

FEDERAL TRADE COMMISSION

PERFORMANCE REPORT FISCAL YEAR 2000



March 31, 2001

EXECUTIVE SUMMARY

The Federal Trade Commission (FTC), an independent law enforcement agency, is the only federal agency with both consumer protection and competition jurisdiction over broad sectors of the economy. We strive to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive.

The FTC protects American consumers in both domestic and world marketplaces. Our experience demonstrates that competition among producers and accurate information in the hands of consumers yields products at the lowest prices, spurs innovation, and strengthens the economy.

Our Strategic Plan defines the FTC's Vision and Mission in two goals:

GOAL 1 Prevent fraud, deception, and unfair business practices in the marketplace.

GOAL 2 Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

These goals, with their corresponding objectives and performance measures, help us assess our performance.

FTC'S STRATEGIC PLAN

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

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

GOAL 1 Prevent fraud, deception, and unfair business practices in the marketplace.

GOAL 2 Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

OBJECTIVE 1.1 Identify fraud, deception, and unfair practices that cause the greatest consumer injury.

OBJECTIVE 2.1 Identify anticompetitive mergers and practices that cause the greatest consumer injury.

OBJECTIVE 1.2 Stop fraud, deception, and unfair practices through law enforcement.

OBJECTIVE 2.2 Stop anticompetitive mergers and practices through law enforcement.

OBJECTIVE 1.3 Prevent consumer injury through education.

OBJECTIVE 2.3 Prevent consumer injury through education.

FY 2000 Performance Measures and Targets

GOAL 1

OBJECTIVE 1.1

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

Target: 600,000
Actual: 833,659 ✓

OBJECTIVE 1.2

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

Target: \$250 million
Actual: \$263 million ✓

Measure 1.2.2: Percentage of targeted industry brought into compliance through law enforcement and self-regulation.

Target: 50%-75%
Actual: 83% ✓

OBJECTIVE 1.3

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

Target: 8.7 million
Actual: 11 million ✓

✓ met or exceeded target

GOAL 2

OBJECTIVE 2.1

Measure 2.1.1: Average number of days for review of HSR-reported transactions.

Target: 20
Actual: 18 ✓

Measure 2.1.2: Number of nonmerger investigations opened per year.

Target: 45-70
Actual: 25 (see text)

OBJECTIVE 2.2

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

Target: 80%
Actual: 95% ✓

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

Target: \$500 million
Actual: \$2.98 billion ✓

Measure 2.2.3: Average time, in months, from proposed consent orders to divestitures.

Target: 9
Actual: 4 ✓

OBJECTIVE 2.3

Measure 2.3.1: Identify and survey FTC "customers" in the marketplace.

Incorporated stakeholder input ✓

Measure 2.3.2: Average number of days to issue advisory opinions in health care area.

FY 2000 Assessment

The results of our FY 2000 activities reached, and in most cases exceeded, each of our performance measure targets with the exception of one. Highlights of our performance and its effect on consumers and businesses are:

- Saving consumers an estimated \$3.2 billion in 2000 from law enforcement actions to stop fraud and prevent anti-competitive mergers, achieving an estimated consumer savings of approx-

imately \$26 for every \$1 spent on agency operations. In addition, the FTC's law enforcement activities and consumer education efforts deter many fraudulent activities or anticompetitive mergers that could result in substantial, though unmeasurable, consumer savings.

- Protecting consumers and businesses from anticompetitive mergers which raise prices and harm consumer confidence. Merger activity in 2000 reached record levels in terms of both

number of transactions and transaction dollar values. The agency's enforcement actions protected consumer interests in a broad array of vital markets, from health care to food to transportation and energy.

- Bringing 49 Internet-related fraud enforcement actions in 2000, for a total of 149 since 1994. These actions have targeted corporate and individual defendants on behalf of millions of on-line consumers and small businesses. Further, these actions have stopped some of the newest, as well as the traditional, types of fraud used on the Internet to con consumers.
- Receiving and processing more than 833,500 consumer complaints and inquiries into our Consumer Information System database since 1997, and sharing fraud complaints with over 250 law enforcement agencies via Consumer Sentinel, a secure Web site. Many complaints are received through the Internet and our toll-free consumer helpline, 1-877-FTC-HELP. We expanded our efforts in 2000 by establishing a second toll-free number, 1-877-ID-THEFT, that consumers can call to report identity theft and receive guidance to resolve credit problems resulting from the theft.
- Educating consumers and businesses about their rights and responsibilities, and alerting them to potential frauds, by distributing 11 million educational publications in print and online and expanding our media outreach programs. Additionally, we issued a report on Marketing Violent Entertainment to Children, finding that such marketing undermines the credibility of industry parental advisory labels and ratings and frustrates parents' attempts to make informed decisions about their children's exposure to violent content.

Challenges

Two developments have greatly increased the demands on the FTC – the continuous growth of the Internet and the dramatic increase in the size and complexity of corporate mergers.

Use of the Internet has grown exponentially since commercial Web browsers first became available in 1994 – 163 million Americans now have access to the Internet. Internet purchasing also is booming and is forecasted to skyrocket from \$48 billion in 2000 to \$269 billion in 2005. The FTC is working to protect consumers and businesses against new high-tech frauds that use the Internet to defraud consumers. Halting cyberfraud and reviewing Internet-related issues to ensure continued growth of the new e-commerce medium during the early years of the Internet's existence already is challenging us and taxing our resources.

To meet the challenges of the Internet, we have pursued a comprehensive program consisting of systematic analysis of the marketplace, law enforcement – often in conjunction with federal, state, and local partners – and consumer and business education.

Similarly, the number of mergers has more than tripled in the past decade, and the dollar value of commerce affected by these mergers is rising at an even greater rate, increasing nearly eighteen-fold in total value during this period, from \$169 billion in 1991 to approximately \$3 trillion. While restructuring may be necessary for companies to compete in the new global, high-tech marketplace, antitrust review is necessary to identify and stop those combinations that could diminish competition in specific markets as restructuring proceeds. Overall, merger transactions are increasingly larger, involving many different markets, both domestic and inter-

national, that require examination of possible antitrust consequences. Moreover, these deals continue to increase significantly in complexity, thus requiring much more exacting analysis of the competitive issues. As a result, merger investigation and litigation are substantially more resource-intensive than even a few years ago.

To meet the merger challenge, we worked closely during 2000 with business groups, members of the bar, and key legislators to develop ways to improve merger investigations to enhance the efficiency of the process while preserving our ability to obtain the information needed to identify and prevent anti-competitive mergers. These cooperative discussions have identified approaches that will enable us to reduce the burden on business, to expedite merger investigations, and to provide parties with more complete information on the issues that give rise to an investigation.

Strategic Planning – Continuing the Process

A major part of our Strategic Planning is to continually reevaluate our objectives, performance measures, and performance targets. In 2000, we reviewed and updated our Strategic Plan through 2005. Our focus throughout this process was to ensure that we measure the most appropriate indicators of our performance in enhancing the smooth operation of the marketplace. As a result of this review, we revised and replaced several performance measures beginning in 2001.

Under Objective 1.1 (Identify practices that cause consumer injury), we are changing the measure that captures the number of consumer complaints and inquiries in our database from a cumulative count to an annual one. Our rationale for

this change is that an annual count represents current entries. The data gleaned from current entries helps identify the most recent trends in fraudulent and other harmful practices so we can target our law enforcement and education efforts in the areas affecting the greatest number of consumers.

Under Objective 1.2 (Stop practices that cause consumer injury), we have set a goal to save consumers \$400 million a year or \$2 billion over five years. We based this on savings achieved in 1999 and 2000 and the types of fraud we are seeing in the marketplace. In the nonfraud area, we have changed our performance measure (Measure 1.2.2) from the percentage of targeted industries brought into compliance to the size of the deceptive or unfair advertising campaigns (measured in dollars) that we are able to shut down. Our annual goal is to stop deceptive or unfair major national advertising campaigns that have combined media expenditures totaling \$300 million. By 2005, our goal is to have stopped \$1.5 billion in such campaigns. This measure captures the broad impact of preventing consumers nationwide from being taken in by deceptive or unfair national advertising campaigns.

Under Objective 2.1 (Identify anticompetitive mergers and practices that cause the greatest consumer injury), we will continue effective screening of *Hart-Scott-Rodino (HSR) Act* premerger notification filings to identify those that most likely present antitrust concerns, so that at least 50% of HSR requests for additional information (“second requests”) result in enforcement action. Success on this measure will benefit consumers by targeting resources on the transactions most likely to have harmful anticompetitive effects. This new measure will replace Measure 2.1.1, relating to the average number of days for review of HSR-reported transactions.

Under Objective 2.2 (Stop anticompetitive mergers and practices through law enforcement), we will increase our target for dollar savings to consumers resulting from FTC merger actions from \$500 million to \$800 million. In addition, we are adding a new performance measure relating to consumer savings resulting from FTC nonmerger enforcement actions. We expect to achieve \$200 million in nonmerger consumer savings in 2001. This new measure will replace Measure 2.2.3, relating to average time from proposed consent orders to divestitures.

Under Objective 2.3 (Prevent consumer injury through education), we are replacing both performance measures (2.3.1, relating to a survey of FTC “customers” and 2.3.2, relating to the time needed to issue health care advisory opinions). The new measures, relating to education and outreach activities by Commission personnel,

and the frequency of the public’s access to important antitrust-related content on the FTC’s Web site, will more directly reflect our success in preventing consumer injury through education of the public. We are currently evaluating data from 2000 in order to establish reasonable targets on these measures for 2001 and beyond.

Although we face mounting challenges – especially from the continuing growth of the Internet and the increasing size and complexity of mergers – we are able to address them more effectively because of Strategic Planning. Through this ongoing process we have assessed, and will reassess, the challenges and opportunities facing the FTC and will continue to position ourselves to be as innovative and aggressive in protecting consumers and businesses from unfair or deceptive acts or practices.

THE RESULTS

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

The FTC is the federal government's primary consumer protection agency. While most federal agencies have jurisdiction over a specific market sector, we have broad law enforcement authority over nearly the entire economy, including business and consumer transactions on the Internet. Our goal is to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace. We implement three interconnected objectives to reach this broad-reaching goal.

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

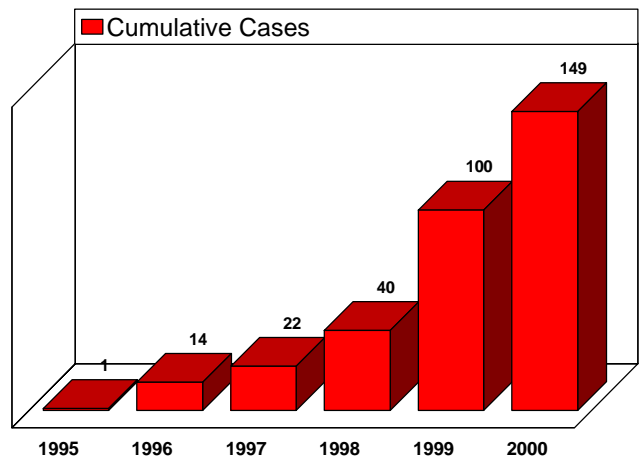
We first identify practices that cause consumer injury by analyzing the consumer complaint data collected in our Consumer Information System database and monitoring the marketplace, including the Internet. We then use this information to target law enforcement efforts. Our law enforcement program aims to stop and deter fraud and deception and to increase compliance with our consumer protection statutes to ensure that consumers have accurate and complete information for their purchasing decisions. We target our education efforts to give consumers the information they need to protect themselves from injury.

One of the greatest challenges we face is safeguarding consumers in the new

electronic marketplace so they will have the same confidence in this market as they should in the traditional marketplace. The Internet has the potential to deliver traditional goods and services, often more conveniently, faster, and at lower prices than traditional media. Online commerce promises enormous benefits to consumers and the economy. Moreover, the Internet is stimulating the development of innovative products and services that were barely conceivable just a few years ago and is enabling consumers to tap into rich sources of information that they can use to make better informed purchasing decisions.

There is real risk, however, that these benefits may not be realized if consumers associate the Internet with fraud operators. Fraud on the Internet is an enormous concern for the FTC, and it has prompted a vigorous response using all the tools at our disposal, including law enforcement and education.

Cumulative Number of Internet Cases Brought by the FTC



OBJECTIVE 1.1 IDENTIFY PRACTICES THAT CAUSE CONSUMER INJURY

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

Strategies

To keep abreast of consumer protection problems in the marketplace, the FTC is collecting and analyzing data from many sources. In 1997, we established the Consumer Response Center to receive consumer complaints and inquiries via a toll-free number (1-877-FTC-HELP), mail, and the Internet. We are now responding to 10,000 inquiries and complaints a week. Partners such as the National Fraud Information Center of the National Consumers League, Better Business Bureaus, and the Canadian fraud database, PhoneBusters, also provide us with the consumer complaint data they collect. The information is entered into the Consumer Information System database and analyzed by FTC staff to identify trends and patterns, new scams, and companies engaging in fraudulent, deceptive, and unfair business practices. This information is used to target FTC law enforcement and education efforts. Also, the fraud complaints collected are shared with over 250 other law enforcement agencies across the United States, Canada, and Australia via Consumer Sentinel, a secure Web site. The constant input and analysis of fresh complaint data have allowed the FTC to move quickly – in some instances in a matter of weeks – to stop practices before they can do more harm to consumers.

In 2000, we expanded our efforts to assist the public by establishing a toll-free number, 1-877-ID-THEFT, that consumers can call to get information on and report identity theft and receive guidance on the steps they can take to resolve credit and other problems that may have resulted from the identity theft. Calls to this number, which provides a central point of contact in the federal government for identity theft victims, have increased dramatically, from 400 calls a week a year ago to over 2,200 a week now.

In addition to receiving and analyzing consumer complaints, we monitor the growing online marketplace by systematically surfing the Internet to identify Web sites engaged in questionable practices. To date, the FTC has led or coordinated approximately 25 Surf Days, uncovering some 4,500 questionable sites. The FTC also hosts public workshops to explore cutting-edge issues with relevant stakeholders. For example, we recently hosted a workshop entitled *The Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Issues*. The workshop examined the privacy, security, and consumer protection issues raised by emerging wireless Internet and data technologies. We also hosted *The Information Marketplace: Merger and Exchange of Consumer Information*. Its purpose was to educate the FTC on issues raised by the creation of detailed consumer profiles through the merger or exchange of data, whether offline or online.

Performance Measure 1.1.1	
Cumulative number of consumer complaints and inquiries entered into database.	
FY 2000 Target:	600,000
FY 2000 Actual:	833,659
Met or Exceeded:	✓

Performance Measure and Results

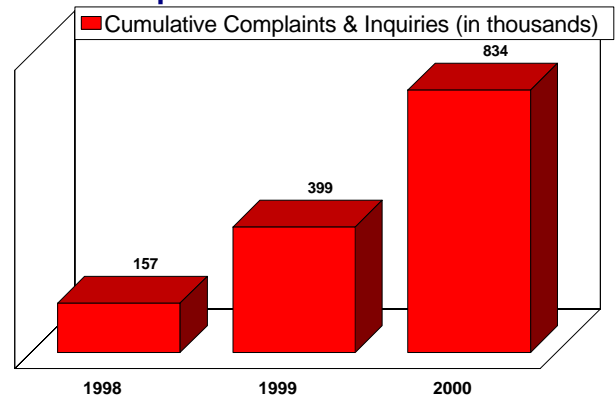
We assessed our 2000 impact by the total number of consumer complaints and inquiries in the Consumer Information System database. At the end of 2000, these entries totaled more than 833,500 – approximately 39% over our target of 600,000, which had been increased in 1999. This growth was due to the ever-increasing number of complaints received via the Internet and our toll-free telephone number, the addition of our identity theft toll-free number, and the growing number of partners contributing complaints. The data have proved invaluable in targeting our enforcement and education efforts on the most serious problems, among them: online auction fraud, Internet service provider scams, Web and credit card “cramming” (unauthorized billing), pyramid schemes, investment schemes, travel and vacation fraud, pay-per-call solicitation frauds, and health care fraud. Using the data, the FTC led its first global law enforcement effort, and the largest coordinated effort in its history, targeting these Internet scams – over 250 law enforcement actions were brought by five U.S. agencies and consumer protection organizations from nine countries and 23 states.

Performance Assessment and Future Trends

Not only does our database enable us to tackle the most serious problems, it informs us quickly of emerging problems so that we can move rapidly to stop consumer injury. In addition, by collecting data from, and sharing it with, our partners, we are able to coordinate and enhance the effectiveness of law enforcement agencies across the country and in Canada and Australia. To make the database even more valuable, we are pursuing

ways to increase our collection of information from consumer agencies in other countries. We are continuing our work with the International Marketing Supervision Network and the European Commission to develop a public Web site where consumers can file complaints to be shared with international law enforcers through Consumer Sentinel. Building on our experience with the Canadian and Australian members of Consumer Sentinel, we are also working toward data-sharing agreements with other countries.

Cumulative Number of Consumer Complaints and Inquiries Entered Into Database



In 2000, the FTC created a Data Clearinghouse to track the complaints it receives from victims of identity theft. Data Clearinghouse information is shared electronically with other law enforcement agencies nationwide via the FTC’s secure law enforcement Web site, Consumer Sentinel. The Clearinghouse contained over 50,000 records as of the end of January 2001. The Clearinghouse information helps law enforcement and policy makers assess the extent of identity theft and the forms it is taking (for example, credit card versus phone fraud, the latest scams, etc). Access to the Clearinghouse information also supports law enforcement agencies’ efforts to combat identity theft by providing a broader range of complaints from which to spot patterns of illegal activity. These patterns might not be apparent from the more limited number of complaints the agencies receive directly from victims.

Assessing our performance using the number of entries in our consumer complaint database has proven to be a reasonable indicator of our ability to identify consumer problems. Using the data to identify trends and patterns, new scams, and individual companies engaged in illegal activities has quickly become the bedrock of our ability to effectively target our law enforcement and education efforts. Also, working with our partners to collect data in one central location increases the value of each batch of data by establishing patterns and giving us a broad view of what consumers are facing in the expanding, global marketplace. The more data we have, the better able we are to see trends and coordinate activities with other law enforcers. Additionally, having two centralized, toll-free numbers for consumers to call with complaints gives them the opportunity to share their experiences and contribute to law enforcement efforts to stop wrongdoers.

In 2000, we examined the potential for duplication of complaints. Our basic approach to avoid duplication is to collect data only from organizations that have their own source of consumer complaints and do not duplicate the data of any other FTC data contributor. Each data contributor is assigned a unique identification number, and the data is cross-checked to

the extent possible. In-house, telephone counselors ask repeat callers for the unique reference number included on FTC consumer correspondence. Information provided in a repeat call is added to the original complaint. Complaints filed via the Internet are subject to quality control procedures to eliminate duplicates. In all, we continue to believe that duplication of complaints is not a significant problem.

In our revised five-year strategic plan, this performance measure is changed to an annual count of database entries versus a cumulative one. The use of a cumulative count for 2000 continues to be valid since the database has been in existence for approximately three years, and the vast majority of data has been entered in the past two years. However, as the data age, earlier entries will be less useful in identifying bad practices; the data gleaned from recent entries will determine the targets of current law enforcement and education efforts.

In 2001, we are expanding our reach by launching a public information campaign for the toll-free numbers and developing a program to enable military personnel across the globe to enter complaints online. We are also working to expand international participation in Consumer Sentinel.

OBJECTIVE 1.2

STOP PRACTICES THAT CAUSE CONSUMER INJURY

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

Strategies

To combat fraud, we select priorities for enforcement by analyzing complaint data from our Consumer Information System database and monitoring the traditional and online marketplaces. Telemarketing fraud continues to be a priority, as does protecting consumers from more traditional scams that have found new life on the Internet, including health-related fraud. The FTC also is moving to protect consumers and businesses against new high-tech frauds through our Internet Rapid Response Team. In one such case, *FTC v. Verity International*, the FTC, within weeks of seeing a dramatic spike in consumer complaints about long-distance charges on their telephone bills, sued the company in federal district court. The court entered a temporary restraining order, froze defendants' assets, and later issued a preliminary injunction against future violations.

One of the most effective tools in the battle against fraud has been the law enforcement sweep – simultaneous law enforcement actions by federal, state, and/or local partners against numerous defendants nationwide that focus on a particular, widespread type of fraud. Each sweep is supported by a creative education program aimed at preventing future losses to the public. Since 1995, the FTC has joined with partners in bringing 1,567 law enforcement actions in 60 sweeps against fraudulent operators. This includes 376

cases by the FTC. In 2000, the FTC led 10 sweeps resulting in a total of 245 actions, including 75 FTC cases. These sweeps have had a substantial impact on reducing fraud and raising consumer awareness.

In the nonfraud area, we work to ensure that there is compliance with our consumer protection statutes. Given our broad jurisdiction and limited resources, we focus on the most serious problems, use various enforcement tools, and encourage self-regulation. The overall goal is the greatest possible compliance with statutes, regulations, and orders. Using information from our database and monitoring national advertising, we are able to target our law enforcement to areas that create the greatest risks to consumer health, safety, and economic well-being. We often work with industry and interested groups to encourage self-regulation and private initiatives, where appropriate, in lieu of regulation or law enforcement.

Performance Measures and Results

Our goal in 2000 was to save consumers over \$250 million by stopping fraud. We estimate that we surpassed this target, with our actions saving consumers approximately \$263 million. Consumer savings are measured on the basis of the estimated annual fraudulent sales of defendants in the 12 months prior to filing a complaint. The law enforcement actions included in this measure were taken against fraudulent operators ranging from individuals or small companies to scam artists operating large schemes on the Internet. Our experience in most cases is that once we file a complaint in federal

district court and obtain a court order, the defendants stop their fraudulent practices; if they fail to comply, they are subject to contempt actions. Thus, in stopping these frauds, we stop further consumer losses to these defendants. By publicizing these law enforcement actions and distributing consumer education materials, we seek to increase consumer confidence in the marketplace.

In the nonfraud area, our goal was to increase compliance with the laws against deceptive and unfair practices, and thereby ensure that consumers have more accurate and complete information for their purchasing decisions. We target industries where misleading or unfair practices are widespread, and work to significantly improve the level of compliance through law enforcement or self-regulatory programs. In 2000, we planned to bring 50% to 75% of the noncomplying members in targeted industries into compliance within a two-year period. We targeted industries whose major members were not in compliance with the law, including invention promotion, computer leasing, and Individual Reference (Look-up) Services. By taking law enforcement actions and encouraging self-regulatory programs across these industries, we were able to achieve an average increase in compliance of 83%. Although this exceeds our target, the result does not include all industries targeted in 1998. The reduction in the number of industries measured is, in part, a result of the difficulties of collecting market share data. These difficulties also led to the elimination of this measure in our revised five-year strategic plan.

Performance Assessment and Future Trends

Drawing on Consumer Sentinel data, we are targeting the most pervasive online fraud and moving quickly to stop large, fast-growing Internet scams. In 2000, the Commission brought 49 cases involving fraudulent or deceptive marketing practices related to the Internet, bringing the total number of Internet cases filed since 1994 to 149. We expect fraud to continue to grow as the use of the Internet grows, and in response, we will increase our efforts to slow online fraud and prevent consumer injury.

In our revised five-year strategic plan, we set a goal to save consumers \$400 million a year or \$2 billion over five years. We based this on savings achieved in 1999 and 2000 and the types of fraud we are seeing in the marketplace. In particular, online fraud has the potential to reach consumers worldwide and cause great economic

injury. As our expertise in high and new technologies grows, we will be better able to detect and deter online fraud before these schemes take hold. By stopping fraudulent operators early, measured savings in each case may fall; however, the quick response results in less injury to consumers. This effort, combined with strategies such as law enforcement sweeps, demonstrates our effectiveness in preventing consumer injury.

In addition to fighting fraud, we also focus on compliance with traditional advertising law and FTC Rules and Guides. We work cooperatively with our law enforcement partners, industry, and consumer groups to extend the reach of our

Performance Measure 1.2.1	
Dollar savings for consumers from FTC actions which stop fraud.	
FY 2000 Target:	\$250 million
FY 2000 Actual:	\$263 million
Met or Exceeded:	✓
Performance Measure 1.2.2	
Percentage of targeted industry brought into compliance through law enforcement or self regulation.	
FY 2000 Target:	50% - 75%
FY 2000 Actual:	83%
Met or Exceeded:	✓

efforts to increase compliance. The scope of our current and upcoming priorities spans our broad jurisdiction. We will use business and consumer education, as well as selective enforcement, to ensure broad compliance with the consumer credit statutes, the Mail and Telephone Order Rule, and advertising regulations. For example, in an enforcement effort labeled "Project TooLate.com," the FTC addressed widespread shipping delays by online sellers during the 1999 holiday season. In 2000, seven online retailers ("e-tailers") settled FTC charges that they violated the Mail and Telephone Order Rule by not giving proper or timely notice of shipping delays. The companies paid civil penalties totaling \$1.5 million and implemented procedures to ensure that the violations would not recur. Before the 2000 holiday season, FTC staff surfed more than 200 e-tailer sites and sent warning letters explaining Rule obligations to nearly 100 businesses that made "quick-ship" claims. The 2000 season proceeded more smoothly, with consumers reporting fewer problems with shipping delays.

The measure of our efforts to ensure broad-based protections for consumers in the nonfraud area was changed in our

revised five-year strategic plan to a more comprehensive measure of FTC efforts to reduce harm to consumers. Our new measure is "Each year, the FTC will reduce consumer injury by obtaining orders stopping deceptive or unfair major national advertising campaigns with combined media expenditures totaling \$300 million; by 2005, \$1.5 billion in such campaigns will have been stopped." This measure was chosen because it captures the broad impact in (1) stopping major misleading ad campaigns and deterring others, and (2) preventing consumers nationwide from being injured by purchasing products or services promoted by deceptive or unfair national advertising campaigns. The premise is that the more a company spends on an advertising campaign, the more widespread the deceptive or unfair message. The new measure is a conservative measure of the agency's impact because it includes only deceptive or unfair ad campaigns of major national advertisers. It does not count all the deceptive advertising we may stop - for example, cases involving modest advertising expenditures, multi-level marketing, claims made solely on product packaging, and fraud-related advertising (which is captured in performance measure 1.2.1).

OBJECTIVE 1.3

PREVENT CONSUMER INJURY THROUGH EDUCATION

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

Strategies

One of the FTC's operating principles is that education and outreach are cost-effective ways to prevent consumer injury, increase business compliance, and add an extra dimension to our law enforcement program. Virtually every Consumer Protection effort has an education component, from compliance surfs and law enforcement sweeps to the announcement of new rules and regulations. Through reports, publications, Web sites, media events, speeches, and collaborative activities with other organizations, the FTC reaches tens of millions of consumers and businesses every year.

Our database helps us focus our education efforts on areas where fraud, deception, unfair practices, and information gaps are causing the greatest injury. Consumers are given the tools they need to spot potentially fraudulent and other illegal promotions, and businesses are advised about how to comply with the law. As with our law enforcement, more of our education efforts now involve the Internet. We not only address consumer issues involving the Internet, such as shopping online, but we also use the Internet as a tool to reach consumers, for example, through our Web sites, online banner public service announcements, and online distribution of "news" consumers can use.

We coordinate with hundreds of private and public partners to provide information about specific promotions, products, and services. In 2000, the FTC was in the lead in organizing the second National Consumer Protection Week, which focused on a public/private campaign to provide information on how to shop safely from home – whether by telephone or mail order, or online. Among our partners were the National Association of Consumer Agency Administrators, the National Association of Attorneys General, the National Consumers League, the American Association of Retired Persons (AARP), the Department of Justice, and the U.S. Postal Inspection Service. The FTC also continues to manage www.consumer.gov and to recruit new agency members to participate in the site, which offers one-stop access to federal consumer information. In the past year, the number of members has grown from 60 agencies at the end of 1999 to 174 today.

Performance Measure and Results

We gauged our impact in the education area by tracking the number of publications we distributed to the public. In 2000, the FTC distributed approximately 11 million publications: 5.4 million print publications and 5.6 million through the consumer protection Web page on the FTC Web site, making this the first year electronic distribution surpassed print distribution. We exceeded our goal of 8.7 million publications by approximately 2.3 million, due primarily to a 120% increase in the number

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

FY 2000 Target: **8.7 million**
FY 2000 Actual: **11 million**
Met or Exceeded: **✓**

of publications accessed online. Our reach nationwide was extended by more aggressive outreach and promotion of FTC materials and our toll-free numbers, including an extensive multimedia campaign on identity theft. We used information from our database to target our education programs to problem areas, such as Internet fraud, children's online privacy, online auctions, day trading, dietary supplements for children, credit reports, and office supply scams. The growing number of telephone calls and the increased use of our Web site demonstrate that our efforts have created a greater awareness of consumer issues. In turn, consumers will, to some extent, be able to protect themselves against fraud and deception in the marketplace.

Performance Assessment and Future Trends

The FTC seeks to alert as many consumers as possible to the telltale signs of fraud, deception, and unfair business practices, and other critical consumer protection issues. Use of the Internet to disseminate information about fraud and technology-related matters is integral to the FTC's education, deterrence, and enforcement efforts and has allowed the agency to reach vast numbers of consumers and businesses quickly, simply, and at low cost. The FTC has been at the forefront of using the Internet to educate and empower consumers. This trend will accelerate in the future.

Our measure of the number of publications distributed is an accurate indicator of our impact in educating consumers, although it does not fully capture the millions of FTC publications distributed by our customers, partners, and the public. As we forecasted, the number of print publications we distribute has declined and the number of publications accessed

through the Internet has increased, as more consumers and businesses go online. The difference in the number of publications accessed online in 1996 and 2000 (140,000 versus 5.6 million) tells the story of the Internet's coming of age as a mainstream medium and certainly its importance to any large-scale dissemination effort. Capitalizing on this trend, we will increase our use of the FTC's Web site, www.ftc.gov, and the multi-agency Web site, www.consumer.gov, to efficiently and effectively reach consumers, businesses, law enforcement officials, and the media.

Additionally, the Commission delivered testimony on consumer protection issues to the United States Senate and the United States House of Representatives 16 times during 2000:

- *Solving the Problem of Scholarship Scams: S1465, The College Scholarship Fraud Prevention Act of 1999*, Presented by Sheila Anthony, Commissioner.
- *Unsolicited Commercial Email*, Presented by Eileen Harrington, Associate Director of Marketing Practices.
- *Identity Theft*, Presented by Jodie Bernstein, Bureau Director.
- *Office Supply Fraud*. Presented by Jodie Bernstein, Bureau Director.
- *Funeral Industry*, Presented by Eileen Harrington, Associate Director of Marketing Practices.
- *Fair Credit Reporting Amendments of 1999*, Presented by Debra Valentine, General Counsel.
- *Online Privacy: Recent Commission Initiatives*. Presented by Jodie Bernstein, Bureau Director.
- *Predatory Lending Practices in the Subprime Industry*, Presented by David Medine, Associate Director of Financial Practices.
- *Privacy Online*, Presented by Robert Pitofsky, Chairman, and all Commissioners.

- *Online Profiling: Benefits and Concerns*. Presented by Jodie Bernstein, Bureau Director.
- *Proposed Legislation: The Telemarketing Victims Protection Act (HR 3180) and The Know Your Caller Act (HR 3100)*, Presented by Eileen Harrington, Associate Director of Marketing Practices.
- *Living Trust Scams*, Presented by Elaine Kolish, Associate Director of Enforcement.
- *Identity Theft*, Presented by Jodie Bernstein, Bureau Director.
- *Fraud Against Seniors*, Presented by Rolando Berrelez, Assistant Regional Director, Midwest Regional Office.
- *Identity Theft*, Presented by Jeffrey Klurfeld, Regional Director, Western Regional Office.
- *Identity Theft*, Presented by Betsy Broder, Assistant Director, Division of Planning and Information.

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

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

Competition among sellers in an open marketplace results in lower prices for consumers, leads to high quality products and services, maximizes consumer choice, and spurs the discovery and development of beneficial new products and services. Anticompetitive mergers, and other practices that diminish competition, deny consumers these benefits. Thus, the FTC's goal is to promote vigorous competition by preventing anticompetitive practices and mergers that would diminish competition. We apply three objectives to achieve this goal.

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

First, we identify anticompetitive mergers and business practices by applying sophisticated economic analysis and conducting thorough factual investigation to distinguish between actions that threaten the operation of free markets and behavior that promotes vigorous competition and advances their operation. This step is critical because in any given circumstance the

activity in question, such as a merger, may be either beneficial – by enabling sellers to be more efficient and pass those savings along to consumers – or harmful – by enabling sellers to reduce the output of their product and raise the price to consumers. Thus, indiscriminate or ill-considered intervention into the marketplace may do more harm than good.

Second, once we identify an anti-competitive merger or business practice, we take enforcement action under the antitrust laws to stop it, either through an administrative challenge or in federal court. In many instances we are able to reach a consent agreement with the affected parties that stops the anticompetitive activity while avoiding litigation.

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

OBJECTIVE 2.1

IDENTIFY ANTICOMPETITIVE MERGERS AND PRACTICES THAT CAUSE CONSUMER INJURY

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

Strategies

To achieve this objective, the FTC (1) identifies the mergers and business practices that should be examined for antitrust consequences, and (2) conducts an inquiry appropriate to the circumstances of each matter to determine whether to pursue enforcement action. As a collateral, but important, aspect of this objective, we try to conduct our inquiry in a way that minimizes any cost or inconvenience to businesses.

The premerger notification requirements of the *Hart-Scott-Rodino (HSR) Act* provide us the primary means for identifying potentially anticompetitive mergers. The FTC's Premerger Notification Office reviews all filings made for proposed mergers, acquisitions, and joint ventures and performs preliminary antitrust review for every transaction that is filed with the FTC. We work to complete these reviews as quickly and as efficiently as possible, both to conserve our available resources to devote to other work, and to minimize the delay imposed on businesses as a result of the HSR requirements.

We also use trade press and other news articles, consumer and competitor

complaints, hearings, economic studies, and other means to identify potentially anticompetitive conduct that may harm consumers. In particular, we focus on emerging trends in the economy, technology, and the marketplace.

Performance Measures and Results

We measure our success in identifying anticompetitive mergers by the average number of days we devote to reviewing actions reported to us under the HSR premerger notification program. This measure is important because it reflects the efficiency with which we conduct these reviews. When the review of reported actions is completed quickly and efficiently, we conserve available resources that can be devoted to other important activities. In addition, a prompt review better serves economic growth, because it allows businesses to proceed with mergers and acquisitions that pose no antitrust issues with minimal delay.

Despite a high volume of reported transactions, we continued our emphasis on expediting our preliminary reviews. We established as a goal an average review time of 20 days for transactions reported under HSR, even though the statute generally permits 30 days for our review. We were able to exceed that goal in 2000, completing our review of HSR-reported actions in an average of 18 days, an improvement of one day over 1999.

Performance Measure 2.1.1

Average number of days for review of HSR-reported transactions.

FY 2000 Target: **20 days**
FY 2000 Actual: **18 days**
Met or Exceeded: ✓

Performance Measure 2.1.2

Number of nonmerger investigations opened per year.

FY 2000 Target: **45 - 70**
FY 2000 Actual: **25**

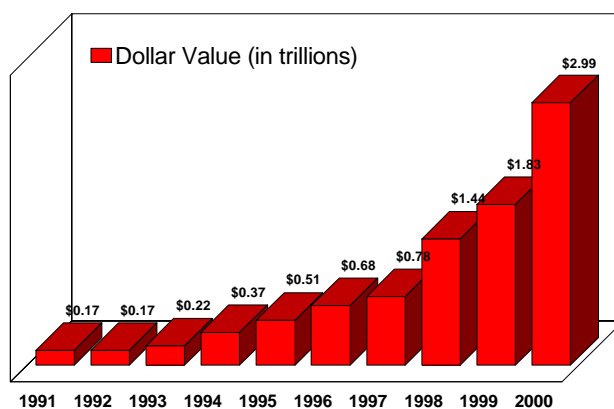
In 2000, we received notification of 4,926 proposed transactions in accordance with the HSR notification and filing requirements, an increase of approximately 6% over 1999. This volume of transactions reflects the increasing merger activity that has been taking place over the past decade. The number of reported transactions in 2000 represents a more than threefold increase over the number of reported merger transactions in 1991. In addition, the total dollar value of mergers reported in 2000 was \$2.99 trillion, representing an increase of 63% over 1999, and an increase of 1769% since 1991.

Mergers reported under the *HSR Act* vary tremendously in their complexity and potential anticompetitive effect. We continue to review and prepare an analytical summary of each reported transaction. In most cases, the agency can make a reasonable judgment about whether a merger has the potential to be anticompetitive or not within a few days of filing, simply by reviewing these analyses, based on materials filed with the HSR notification. The agency's Merger Screening Committee, comprising senior officials of the Bureaus of Competition and Economics, reviews those transactions that raise more difficult questions. If the Committee determines that more information is needed in a matter, it calls for a more extensive investigation, often including the issuance of a request for additional information ("second request") from the parties.

In 2000, the Antitrust agencies allowed more than 97% of the reported transactions to proceed by the end of the statutory 30-day waiting period, with more than 70% having been granted early termination of the statutory waiting period. Of the 4,926 transactions, we opened 211 investigations and issued second requests in 43 to obtain information to assist the attorneys and economists in conducting their investigations.

We also measure our success in identifying anticompetitive practices that cause consumer injury by counting the number of nonmerger investigations opened during the year. This measure directly reflects our enforcement activity. While we do not take enforcement action in every matter we investigate, because we often conclude that the practice in question is not anticompetitive, it is axiomatic that a thorough investigation always precedes any order to a business that it must "cease and desist" a particular anticompetitive activity.

Dollar Value of Merger Transactions



We established a goal of opening 45 to 70 nonmerger investigations over the course of the year. While we continue to believe that this goal is ordinarily a reasonable one, extraordinary circumstances – that is, the overwhelming crush of merger activity during the year – required us to reallocate resources in such a way that this goal could not be met in 2000. As noted, our merger review must take place within statutorily mandated time periods, permitting no discretion to balance the workload with other priorities. Despite the necessity of moving substantial resources from nonmerger to merger activity to meet and exceed statutory merger review deadlines, we were able to open 25 nonmerger investigations in 2000.

Performance Assessment and Future Trends

We were able to exceed our goal on the average review time for HSR-reported transactions, improving on our performance from 1999. While our performance in this area remains important, we are replacing this performance measure beginning in 2001 with a measure that more directly relates to the core objective. Prompt review of HSR filings is important in that it helps to reduce the burden on businesses that are required to delay merger transactions pending antitrust review. We believe that the structured review process we have put in place to assess transactions will enable us to continue to do so as quickly and efficiently as possible, and this will remain among our highest priorities. However, because a primary focus of Objective 2.1 is to determine which of the many merger transactions we encounter is likely to cause consumer injury – and therefore warrants investigation – we have developed a more targeted performance measure.

Beginning in 2001, we will measure the percentage of matters involving a second request that result in enforcement action, with a goal of approximately 50%. A percentage significantly below that level may suggest that we are targeting enforcement resources ineffectively by investigating too many competitively benign transactions (and unduly burdening businesses as a result), while a percentage significantly above that level may suggest that we are focusing too narrowly and thus potentially allowing problematic transactions to go forward without sufficient review. Success on this measure will benefit consumers by targeting resources on the transactions most likely to have harmful anticompetitive effects.

We continue to be concerned with the importance of identifying anticompetitive conduct in the marketplace. Although we did not meet our goal on this performance measure, two factors limited our ability to do so. First, the record-setting pace of corporate mergers and acquisitions accelerated further in 2000, both quantitatively (number of filings) and qualitatively (complexity of transactions). The agency investigated many mergers that raised anticompetitive issues in multiple product and geographic markets and involved highly technical or specialized goods and services. This merger activity demanded a disproportionate share of the resources available to our Maintaining Competition Mission and necessarily diverted resources from nonmerger enforcement. Second, of the resources remaining for nonmerger investigation and enforcement, we devoted a substantial proportion to the advancement and conclusion of cases that were already underway. Our resulting accomplishments, not reflected in the number of new investigations opened, included 14 consent orders involving a broad range of consumer goods markets, including pharmaceuticals, compact discs, spices, women's shoes, and health care. Moreover, we devoted significant resources to pretrial litigation in the *Mylan Laboratories* matter, which led to a settlement after the close of 2000 resulting in \$100 million in consumer redress – a direct, tangible return to consumers that substantially exceeds the entire annual cost of our Maintaining Competition Mission. In the future, we expect to reestablish the balance in merger and nonmerger activity, which we believe will result in a return to historic levels of nonmerger investigation initiations.

In addition to achieving these specific performance goals, we continue our work to accomplish this objective through activities designed to improve our understanding of those market situations where

antitrust activity could lead to a more competitive market. In 2000, we conducted workshops relating to two current anti-trust topics, slotting allowances and business-to-business (“B2B”) electronic marketplaces. The learning derived from these workshops, as well as from economic research on various competition issues,

will provide a foundation for future enforcement initiatives. During 2001, we will work to develop new ways to identify possibly anticompetitive mergers that may not be subject to filing under HSR in light of the raised filing thresholds effective this year.

OBJECTIVE 2.2

STOP ANTICOMPETITIVE MERGERS AND PRACTICES THROUGH LAW ENFORCEMENT

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

Strategies

To stop suspect mergers and practices through law enforcement, our preferred strategy – that is, the most effective and cost-efficient strategy – is to prevent such mergers before they occur. We implement this strategy primarily through our authority to seek injunctive relief under Section 13(b) of the Federal Trade Commission Act. Often we are able to resolve a competitive problem through consent proceedings without having to seek such an injunction. Where injunctive relief is inappropriate or unavailable, we may rely on our administrative remedial powers to seek to restore competition lost as a result of a merger that could not be prevented. Whether achieved by consent or in an administrative proceeding, the principal remedy is the divestiture of assets sufficient to preserve or restore competition. We have also employed conduct remedies where appropriate.

To accomplish this objective, we emphasize (1) thorough investigation, as well as sophisticated legal and economic analysis to ensure we reach an accurate

assessment of the illegality of the activity in question, and (2) comprehensive preparation for litigation before an Administrative Law Judge or in federal court. While we frequently resolve matters through settlement (or, in the case of mergers, through the parties' abandonment of the anticompetitive transaction), our ability to do so depends in large measure on our preparedness to achieve the needed result through litigation, if necessary.

In addition, when resolving anticompetitive mergers and practices through settlement, we place increasing emphasis on crafting remedies that will successfully eliminate the anticompetitive effects of the activity in question, and do so in a timely fashion.

We employ our law enforcement authority to stop anticompetitive mergers and practices both directly and indirectly. Through direct legal challenges to specific anticompetitive transactions, we save consumers millions of dollars annually by preventing such transactions from taking place or by arranging for restructuring of the transaction to eliminate the anticompetitive effects.

In addition, such challenges indirectly serve our objective by serving as legal precedent and establishing an effective, visible law enforcement presence. This deterrent effect prevents many anti-

Performance Measure 2.2.1

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

FY 2000 Target: **80%**
FY 2000 Actual: **95%**
Met or Exceeded: **✓**

Performance Measure 2.2.2

Dollar savings for consumers resulting from FTC actions.

FY 2000 Target: **\$500 million**
FY 2000 Actual: **\$2.98 billion**
Met or Exceeded: **✓**

Performance Measure 2.2.3

Average time, in months, from proposed consent orders to divestitures.

FY 2000 Target: **9 months**
FY 2000 Actual: **4 months**
Met or Exceeded: **✓**

competitive mergers and acquisitions from even being proposed.

Another part of our strategy is to study and evaluate the remedies used in anti-trust cases, particularly divestiture orders used to resolve merger cases. This ongoing process focuses in particular on what makes divestiture orders most effective in preserving or restoring competition, and on how to expedite the completion of curative divestitures.

We are continuing to refine and improve our skills in litigation, economic analysis, and negotiation through ongoing training for staff.

Finally, we try to ensure that administrative litigation and adjudication reach a timely resolution.

Performance Measures and Results

We measure our success in stopping anticompetitive mergers and practices through law enforcement by the percentage of successful outcomes in enforcement actions. This measure is important not only because it directly reflects whether we stopped, or failed to stop, the anticompetitive mergers and practices we challenged, but also whether we are effectively utilizing the limited resources available to the agency.

We established as a goal a positive outcome in 80% of the enforcement actions brought by the agency to challenge anticompetitive mergers or practices. Positive outcomes include abandonment of an anticompetitive transaction following an FTC challenge, a consent agreement to resolve antitrust concerns, or a successful challenge in court. A negative outcome occurs when parties refuse to settle antitrust concerns raised by the agency and

we are unsuccessful in obtaining relief through the courts. We were able to significantly exceed our goal in 2000, reaching a successful settlement agreement or persuading parties not to proceed with an anticompetitive acquisition in approximately 95% of the matters we challenged. The Commission approved 32 proposed consent orders in 2000. In addition, parties to proposed mergers abandoned their transactions in nine instances following our investigation.

We established as another goal direct dollar savings to consumers of at least \$500 million as a result of our prevention of anticompetitive mergers that would have raised prices by that amount. In calculating these savings, we take into consideration the size of the markets involved, the percentage increase in price that would likely have resulted from the merger, and the likely duration of the price increase.¹ We exceeded our goal by a wide margin in 2000, preventing mergers that would have cost consumers \$2.98 billion had they been allowed to proceed.

We also established as a goal a reduction of the average time needed to complete divestitures required by consent

¹We derive these estimates from a thorough analysis of company documents and detailed pricing data, which FTC attorneys and economists routinely conduct as part of their investigations. In some cases, the available information allows us to estimate with specificity the extent to which prices would rise as a result of an anticompetitive merger. Where we do not have such definitive information, we conservatively estimate that an anticompetitive merger would lead to a price increase of at least one percent absent enforcement action, lasting for two years. The methodology used is explained in the analytical guidelines used by the FTC and the Department of Justice for the analysis of horizontal mergers. See U.S. Dept. of Justice and Federal Trade Commission, Horizontal Merger Guidelines §§ 1.1, 1.2.

orders, down from an average of 15 months in 1996 to nine months in 2000, from approval of a proposed consent order to completion of the divestiture. This measure is important because delay in the divestiture of assets that are the subject of a consent decree often results in a decline in the competitive viability of the assets. To avoid delay, we seek either “up-front” purchase and sales agreements or divestiture orders that limit the time in which divestiture relief is accomplished to the minimum necessary. As a result, we exceeded our goal, ensuring the completion of needed divestitures in an average of four months in 2000.

Performance Assessment and Future Trends

In 2000, we achieved a positive out-come in approximately 95% of the challenges initiated by the agency (e.g., court orders in litigated cases and negotiated settlements), exceeding by a significant margin our goal of an 80% success rate. This level of success was due, in part, to the high percentage of our cases that were resolved through consent agreement in 2000. However, we realistically do not expect to succeed in every litigated case. A law enforcement agency that prevails in every litigated matter may do so because it pursues only the cases that are easiest to win. Enforcement authorities such as the FTC should not shy away from difficult cases, which are not uncommon in antitrust law. The FTC will continue to bring law enforcement actions where it has reason to believe that the merger or practice in question is illegal and harms consumers, even where litigation risks may exist. Thus, in years in which litigated cases make up a larger proportion of the total number of resolved cases, our success rate may be closer to the target of 80%.

We exceeded our performance goal of \$500 million in consumer savings through the prevention of anticompetitive mergers by a factor of six, achieving savings of an estimated \$2.98 billion in 2000. Because the amount of consumer savings achieved in any one year is dependent on the size and nature of transactions proposed as well as the agency’s performance in enforcing the antitrust laws, the amount of savings in 2000 may not be typical (due to the size and scope of several major mergers that we reviewed). However, based on our first year of measuring consumer savings for GPRA, we expect the amount of consumer savings resulting from the FTC’s antitrust enforcement activity to remain high. Therefore, we believe it is appropriate to raise our merger goal to an average of \$800 million in consumer savings per year for the years beginning in 2001. We caution, however, that changes in the pattern of corporate merger activity may result in different outcomes on this performance measure, notwithstanding continued strong agency performance.

We also substantially exceeded our performance goal by accomplishing divestitures within an average of four months, compared to the goal of nine months. Based on our increased knowledge of the importance of accomplishing divestitures quickly and policy changes aimed at achieving that result, we expect that the average time required to complete divestitures will continue to be substantially less than nine months.

While our performance in achieving divestitures in a timely fashion remains important, we are replacing this performance measure beginning in 2001 with a measure relating to our performance on nonmerger enforcement. We believe that the policies and practices put in place in recent years to expedite divestitures are now well-established and accepted, and that divestitures will thus continue to

occur in a timely fashion. This will continue as a priority. To assist in focusing our attention on nonmerger enforcement, we will begin in 2001 to measure consumer savings resulting from nonmerger enforcement activities. We will base the savings estimates on industry and company data obtained in our investigations. In cases where it is not possible to measure directly the amount of consumer savings resulting from enforcement action, we will conservatively use a "default" estimate of 1% of the amount of sales in the affected market(s) for one year. Most often, the cost to consumers from anti-

competitive activity exceeds 1% of the amount of sales, and the anticompetitive effect may continue well beyond one year in the absence of enforcement action. Based on recent years' activity, we believe it is appropriate to set a nonmerger goal at an average of \$200 million in consumer savings per year for the years beginning in 2001. Again, we caution that differences in available opportunities presented, particularly those relating to the size of the affected markets, may result in different outcomes on this performance measure, notwithstanding continued strong agency performance.

OBJECTIVE 2.3

PREVENT CONSUMER INJURY THROUGH EDUCATION

In addition to its law enforcement activity, the FTC seeks to enhance understanding of the operation of the marketplace by educating the business community about the antitrust laws.

Strategies

We pursue this objective through guidance to the business community; outreach efforts to Federal, state and local agencies, business groups and consumers; development and publication of antitrust guidelines and policy statements; and speeches and publications. Through these mechanisms, we publicize the antitrust law and our enforcement intentions, with the likely result of deterring future anticompetitive behavior.

Our enforcement program is made more effective by public awareness of what factors are likely to be challenged as law violations. Through public releases of Commission decisions in various media such as press releases, Web page publications, and speeches, the public facts underlying Commission actions provide bases for companies to evaluate the likelihood that other transactions would likely face challenge.

As a complement to our enforcement activity, we also advise other state and federal government officials about the possible effect that various regulatory proposals may have on competition in the relevant marketplace.

Performance Measures and Results

Our success in educating the business community about the antitrust laws is also determined in part by the timeliness with which we provided needed advice. Accordingly, one measure in accomplishing this objective is the length of time required to provide advisory opinions related to issues in the health care industry, an industry that has experienced fundamental changes in the way it delivers services to consumers over the past decade. We set a goal of providing such advisory opinions within 90 days of our receipt of a request, and we exceeded that goal by providing advisory opinions in an average of 84 days.

Performance Measure 2.3.1 Identify and survey FTC "customers" in the marketplace.	
FY 2000 Target:	incorporate input
FY 2000 Actual:	incorporated input
Met or Exceeded:	✓
Performance Measure 2.3.2 Average number of days to issue advisory opinions in health care area.	
FY 2000 Target:	90 days
FY 2000 Actual:	84 days
Met or Exceeded:	✓

Performance Assessment and Future Trends

We were able to meet one performance goal – receiving and incorporating stakeholder comments on a proposed customer survey – and to exceed the other performance goal – providing advisory opinions relating to health care within 90 days of receipt of a request. Based on our experience in working with these performance goals, we believe that somewhat different measures of our performance would better reflect our efforts in this area. While it remains important to render advisory opinions in a timely fashion, we currently receive relatively few requests for such opinions. In addition, we have concluded

that the consumer survey we have been working to develop would not likely be a powerful instrument to determine the effectiveness of our outreach efforts, particularly in the absence of baseline data.

Our new measures for this Objective will more directly reflect our impact on preventing consumer injury through education and outreach to the public. The Commission increases awareness of antitrust law through guidance to the business community; outreach efforts to Federal, state and local agencies, business groups and consumers; development and publication of antitrust guidelines and policy statements; and speeches and publications. Through these mechanisms, the Commission publicizes the antitrust law and our enforcement intentions, with the likely result of deterring future anti-competitive behavior. We believe that measuring these efforts would more directly reflect our success in educating our major constituent groups. In addition, the extent to which the public is aware of our mission and our policies – as reflected by “hits” on relevant material on the FTC’s Web site – will effectively capture our success in preventing consumer injury through education. We are currently evaluating the relevant data for 2000 to establish appropriate performance goals for the years beginning with 2001. For example, in 2000, we worked to educate the public in the following ways:

- ! The FTC conducted a workshop on business to business (“B2B”) electronic marketplaces, which use the Internet to electronically connect businesses with each other, primarily for purposes of buying and selling a wide variety of goods and services. The agency also issued a report on this subject that includes a description of various facets of B2B marketplaces and the efficiencies they may provide, and outlines

a framework for understanding how to answer traditional antitrust questions in the context of new B2B technology. The Commission also completed its review of the Covisint joint venture among five automotive manufacturers – General Motors Corp., Ford Motor Co., DaimlerChrysler AG, Renault SA, and Nissan – and two information technology firms – Commerce One, Inc. and Oracle Corporation – to operate an Internet-based B2B providing services to firms in the automotive industry supply chain.

- ! The FTC, in an effort for staff to better assess the competitive impact of slotting allowances, held two workshops for interested parties to exchange views on this subject. Slotting allowances are lump-sum, up-front payments from a manufacturer or producer to a retailer to have a new product carried by the retailer and placed on its shelf. The agency continues to study this subject.
- ! Our Premerger staff handled approximately 41,000 telephone inquiries from the public, primarily concerning interpretation of the statute and the HSR rules. Staff estimates that at least half of these inquiries related to issues of reportability.
- ! The Commission assisted the public through written guidance, such as the Premerger Rules, formal interpretations, the Premerger Notification Source Book, and the three Premerger Guides designed to assist the public’s understanding and compliance under the *HSR Act*.
- ! The Premerger Notification Office conducted a series of Brown Bag Lunches, both in Washington and in other cities around the country, with interested members of the American Bar Asso-

ciation. These events provided a forum for staff and HSR practitioners to discuss interpretations of the rules and potential improvements to the filing process. Interested persons were invited to send in white papers to give their views on rules changes, including changes necessary for HSR reform. Several members of the bar voluntarily submitted language for proposed rules.

- ! After soliciting public comment, the Commission and the Department of Justice jointly issues new *Antitrust Guidelines for Collaborations among Competitors*, and area of antitrust law in which there had previously been no agency guidelines
- ! The Commission and the Department of Justice promoted federal and state cooperation by issuing a joint protocol concerning joint and coordinated merger investigations by federal and state antitrust agencies.
- ! Commissioners and senior staff members presented a number of speeches before bar and business groups on current enforcement topics.
- ! The Commission published press releases, complaints and other materials through its Web site, providing up-to-date information on enforcement actions taken.
- ! Commission staff delivered testimony on antitrust issues to the United States Senate and the United States House of Representatives nine times during the year.

- *Antitrust Implications of Entertainment Industry Self-Regulation to Curb the Marketing of Violent Entertainment Products to Children*. Presented by Robert Pitofsky, Chairman.

- *Midwest Gasoline Prices*. Presented by Richard G. Parker, Bureau Director.

- *Midwest Gasoline Prices*. Presented by Robert Pitofsky, Chairman.

- *Antitrust Enforcement Activities*. Presented by Robert Pitofsky, Chairman.

- *Solutions to Competitive Problems in the Oil Industry*. Presented by Richard G. Parker, Bureau Director.

- *Antitrust Issues*. Presented by Robert Pitofsky, Chairman.

- *Oil Product Prices*. Presented by Richard G. Parker, Bureau Director.

- *Mergers in the Telecommunications Industry*. Presented by Robert Pitofsky, Chairman.

- *Slotting Allowances and the Antitrust Laws*. Presented by Willard K. Tom, Deputy Director.

- ! The Commission continued to maintain effective international outreach and coordination efforts with foreign competition authorities.

- ! The Bureau of Economics circulated economic papers on competition issues providing its scholarly input to the public.

- *Transformation and Continuity: The U.S. Carbonated Soft Drink Bottling Industry and Antitrust Policy Since 1980*. This report analyzes the U.S. carbonated soft drink industry, with its primary focus on the 1980s and early 1990s, a period of rapid structural change that transformed the industry. In addition to documenting these changes, an empirical model is developed to evaluate the antitrust merger policies that were pursued by the Commission during this period.

- *Economic Perspectives on the Internet*. This report provides an introduction to Internet technology and history and addresses (1) different

methods of pricing user access, (2) the pricing of goods and services sold via the Internet, (3) network effects and firm behavior, and (4) taxation of electronic commerce.

! Because the Commission and its staff have a great deal of expertise about competition and about the competitive effect of proposed laws, rules or regulations of other governmental bodies, they are often invited to comment on such proposals. For instance, the Bureau of Competition filed comments before the Food and Drug Administration in two instances in 2000:

- *180-Day Generic Drug Exclusivity for Abbreviated New Drug Applications*, November 4, 1999.
- *Citizen Petitions; Actions That Can Be Requested by Petition; Denials, Withdrawals, and Referrals for Other Administration Action*, March 2, 2000.

We strongly believe in the importance of these outreach activities and will continue to place emphasis in this area in future years.

Finally, because the Commission and its staff have a great deal of expertise about competition and about the competitive effect of proposed laws, rules or regulations of other governmental bodies, they are often invited to comment on such proposals. For instance, we provided advice to the Federal Energy Regulatory Commission, state utility commissions, and a committee of the House of Representatives about how best to promote competition and protect consumers in the context of the deregulation of electricity transmission and generation. In July 2000, the Commission issued a staff report, *Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform*, that suggest an analytical framework that federal and state policymakers may wish to employ to ensure that consumers and businesses benefit from electric power industry restructuring. Recently, members of Congress have asked the Commission to update that report and extend its analysis.

Appendix FY 2000 Performance Measures

	FY 2000 Target	FY 2000 Actual	Met or Exceeded
Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.			
<i>Objective 1.1—Identify fraud, deception, and unfair practices that cause the greatest consumer injury.</i>			
Measure 1.1.1: Cumulative number of consumer complaints and inquiries entered into database.	600,000	833,659	✓
<i>Objective 1.2—Stop fraud, deception and unfair practices through law enforcement:</i>			
Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud.	\$250 million	\$263 million	✓
Measure 1.2.2: Percentage of targeted industry brought into compliance through law enforcement and self regulation.	50% -75%	83%	✓
<i>Objective 1.3—Prevent consumer injury through education:</i>			
Measure 1.3.1: Number of education publications distributed to or accessed electronically by consumers.	8.7 million	11 million	✓
Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.			
<i>Objective 2.1—Identify anticompetitive mergers and practices that cause the greatest consumer injury:</i>			
Measure 2.1.1: Average number of days for review of HSR-reported transactions.	20	18	✓
Measure 2.1.2: Number of nonmerger investigations opened per year.	45 to 70	25	see text
<i>Objective 2.2—Stop anticompetitive mergers and practices through law enforcement:</i>			
Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.	80%	95%	✓
Measure 2.2.2: Dollar savings for consumers resulting from FTC actions.	\$500 million	\$2.98 billion	✓
Measure 2.2.3: Average time, in months, from proposed consent orders to divestitures.	9	4	✓
<i>Objective 2.3—Prevent consumer injury through education:</i>			
Measure 2.3.1: Identify and survey FTC "customers" in the marketplace.	incorporate stakeholder input	incorporated stakeholder input	✓
Measure 2.3.2: Average number of days to issue advisory opinions in health care area.	90	84	✓