohibits “unfair methods of competition,” and was amended in 1938 also to prohibit “unfair or deceptive acts or practices.”²⁹ The FTC enforces a variety of other antitrust and consumer protection laws as well.

Although the nation’s first antitrust law, the Sherman Act, was enacted in 1890, the history of the FTC may be said to begin with the Supreme Court’s landmark 1911 decision in the *Standard Oil* case,³⁰ in which the Court declared that Section 1 of the Sherman Act prohibited only *unreasonable* restraints on trade that have a direct effect on interstate commerce. In the aftermath of that decision, the Senate passed a resolution calling for a study of its impact,³¹ and two years later the Senate Commerce Committee produced a report calling for the establishment of an administrative agency to consider antitrust issues.³² After receiving the Senate report, the House Commerce Committee reported out a bill to create a new agency with broader powers than those proposed by the Senate. The House and Senate bills would have given the new agency the duties of the Bureau of Corporations of the Department of Commerce, which were principally to collect and study data and to issue reports on antitrust and related economic issues. The House bill, however, went much further, including provisions to prohibit “unfair methods of competition,” create an expert body to give definition to that general prohibition, and grant the new agency quasi-judicial powers to enforce that prohibition.³³ The final version of the FTC Act followed this approach and provided a comprehensive framework for carrying out the FTC’s law enforcement initiatives.

In executing its consumer protection law enforcement responsibilities, the FTC relies on Section 5 of the FTC Act – which prohibits unfair or deceptive acts or practices – and on a number of more specific consumer protection statutes. Under Section 5, the FTC has determined that a representation, omission, or practice is *deceptive* if (1) it is likely to mislead consumers acting reasonably under the circumstances, and (2) it is material, that is, likely to affect consumers’ conduct or decisions with respect to the product at issue.³⁴

²⁸ Act of Sept. 26, 1914, ch. 311, § 5, 38 Stat. 717, 719 (codified as amended at 15 U.S.C. §§ 41-58 (1994)).

²⁹ Act of March 21, 1938, ch. 49, § 3, 52 Stat. 111 (codified at 15 U.S.C. § 45(a)(1) (1994)).

³⁰ *Standard Oil Company v. United States*, 221 U.S. 1 (1911).

³¹ 47 Cong. Rec. 2695 (1911).

³² S. Rep. No. 1326, 62d Cong., 3d Sess. (1913).

³³ ABA Antitrust Section, Monograph No. 5, “The FTC as an Antitrust Enforcement Agency: The Role of Section 5 of the FTC Act in Antitrust Law,” vol. 1, p. 9 (1981).

³⁴ *Stouffer Foods Corporation*, Docket No. 9250 (Sept. 26, 1994), slip op. at 3; *Kraft, Inc.*, 114 F.T.C. 40, 120 (1991), *aff’d and enforced*, 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1254 (1993); *Removatron International Corporation, et al.*, 111 F.T.C. 206, 308-09 (1988) (*citing, e.g.*,

In August 1994, Congress amended Section 5 of the FTC Act to provide that an act or practice is *unfair* if the injury it causes or is likely to cause to consumers is (1) substantial, (2) not outweighed by countervailing benefits to consumers or to competition, and (3) not reasonably avoidable by consumers themselves.³⁵

Congress has also enacted, over time, a number of other statutes prescribing additional consumer protection enforcement responsibilities. Thus, for example, the Wheeler-Lea Act of 1938 gave the FTC specific authority to prevent false advertising of foods, drugs, and cosmetics, and Title II of the Magnuson-Moss Warranty - Federal Trade Commission Improvements Act (Magnuson-Moss Act) (effective in 1976) enlarged the FTC's jurisdiction to cover activities "affecting commerce" as well as "in commerce."³⁶ In addition, beginning in the late 1960s and into the 1970s, a number of statutes substantially strengthened the FTC's enforcement presence in the credit area. These statutes include the Truth in Lending Act (effective in 1969), as amended by the Fair Credit Billing Act (effective in 1975); the Fair Credit Reporting Act (effective in 1971); the Equal Credit Opportunity Act (effective in 1975 and amended in 1977); the Consumer Leasing Act (effective in 1977); and the Fair Debt Collection Practices Act (effective in 1978).³⁷ With respect to tobacco products, the Public

Southwest Sunsites, Inc. v. FTC, 785 F.2d 1431, 1436 (9th Cir.), *cert. denied*, 107 S. Ct. 109 (1986)); *International Harvester Co.*, 104 F.T.C. 949, 1056 (1984); *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 164-65 (1984); *see generally* *Federal Trade Commission Policy Statement on Deception*, *appended to Cliffdale Associates, Inc.*, 103 F.T.C. at 174.

³⁵ *See* Section 5(n) of the FTC Act, 15 U.S.C. § 45(n), *added by* The Federal Trade Commission Act Amendments of 1994, Pub. L. No. 103-312. The Commission previously relied on similar criteria to define the scope of its authority to prohibit unfair acts or practices pursuant to Section 5(a) of the FTC Act. *See, e.g., Orkin Exterminating Co.*, 108 F.T.C. 263, 362 (1986); *International Harvester Co.*, 104 F.T.C. 949, 1061 (1984); *see generally* *Federal Trade Commission Policy Statement on Unfairness*, *appended to International Harvester Co.*, 104 F.T.C. at 1070-76.

³⁶ The Magnuson-Moss Act also created specified procedures for the FTC to prescribe substantive rules for unfair or deceptive acts or practices; increased the FTC's authority to represent itself, under certain conditions, in federal court actions and before the Supreme Court; authorized civil penalty actions for knowing violations of rules and cease and desist orders respecting unfair or deceptive practices; and authorized suits for consumer redress under certain conditions. *See, e.g.,* 15 U.S.C. § 57a (Magnuson-Moss rulemaking procedures), § 57b (nature of relief available for rule and order violations); *see also* 15 U.S.C. § 45(m) (civil penalty authority). The FTC's rules are set forth in title 16, ch. 1, of the Code of Federal Regulations, 16 C.F.R. Parts 0 through 999.

³⁷ These statutes, comprising various titles of the Consumer Credit Protection Act, Pub. L. No. 90-321, 82 Stat. 1601 (1968) (codified at 15 U.S.C. § 1601 *et seq.*) have since been amended and supplemented on numerous occasions. *See, e.g.,* Electronic Funds Transfer Act (1978), 15 U.S.C. §§ 1693-1693r (establishing certain rights, liabilities, and responsibilities in regard to electronic fund transfer systems); Fair Credit and Charge Card Disclosure Act of 1988, *codified in relevant part at* 15 U.S.C. § 1637(c)-(g) (requiring that credit and charge card issuers provide certain disclosures in direct mail, telephone and other applications and solicitations to open-end credit and charge accounts and under other circumstances); Home Equity Loan Consumer Protection Act of 1988, *codified in relevant part at* 15 U.S.C. §§ 1637, 1647 (requiring that creditors provide certain disclosures and substantive limitations for open-end credit plans secured by the consumer's residence); Home Ownership and Equity Protection Act of 1994, *codified in relevant part at* 15 U.S.C. § 1639 (establishing disclosure

Health Cigarette Smoking Act of 1969, as amended in 1984, requires cigarette packages to bear one of four rotated health-related warnings, and it requires the FTC to submit annual reports to Congress concerning the effectiveness of cigarette labeling, current practices and methods of cigarette advertising and promotion, and recommendations for legislation. The Comprehensive Smokeless Tobacco Health Education Act of 1986 further requires manufacturers, packagers, and importers of smokeless tobacco products to place one of three statutorily prescribed health warning labels on their product packages and in advertisements, on a rotating basis; prohibits them from advertising smokeless tobacco products on radio and television; and empowers the FTC to enforce these provisions. In addition, the Wool Products Labeling Act, the Fur Products Labeling Act, and the Textile Fiber Products Identification Act – all enacted in 1939 – address different aspects of textile fiber product labeling and have since been supplemented by labeling statutes in other areas.³⁸ The rise of telemarketing and electronic commerce, and heightened concern for consumer financial and children’s privacy brought further statutory enforcement responsibilities to the FTC in the 1990s.³⁹ Combating fraud in the consumer marketplace

requirements and prohibiting equity stripping and other abusive practices with respect to high-cost mortgages); Credit Repair Organizations Act (1996), 15 U.S.C. §§ 1679-1679j (prohibiting misrepresentations to individuals or others and requiring certain disclosures in the offering or sale of credit repair services).

³⁸ Other labeling statutes administered or enforced by the FTC include, for example, the Fair Packaging and Labeling Act (1966), 15 U.S.C. §§ 1451-1461 (directing the FTC to issue labeling regulations applicable to consumer commodities other than food, drugs, therapeutic devices, and cosmetics), the Hobby Protection Act (1973), 15 U.S.C. §§ 2101-2106 (prohibiting the manufacturing or importation of imitation numismatic and collectible political items not marked in accordance with FTC regulations), the Dolphin Protection Consumer Information Act (1990), *codified in relevant part at* 16 U.S.C. § 1385 (prohibiting deceptive “dolphin safe” claims on tuna products), and section 320993 of The Violent Crime Control and Law Enforcement Act of 1994, *codified in relevant part at* 15 U.S.C. § 45a (requiring that “Made in the U.S.A.” claims conform to standards established by FTC decisions and orders). The FTC also has substantial regulatory and enforcement responsibilities under a number of labeling and disclosure statutes in the energy area. *See, e.g.*, Energy Policy and Conservation Act (1975), 42 U.S.C. § 6201 *et seq.* (requiring energy use and efficiency labeling for consumer products pursuant to FTC regulations), as amended by the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (authorizing FTC regulations for energy labeling for certain appliances, bulbs, and other products, to enforce similar Department of Energy rules for other products, and to issue octane posting rules with respect to alternative fuels); Petroleum Marketing Practices Act (1978), 15 U.S.C. §§ 2801-2841 (directing the FTC to prescribe posting requirements for gasoline octane ratings).

³⁹ *See, e.g.*, Telephone Disclosure and Dispute Resolution Act of 1992, as amended, *codified in relevant part at* 15 U.S.C. §§ 5701 *et seq.* (authorizing FTC regulations for pay-per-call disclosures, advertising, and billing); Telemarketing and Consumer Fraud and Abuse Prevention Act (1994), *codified in relevant part at* 15 U.S.C. §§ 6101-6108 (authorizing FTC regulations to define and prohibit deceptive and abusive telemarketing practices); Children’s Online Privacy Protection Act (1998), 15 U.S.C. §§ 6501-6506 (authorizing FTC regulations to require parental consent for the online collection of personally identifiable information from children under the age of 13); Identity Theft Assumption and Deterrence Act of 1998, *codified in relevant part at* 18 U.S.C. § 1028 note (requiring the FTC to log and acknowledge identity theft complaints, provide information to the affected individuals, and refer complaints to appropriate entities); Gramm-Leach-Bliley Act, Pub. L. No. 106-102 (1999) (authorizing FTC regulations to protect the privacy of consumers’ personal financial information collected by certain financial institutions); Do-Not-Call Implementation Act, Pub. L. No. 108-10 (2003) (authorizing

has been an additional focus of more recent legislation affecting the FTC's law enforcement agenda.⁴⁰

In executing its antitrust law enforcement responsibilities, the FTC relies upon both Section 5 of the FTC Act – which prohibits unfair methods of competition – and a number of other antitrust statutes. As a general proposition, practices that constitute unfair methods of competition include at least practices that violate the Sherman Act and the Clayton Act. Thus, for example, although the FTC cannot directly enforce the Sherman Act, it can prohibit – as unfair methods of competition – practices that (1) violate Section 1 of the Sherman Act because they constitute a “contract, combination..., or conspiracy, in restraint of trade or commerce,” or (2) violate Section 2 of the Sherman Act because they constitute monopolization of, an attempt to monopolize, or a conspiracy to monopolize a particular market.⁴¹ In addition, the FTC can directly enforce the Clayton Act. Thus, for example, Section 7 of the Clayton Act authorizes the FTC and the DOJ to prevent acquisitions that may substantially lessen competition or tend to create a monopoly, and therefore threaten competition and consumer welfare. To assist with that effort, Section 7A of the Clayton Act requires companies to file premerger notifications with the FTC and the DOJ's Antitrust Division for transactions satisfying certain threshold requirements and to wait specified periods of time before consummating such transactions. The FTC also has authority to enforce Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, which prohibits certain forms of price discrimination that may substantially lessen competition or tend to create a monopoly, and therefore threaten competition and consumer welfare; Section 3 of the Clayton Act, which proscribes certain types of tying and exclusive dealing arrangements; and Section 8 of the Clayton Act, which proscribes interlocking directorates and officers, with certain exceptions.

As the foregoing discussion indicates, the history of the FTC since 1914 has followed a pattern of ever-increasing statutory responsibilities. The FTC has used its enforcement tools to enhance both the power and the efficiency with which it can prevent unfair competition and unfair or deceptive acts or practices.

the FTC to issue regulations establishing fees sufficient to implement and enforce the provisions relating to the National Do Not Call Registry of the Telemarketing Sales Rule, 16 CFR 310.4(b)(1)(iii), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act, *supra*).

⁴⁰ See College Scholarship Fraud Prevention Act of 2000, Pub. L. No. 106-420, § 5 (Nov. 1, 2000), *codified in relevant part at* 20 U.S.C. § 1920d (requiring the Attorney General and the Secretary of Education, in conjunction with the FTC, to submit an annual report to Congress on college scholarship fraud, and for the Secretary of Education, in conjunction with the FTC, to maintain a scholarship fraud awareness site on the Department of Education's Web site); Crimes Against Charitable Americans Act of 2001, Pub. L. No. 107-56 (Oct. 26, 2001) (USA PATRIOT Act), § 1011 (amending the Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.* at § 6102, to require certain disclosures in telemarketing for the solicitation of charitable contributions).

⁴¹ See, e.g., *United States v. American Airlines Inc.*, 743 F.2d 1114 (5th Cir. 1984); *FTC v. Motion Picture Advertising Serv. Co.*, 344 U.S. 392, 394-95 (1953); *FTC v. Cement Institute*, 333 U.S. 683, 694 (1948); *Fashion Originators' Guild v. FTC*, 312 U.S. 457, 463-64 (1941).

With respect to its consumer protection enforcement, in recent years the FTC has relied more and more frequently on federal court actions not only to secure preliminary injunctions against unfair or deceptive acts or practices, freezes of defendants' assets, and the appointment of receivers to preserve defendants' assets for later consumer redress, but also to secure permanent injunctions providing a variety of ancillary equitable relief, including consumer redress, civil penalties, and disgorgement. The FTC has also used its enforcement tools to reach the assets of, and proscribe practices used by, fraudulent operators.

With respect to its competition enforcement, in recent years the FTC has relied on federal court actions, pending the completion of an administrative trial on the merits, to prevent the consummation of mergers and acquisitions that may substantially lessen competition. The FTC also has secured substantial civil penalties from firms that fail to comply with the premerger notification requirements of the Hart-Scott-Rodino Act.

Key Components of the FTC

The Commission: The FTC is an independent agency that reports to Congress on its actions. It is headed by five Commissioners, who are nominated by the President, confirmed by the Senate, and serve staggered seven-year terms. The President chooses one Commissioner to act as Chairman. No more than three Commissioners can be of the same political party. In 2003, the Chairman is Timothy J. Muris, and the Commissioners are Mozelle W. Thompson, Orson Swindle, Thomas B. Leary, and Pamela Jones Harbour.

Bureau of Competition: This Bureau is the FTC's antitrust arm. It acts to prevent business practices that restrain competition, such as monopolization or anticompetitive mergers. It thereby ensures that the marketplace continues to provide a full range of product and service options for consumers, which in turn helps to ensure that consumers have the benefit of low prices and good product variety. The Bureau's actions include individual company investigations, administrative and federal court litigation, and consumer and business education.

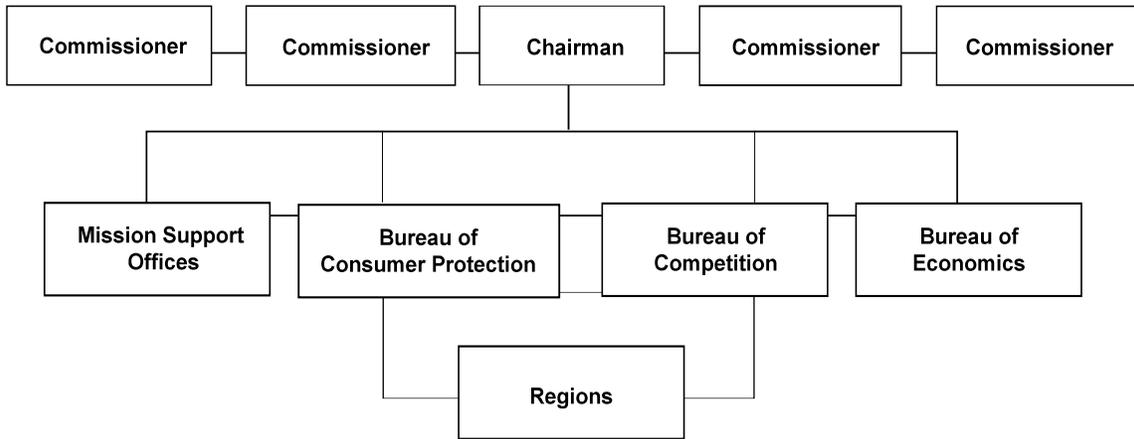
Bureau of Consumer Protection: This Bureau's mandate is to protect consumers against unfair, deceptive, or fraudulent practices. The Bureau enforces a number of consumer protection laws enacted by Congress, as well as trade regulation rules issued by the Commission. Its actions include individual company investigations, law enforcement sweeps coordinated with other law enforcement agencies, administrative and federal court litigation, and consumer and business education. The Bureau also contributes to the Commission's ongoing efforts to inform Congress and other government entities of the impact that proposed legislation could have on consumers.

Bureau of Economics: This Bureau helps ensure that the FTC considers the economic impact of its actions. To achieve this, the Bureau provides economic analysis and support to antitrust and consumer protection casework and rulemaking. It also analyzes the impact of economic government regulation on competition and consumers and provides Congress, the Executive Branch, and the public with economic studies of various markets and industries.

Regions: The Regions comprise the Northeast, Southeast, East-Central, Midwest, Northwest, Southwest, and Western regions, served by offices in New York, Atlanta, Cleveland, Chicago, Seattle, Dallas, and Los Angeles and San Francisco, respectively. Their program activities are coordinated through the Bureau of Consumer Protection, and to a lesser extent, the Bureau of Competition. These offices 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. The regional offices frequently sponsor conferences for small businesses, local authorities, and consumer groups.

Mission Support Offices: The FTC also includes these offices, which provide support to the FTC missions: Administrative Law Judges, Executive Director, General Counsel, Inspector General, Congressional Relations, Public Affairs, and Secretary.

FEDERAL TRADE COMMISSION



Congressional Consultation List

Chairmen and Ranking Members of Congressional Committees

Senate Committee on Appropriations

Senate Subcommittee on Commerce, Justice and State, the Judiciary, and Related Agencies

House Committee on Appropriations

House Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies

Senate Committee on Commerce, Science, and Transportation

Senate Subcommittee on Consumer Affairs, Foreign Commerce and Tourism

House Committee on Commerce

House Subcommittee on Telecommunications, Trade and Consumer Protection

Senate Judiciary Committee

Senate Subcommittee on Antitrust, Business Rights, and Competition

Senate Subcommittee on Terrorism, Technology, and Government Information

House Judiciary Committee

Senate Committee on Small Business

House Committee on Small Business

Senate Committee on Governmental Affairs

House Committee on Government Reform and Oversight

House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

Senate Committee on Banking, Housing, and Urban Affairs

Senate Subcommittee on Financial Institutions

Senate Subcommittee on International Trade and Finance

House Committee on Banking and Financial Services

House Subcommittee on Financial Institutions and Consumer Credit

Senate Special Committee on Aging