



OFFICE OF
THE CHAIRMAN

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 27, 1995

The Honorable Phil Gramm
Chairman
Subcommittee on Commerce, Justice, and State,
the Judiciary, and Related Agencies
United States Senate
Washington, D.C. 20510

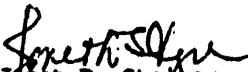
The Honorable Harold Rogers
Chairman
Subcommittee on Commerce, Justice, and State,
the Judiciary, and Related Agencies
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman,

This transmits the budget justification for the Federal Trade Commission in support of the President's fiscal year 1996 budget request.

The Commission's fiscal year 1996 budget request amounts to a program level of \$107,849,000 and 979 full-time equivalent positions. It provides for a net increase of approximately \$4.9 million over our fiscal year 1995 program level while holding full-time equivalent positions at our current level. As the justification materials describe, this budget will permit the Commission to continue to pursue its Competition and Consumer Protection missions.

By direction of the Commission,


Janet D. Steiger
Chairman

**Fiscal Year 1996
Congressional Budget Justification**

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Overview Statement

The role of the Federal Trade Commission, as defined by Congress, is to enforce a variety of Federal antitrust and consumer protection laws. Under these laws, the Commission seeks to ensure that the nation's markets are competitive, function vigorously and efficiently, and are free from undue governmental and private restrictions. The Commission also seeks to improve the operation of the marketplace by eliminating deceptive and unfair practices, with emphasis on those practices that may unreasonably restrict or inhibit the free exercise of informed choice by consumers. The Commission relies upon economic analyses to support this law enforcement effort and to contribute generally to the economic policy deliberations of the Congress, the Executive Branch, and the public.

Agency Request

The Commission is requesting \$107,849,000 to support 979 full-time equivalents (FTE) in fiscal year 1996. The request will sustain a 979 FTE level that is approximately half the size of the Commission's 1980's workforce. This represents a net dollar increase of \$4,921,000 over our fiscal year 1995 authorized level, and no increase in FTE. The requested funding level for fiscal year 1996 will allow the Commission to replace or improve a number of key automated management and program support systems and to provide comprehensive training on and support of these new capabilities.

The Commission is continuing, in coordination with the Department of Justice, to provide technical assistance to Eastern European governments in restructuring their economies by advising on the policies, laws, and regulations relating to the development of a competitive market environment, and on "how-to" aspects of case development and presentation. The Commission is responding to requests from the Agency for International Development (AID) to give support to additional countries, such as Venezuela and Jamaica, expanding our technical assistance into other parts of the world. All direct costs incurred in providing this assistance are reimbursed by the Agency for International Development.

Federal Deposit Insurance Corporation Improvement Act

The Administration's proposed appropriation language, which the Commission supports, continues the prohibition on spending authorized funds to implement certain provisions of the Federal Deposit Insurance Corporation Improvement Act (FDICIA). The Commission continues to believe that its responsibilities under the FDICIA would be more appropriately assigned to Federal regulatory agencies with jurisdiction over financial institutions, and that the Commission does not have the resources required to carry out these duties. The FTC and OMB continue to

address this issue with the authorizing committees of the Congress and involved Federal agencies.

Hart-Scott-Rodino Premerger Filing Fees

In fiscal year 1994 the Congress increased the amount of Hart-Scott-Rodino (HSR) fee dependency for the Commission from \$16,900,000 to \$20,820,000, with a continuation of the protective language should the fees fall short of the target. For fiscal year 1995 the fee per HSR filing was increased to \$45,000 with a total reliance on fee collections of \$39,640,000, and continues language which would protect the Commission in the event of a sudden fee shortfall.

The President's fiscal year 1996 request includes an increase in spending authority from \$39,640,000 to \$48,262,000, which would be accomplished by an anticipated increase in fee collections. Data for fiscal year 1994 and the first quarter of fiscal year 1995 indicate that the total number of filings would support this higher level of fee reliance.

Maintaining Competition

For fiscal year 1996, under the Maintaining Competition Mission, the Commission is requesting a total of 470 FTE and \$51,948,000. The request reflects an increase of \$2,694,000 and 3 FTE from the fiscal year 1995 level.

The activities of the Mission are divided into five major program areas: Premerger Notification, Mergers and Joint Ventures, Horizontal Restraints, Distributional Arrangements, and Single Firm Violations. These programs, together with the Antitrust Policy Analysis Program, are supported by the Bureau of Economics. In enforcing the various acts mandated by Congress through its Maintaining Competition Mission, the Commission examines a wide variety of industries and commercial practices. The Mission's purpose is the detection and elimination of antitrust law violations, including collusion, anticompetitive mergers, unlawful single-firm conduct, and injurious vertical agreements.

Fiscal Year 1994 Accomplishments

Hart-Scott-Rodino Activities: Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 2,302 transactions were reported to the Commission under the Premerger Notification Program during fiscal year 1994. This number represents an increase of approximately 25 percent over the number of transactions reported to the Commission during fiscal year 1993. The last time the number of reported transactions exceeded the 2,000 total was during fiscal year 1990 (2,262 transactions reported). Stephen Schmidheiny paid \$414,650 to the U.S.

Treasury Department to settle 1993 charges that he violated the HSR Act when he acquired control of two foreign firms without notifying the federal antitrust agencies. On September 27, 1994, a judgment was entered in federal district court requiring Pennzoil Company to pay \$2.6 million in civil penalties to settle charges that it failed to comply with the premerger notification and waiting period requirements in the acquisition of certain voting securities of the Chevron Corporation; one other matter, also involving charges of violating provisions under the HSR Act, is in litigation in federal district court. The complaints were filed by Commission attorneys under a special authorization of the U.S. Attorney General. The staff is currently investigating four transactions to determine if the parties violated the filing and waiting period requirements of the HSR Act when they consummated certain acquisitions.

"A Model Request for Additional Information and Documentary Information", a guide designed to aid the public in the submission of documents and materials when the Commission issues a request for additional information, was released to the public. The Commission requested comments on proposed amendments to the Premerger Notification and Report Form that would require companies to submit new and more up-to-date information in some instances, and decrease the burden of filing by raising the thresholds for providing information in other instances.

Mergers and Joint Ventures Program Activities: Under the Mergers and Joint Ventures Program, the Commission authorized 20 new enforcement actions, including four preliminary injunctions, fifteen consents and one Part III complaint; opened 55 investigations (four initial phase; 51 full phase); and the Commission issued 46 "Requests for Additional Information or Documentary Materials" under the HSR Act. The parties in eight proposed mergers abandoned their transactions after the request for additional information was issued. The Commission authorized staff to file motions in federal district court to bar the consummation of three proposed mergers in the health care industry: in one matter the merger was abandoned after the Commission announced plans to enjoin the merger; in the second matter a divestiture agreement was reached; and in the third case the Eleventh Circuit Court of Appeals heard oral arguments on the Commission's appeal of a district court decision that dismissed the Commission's motion for a preliminary injunction. In addition, for the first time, the Commission authorized staff to seek injunctive relief to prevent the shutdown and sale of supermarkets that were potential candidates for divestiture under the Notice of Contemplated Relief portion of an administrative complaint.

In other enforcement actions, the Commission accepted 15 consents to remedy competitive problems in a number of industries such as health care (acute care hospital services, retail

prescription drug stores, drugs and other medications), consumer money wire transfer services, satellite research and development, and specialized chemicals; one administrative complaint was issued in a supermarket matter. The Commission found violations in three adjudicative matters; two Commission decisions were modified in accordance with decisions rendered by the courts; and finally, an initial decision by an Administrative Law Judge upheld a 1990 complaint and ordered the nation's largest printing service company to divest four printing plants it acquired in 1990.

A settlement filed in a federal district court requires Rubus Development Corporation (successor to Supermarket Development Corporation) to pay \$400,000 in civil penalties to settle allegations that Furr's violated several provisions of a 1988 divestiture order. The first installment of \$150,000 was paid to the U.S. Treasury in February 1994.

Also, in September 1994, the Commission and the Antitrust Division of the Department of Justice issued revised guidelines regarding the application of antitrust laws in the health care industry. As a result of the guidelines, Commission staff responded to six requests from the industry for advice about whether specific health care arrangements might violate antitrust laws. The Commission also joined the Justice Department in announcing proposed international antitrust guidelines.

Non-Merger Program Activities: In the three non-merger areas of the Maintaining Competition Mission, the Commission opened 74 investigations (55 under Horizontal Restraints; eight under Distributional Arrangements; and 11 under Single Firm Violations) during fiscal year 1994.

Eleven consent agreements involving such restraints as advertising or antisolicitation restrictions, price fixing, conspiracy to boycott, and monopolization in industries that provide consumer services in the provision of medical care, real estate management, automobile sales, and CATV systems were accepted for public comment. Eight of those agreements were made final.

The Commission's 1989 final order in Ticor Title Insurance Company became final in March when the Supreme Court denied Ticor's petition for certiorari to review the Third Circuit's decision ruling that title search and examination services are not part of the "business of insurance." A district court judge dismissed charges concerning Abbott Laboratories' alleged illegal bidding practices. The Commission dismissed the 1990 administrative complaint that challenged the College Football Association's (CFA) agreements to market and sell certain college football television rights. The Commission determined that it did not have jurisdiction over the activities of the College

Football Association because the revenues generated by the CFA did not benefit any private individual or for-profit entity.

The staff ended the fiscal year with a substantial workload of non-merger matters: under the Horizontal Restraints Program there are 73 ongoing investigations, two matters in litigation, and four major projects; under the Distributional Arrangements Program there are 13 ongoing investigations, one complaint withdrawn from adjudication to consider staff's recommendation to accept consent agreements, and three projects; and under the Single Firm Violations Program there are 15 ongoing investigations and three projects.

Consumer Protection

For fiscal year 1996, under the Consumer Protection Mission, the Commission is requesting a total of 509 FTE and \$55,901,000. The request reflects an increase of \$2,227,000 and a decrease of 3 FTE from the fiscal year 1995 level.

The Consumer Protection Mission includes five law enforcement programs: Advertising Practices, Service Industry Practices, Marketing Practices, Credit Practices and Enforcement. Advertising and fraud issues, which span several Consumer Protection programs, top the Mission's priorities list, which includes: health claims in food advertising; environmental advertising and labeling; general advertising issues; health care fraud; telemarketing, business opportunity, franchise and investment fraud; mortgage lending and credit-related discrimination; enforcement of Commission orders; and enforcement of other credit statutes and a wide variety of special statutes such as the Textile, Fur and Wood Labeling Acts, the Comprehensive Smokeless Tobacco Health Education Act and the Comprehensive Smoking Education Act, as well as trade regulation rules addressing such diverse topics as funeral goods and services, mail- and telephone-order merchandise, used car sales and octane ratings. The Mission also includes a consumer and business education program designed to inform consumers and businesses of their rights and responsibilities under the laws and regulations administered by the Commission.

Under the Consumer Protection Mission, the Commission strives to maintain a well-functioning marketplace that allows consumers to make informed purchase choices. To this end, the Commission works to: increase the usefulness of advertising by ensuring that advertising is truthful and not misleading; reduce instances of fraudulent or deceptive sales and marketing practices; and prevent creditors from using unlawful practices in the granting of credit, the maintenance of credit information, the collection of debts, and the operation of credit systems. The Mission also includes a program directed at educating

consumers and businesses about their rights and responsibilities under laws and regulations administered by the Commission.

The requested level for the Consumer Protection Mission will be used to continue mission-wide strategic plans. These include: (1) targeting high impact fraud cases; (2) concentrating on industry-wide problems in non-fraud areas; (3) enforcing trade regulation rules; (4) ensuring compliance with section 13(b) and rule enforcement orders; and (5) continuing consumer and business education efforts supporting law enforcement.

Fiscal Year 1994 Accomplishments

Law enforcement activities in the Consumer Protection Mission addressed the issues and challenges facing American consumers today. The Commission continued to serve as the consumer's voice in the marketplace, an advocate for truthful, non-deceptive advertising, fair sales and marketing practices, and responsible credit-related services.

Fiscal year 1994 was a banner enforcement year for the Commission. In the Consumer Protection area, over \$60 million in consumer redress and \$1.7 million in disgorgement was ordered in 53 administrative and federal district court matters. In addition, 22 permanent injunctions were obtained by the Commission, and 29 complaints filed in federal district court in fiscal year 1994 were pending at the end of the year. The Commission approved 68 consent agreements, 58 final and ten for public comment, with several including redress or disgorgement provisions. Seventeen of the consent agreements obtained involve environmental claims, including: biodegradable, recyclable, and recycled claims for plastic, foam, and paper plates and other food service products, plastic products containing a cornstarch additive, adhesive tape and its dispenser, fast food containers, and a coffee filter and its packaging; benefits of an ice-melting product; ozone friendly claims for aerosol products; chlorine-free claims for a coffee filter; and unsubstantiated safety claims for pesticides by one of the largest residential lawn care service companies in the nation.

Seven consent agreements involve health claims for foods and supplements, such as unsubstantiated claims about the health benefits of pectin and betacarotene in grapefruit, deceptive osteoporosis claims by a calcium supplement marketer, false and misleading representations about the total fat and saturated fat content of a liquid non-dairy creamer, and deceptive and unsubstantiated claims that a company's eggs are superior to other eggs because they do not increase consumers' serum cholesterol. A major national pharmaceutical manufacturer agreed to settle charges regarding its weight loss and nutritional claims about a high-fiber product. In addition, the Commission issued an enforcement policy statement to provide guidance

regarding its enforcement policy with respect to the use of nutrient content and health claims in food advertising. The policy also addresses how the Commission intends to harmonize its food advertising enforcement policy with the new food labeling regulations issued by the FDA pursuant to the Nutrition Labeling and Education Act of 1990.

In the health care services area, the Commission issued final consent orders against three of the nation's largest commercial diet program companies. - The Commission charged the firms with deceptively advertising the success of diet program participants in reaching their weight loss goals and maintaining that weight loss. Similar consent agreements from four other providers of commercial diet programs were also approved. The orders and agreements in all of these cases require that the companies and individuals have a reasonable basis consisting of scientific evidence for claims that dieters can lose weight or maintain that weight loss, and make various factual disclosures in connection with any future maintenance success claims.

The Commission accepted a consent agreement against a marketer of a cosmetic, non-surgical treatment for varicose and spider veins. The complaint alleged that the provider's advertising deceptively advertised the risks, recurrence rate, and exclusivity of the treatment. Three other consent agreements were accepted against sellers of smoking cessation services. The Commission alleged that the marketers made false and unsubstantiated success rate, efficacy, and superiority claims for single-session, group hypnosis seminars for smoking cessation and weight loss. Another consent agreement prohibits a tobacco company from disseminating ads containing misrepresentations about the relative amount of tar and nicotine consumers will get by smoking various brands of cigarettes.

Ten of the consent agreements approved by the Commission involve complaints against infomercial companies. Challenged claims in the infomercial consent agreements involved the success rate and performance of a system to purchase real estate and obtain credit, and a book about the availability of government grants and loans. In addition to challenging advertising claims for the products, in several infomercial cases the Commission also charged that the advertisements misrepresented that they were independent television programs, rather than commercials, and the orders require the companies to disclose that the program is a paid ad. One of the agreements provides for \$3.5 million in consumer redress and another for \$425,000.

In the energy-saving area, the Commission signed consent agreements with a major electric products company that made exaggerated claims about energy and cost savings for incandescent bulbs, and with a catalog company that made deceptive gas mileage

improvement performance and emissions reductions claims for a fuel additive and an automobile retrofit device.

The Commission gave final approval to an agreement with a major mortgage lender to settle charges it deceptively represented the "lock-ins" it offered consumers on certain types of loans, and failed in some instances to lock-in the interest rate or the number of discount points at the level agreed to by consumers. The settlement prohibits the company from misrepresenting the terms or the nature of lock-in agreements it offers consumers in the future, and requires the company to pay \$300,000 in consumer redress. A settlement was obtained in one administrative case against a "superbureau," a company that bought large volumes of credit and other data about individual consumers at discounted rates, and then resold the data to low-volume buyers.

Other consent agreements include orders against: a major manufacturer and distributor of computer communications equipment for misrepresenting the risks of competing modems that do not contain its escape sequence feature; an advertiser of a non-aerosol spray air cleaner for unsubstantiated efficacy claims; a major auto company that failed to disclose significant restrictions in its promotional offer; an advertiser of a self-protection spray product for use against assailants; a major oil company and its advertising agency for unsubstantiated performance claims for high octane gasoline; one of the three major credit bureaus in the United States; and four companies involved in work-at-home schemes.

Opening an important new front in the battle against telemarketing fraud, the Commission challenged advertising on the information superhighway for the first time and was able to halt an allegedly deceptive credit repair scheme so quickly that consumer losses totalled less than \$2,000. On another important new front, the Commission filed seven 13(b) complaints in federal district court against telemarketers that allegedly engage in deceptive charity solicitations. In a further effort to combat telemarketing fraud, the Commission jointly sponsored with the National Association of Attorneys General a series of regional telemarketing fraud conferences that brought together federal, state, and local law enforcement authorities.

Five district court cases that the Commission brought to conclusion targeted sellers of franchises or business opportunities. One of these cases targeted a business opportunity fraud which the court, after trial, ordered to pay more than \$9 million in redress; the court also broadly banned the individual principal running the scheme from further marketing or sale of any franchise or business venture. One business opportunity matter involving vending machine distributorships resulted in four district court orders totaling

\$95,000 in consumer redress and seven permanent injunctions. Charges are still pending against six individuals and 30 corporate defendants. To settle another case, a defendant who, among other things, promoted a deceptive business opportunity scheme by means of an infomercial agreed to waive any objection to the Commission's claim for nearly \$2.5 million in consumer redress against his bankruptcy estate. In another case, an individual defendant who operated a scheme that licensed the right to sell students college-scholarship information agreed to pay \$300,000 in consumer redress.

Enforcement of the Equal Credit Opportunity Act resulted in a significant settlement agreement with a subsidiary of the third largest banking institution in New England. The settlement resolved allegations that the company violated the Equal Credit Opportunity Act by denying home mortgage loans on the basis of race and national origin, and requires the company to pay approximately \$1 million in consumer redress. This case achieved an important result both in terms of dollars for individual consumers and in terms of the message it sends to mortgage lenders in general. A second case involving lending discrimination charges resulted in payment of a \$150,000 civil penalty.

A \$10 million judgment was obtained in the Commission's first stamp fraud case. Two federal court actions against telemarketing prize promotion frauds were resolved by stipulated settlements banning the defendants from further prize promotions and providing a combined total of \$1.9 million in consumer redress. A \$2 million consumer redress judgment was obtained against a deceptive 900-number scheme to market secured Visa and MasterCard credit cards. The Commission resolved a 13(b) case against a fraudulent invention promotion scheme, obtaining a stipulated settlement with \$1.2 million in redress. In the standards area, a case against a laboratory alleged to have manipulated test results relating to certification of the insulation qualities of windows resulted in \$60,000 paid in consumer redress and 1,400 inaccurate test reports about the insulation capacity of certain windows withdrawn from the marketplace.

Twenty-five federal district court judgments ordered approximately \$4 million in civil penalties. The program's administrative order enforcement efforts resulted in the Mission's largest civil penalty action. In this consent order imposing a \$2.4 million civil penalty, the Commission resolved allegations that General Nutrition Corp., the nation's largest seller of nutritional supplements, violated prior Commission orders prohibiting false and unsubstantiated claims for food supplements.

In the Mail- and Telephone-order Rule area, enforcement continued with three companies agreeing to pay a total of \$46,000 to resolve allegations that they violated the rule in conjunction with the sale of sports collectibles. Additionally, a seller of watches and other items agreed to a consent decree barring future violative conduct, and requiring it to pay a \$32,500 civil penalty. Under another order, a mail order catalogue clothing retailer was prohibited from engaging in future violations of the Rule and paid \$49,000 in civil penalties. In a related area, the Commission obtained a consent decree against a company resolving allegations that it had shipped unordered books to subscribers of a book continuity series. The order prohibits future violative conduct and requires payment of a \$200,000 civil penalty.

The Commission also settled or litigated major civil penalty actions with several other firms. A \$250,000 settlement was obtained with a company charged with making unsubstantiated safety (shock absorption) claims for its athletic footwear. Settlement of allegations of unfair breach of contract against one of the nation's largest health club chains called for a notice-and-refund remedy for an indeterminate number of affected consumers that could total \$1 million, in addition to civil penalties of \$120,000 for alleged Fair Debt Collection Practices Act violations. The Commission also obtained judgments against defendants in two franchise rule enforcement actions for a combined total of \$105,000 in civil penalties and appropriate injunctive relief against future law violations.

The Commission also issued five administrative complaints and two final orders in Consumer Protection matters. The Commission charged one company with deceptive advertising of its weight-loss and cholesterol-lowering products. In another of a series of cases targeting deceptive or misleading claims for nutritional supplements, a complaint was issued against a marketer of calcium supplements. A manufacturer of athletic footwear was charged with making false and misleading advertising and labeling claims that its shoes are "Made in the USA." The Commission also charged a department store chain with making it unreasonably difficult for consumers to remove unauthorized charges from their store credit card bills.

A business opportunity infomercial producer was charged by the Commission with falsely representing users' income and success in connection with a starter kit typically for various computer-based consulting businesses that buyers could operate from their homes. The company subsequently entered into an agreement that would prohibit them from misrepresenting that consumers who use the starter kit typically succeed in starting and operating successful businesses and earn substantial income.

In the warranty area, the Commission, after oral argument, adopted the decision of an Administrative Law Judge (ALJ)

upholding FTC administrative charges against a nationwide marketer of automobile service contracts for failing to honor its contracts and misrepresenting contract coverage. The final order prohibits the company from materially misrepresenting or unilaterally cancelling any service contract it offers in the future.

The Commission also issued a final order prohibiting a company from misrepresenting the amount of sodium or any other nutrient or ingredient in any of its frozen-food products. This decision upheld the decision of the ALJ, and broadened the judge's order which prohibited only the misrepresentation of sodium content.

On the rulemaking front, comments were sought concerning several rules and guides as part of the regulatory reform process, including initiation of reviews of the Credit Practices and Used Car Rules. Pursuant to the statutory requirement to amend the Appliance Labeling Rule to keep current with Department of Energy testing methods, the Commission voted to amend the Appliance Labeling Rule to require water-use disclosures for four types of plumbing products. The Appliance Labeling Rule was also amended to cover certain lighting products. Updated energy-usage disclosures on home appliance labels were adopted by the Commission to make the labels easier to read and more useful to consumers. As required by the Energy Policy Act of 1992, the Commission initiated a rulemaking to establish uniform labeling requirements for alternative fuels and alternative fueled vehicles. Pursuant to the Comprehensive Smokeless Tobacco Health Education Act, the Commission also sought comments on a proposal to require health warnings on sponsored racing cars and other racing event related objects bearing the product brand names, logos, or promotional messages for smokeless tobacco products.

The Office of Consumer and Business Education produced 24 new publications and 46 revised publications. Of these 70 publications, three are business booklets, 11 resulted from joint efforts, seven are in Spanish, and seven are special enclosures for consumer complaint or redress letters. More than three million copies of the FTC consumer publications and 63 thousand copies of the business publications were distributed by the agency during the fiscal year. In joint efforts, the Office did two award-winning multi-media campaigns, one on telephone scams and older consumers and the other on auto repair. For National Consumers Week, the Office developed a special newspaper supplement, *Focus on Fraud*, and distributed 8,000 copies to FTC regional offices and requesting organizations for redistribution.

Management/Support

Included in the Mission sections, above, are program increases totaling \$2,287,000 to address the needs described in this section.

The Commission's initiatives in response to applicable National Performance Review goals have begun to show results. For example, we have reduced the number of supervisors by 13 percent and the number of SES/15/14 positions by three percent, with the attendant reduction in levels of review. Also, two senior levels of review were abolished within Commission bureaus, and smaller offices have been merged or assimilated into larger ones.

The Commission will make further strides in improvements in financial management systems. We are moving ahead with plans for a more integrated budget, financial and program information system as clients of the Department of the Interior's Denver Administrative Service Center (ASC). In fiscal year 1996 the Commission will convert its payroll, personnel and payment activities to the ASC, where we currently receive accounting system services. This franchising arrangement has led to faster, more accurate financial information, and the reallocation of resources to other priority needs.

The Commission is implementing a new procurement system during fiscal year 1995 which will provide full capabilities to conduct procurements electronically for commercially available products. This system has the future capability to interface with the financial management system to streamline further the agency's administrative processes.

There are three basic elements to our strategy for improving productivity through better and broader use of information resources and related technology. First, installation and maintenance of the infrastructure of modern systems and other information resources is necessary for the Commission's attorneys and economists to do their work. The Planning and Information program (P&I) seeks the most cost-effective solutions possible, relying on market competition, off-the-shelf solutions, and resource sharing with other federal agencies and other organizations. Second, P&I focuses on the training and support of Commission staff on all information systems for the maximum utilization by the direct programs. Finally, P&I works with Commission program managers and staff to focus resources on the Commission's most important law enforcement and consumer/business education goals. A major management initiative for both fiscal years 1995 and 1996 will be to continue to improve productivity, with an emphasis on increasing the effectiveness with which the Commission uses information systems to perform its mission. This

emphasis on using information technology is a key enabler for a more efficient Commission.

The fiscal year 1996 request proposes to maintain Commission-wide information systems at the high quality made possible by Congressional and Executive Branch support over the past several years. This support has brought the Commission to a point where it generally has an excellent information systems infrastructure in place. In the future, ongoing investments will be required to support and maintain what we now have, to expand and further upgrade capabilities as requirements continue to grow and as technology continues its rapid rate of change in the marketplace, and to continue the Commission's ongoing process of integrating these improved information systems in its basic business processes.

Budget Justification Summary
(\$ in thousands)

	<u>FY 1995</u>		<u>FY 1996</u>		<u>Change</u>
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE Amount</u>
Budget by Mission:					
Maintaining Competition	467	\$49,254	470	\$51,948	+3 \$2,694
Consumer Protection	512	53,674	509	55,901	-3 2,227
Total	979	\$102,928	979	\$107,849	0 \$4,921
Budget by Organization:					
Headquarters	803	\$89,528	799	\$93,574	-4 \$4,046
Regions	176	13,400	180	14,275	+4 875
Total	979	\$102,928	979	\$107,849	0 \$4,921
Budget by Funding Source:					
Direct Budget Authority	---	\$54,788	---	\$59,587	---
Filing Fees Current Year	---	39,640	---	48,262	---
Filing Fees Prior Year	---	8,500	---	---	---
Total	979	\$102,928	979	\$107,849	0 \$4,921

**Summary of Changes
Fiscal Year 1996 Budget Justification
(\$ in thousands)**

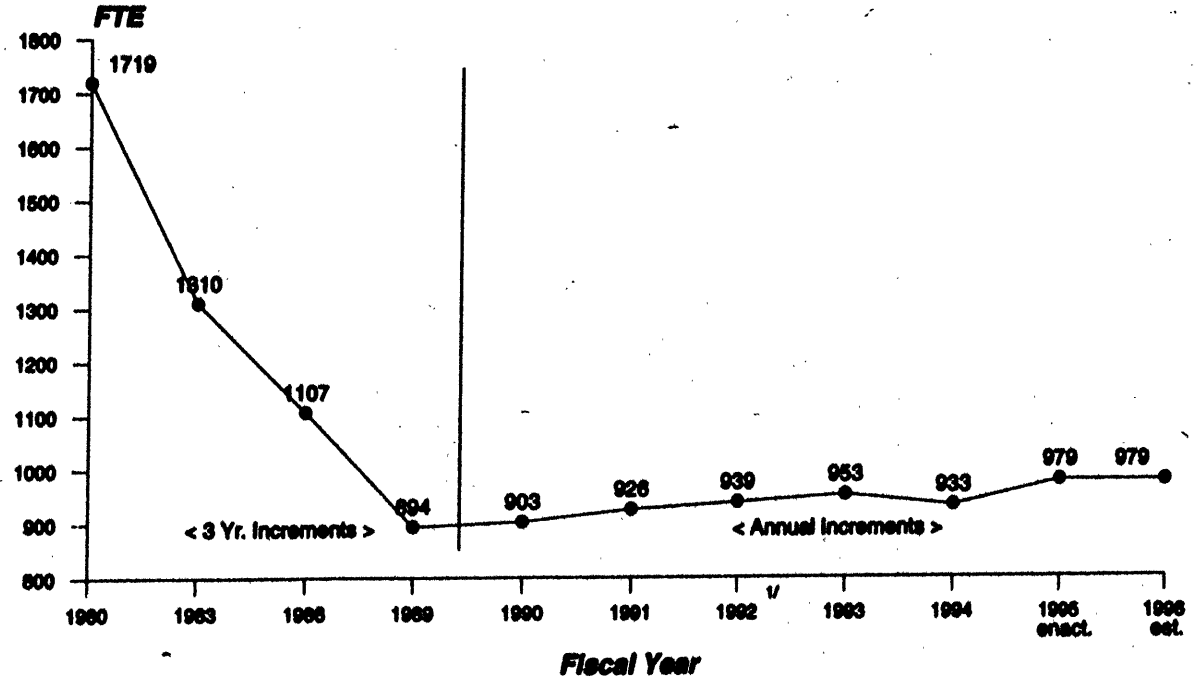
	<u>FY 1995 Enacted</u>	<u>FY 1996 Estimate</u>	<u>Net Change</u>
Budget Authority ¹	\$102,928	\$107,849	+\$4,921
Full-time Equivalents.....	979	979	---
		<u>FTE</u>	<u>Amount</u>
Explanation of Change:			
Increases:			
A. Base Adjustments:			
To provide for annualization of the FY 1995 pay raise.....	---	---	+654
To provide for a 2.2% pay increase effective January 1996.....	---	---	+1,323
To provide for within-grade increases and promotions.....	---	---	+1,230
To provide for increased benefit costs.....	---	---	+899
To provide for increased costs of space rent.....	---	---	+749
To provide for increased costs in other non-personnel services.....	---	---	+417
Subtotal.....	---	---	<u>+5,272</u>
B. Program Increase:			
To provide for automated systems efficiencies & integration in support of Mission activities.....	---	---	<u>+2,287</u>
Total Increases.....	---	---	<u>+7,559</u>

¹ Includes direct appropriation and offsetting collections from pre-merger filing fees.

	<u>FTE</u>	<u>Amount</u>
<u>Decreases:</u>		
A. Base Adjustment:		
To provide for savings from administrative efficiencies.....	---	-438
B. Program Decrease:		
To provide for a decrease of one-time fiscal year 1994 HSR fee-carryover budget authority.....	---	-2,200
Total Decreases.....	---	-2,638
Total Change.....	---	+\$4,921

Full-time Equivalent History

Federal Trade Commission
Fiscal Years 1980 - 1996



1/ Definition of FTE changed to include previously ceiling-exempt FTE, per Exec. Order 12839, dated 2-10-93.

Maintaining Competition Budget Justification
(\$ in thousands)

<u>Program Description</u>	<u>Fiscal Year 1995</u>		<u>Fiscal Year 1996</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Premier Notification	51	\$3,946	51	\$4,150
Mergers & Joint Ventures	151	11,620	153	12,591
Horizontal Restraints	81	6,208	83	6,748
Distributional Arrangements	19	1,478	19	1,556
Single Firm Violations	10	796	10	837
Antitrust Policy Analysis	7	550	7	580
Other Direct Mission Resources	19	1,572	19	1,611
Subtotal Direct Mission	<u>338</u>	<u>\$26,430</u>	<u>342</u>	<u>\$28,072</u>
Direct Support	63	\$9,669	63	\$10,429
Indirect Support	66	13,155	66	13,447
Subtotal Support Allocation 1/	<u>129</u>	<u>\$22,824</u>	<u>128</u>	<u>\$23,876</u>
TOTAL MISSION	<u>467</u>	<u>\$49,254</u>	<u>470</u>	<u>\$51,948</u>

By Organization

Bureau of Competition	220	\$17,276	220	\$18,166
Bureau of Economics	65	5,148	65	5,419
Regional Offices	53	4,006	57	4,485
Subtotal Direct Mission	<u>338</u>	<u>\$26,430</u>	<u>342</u>	<u>\$28,072</u>
Direct Support	63	\$9,669	63	\$10,429
Indirect Support	66	13,155	66	13,447
Subtotal Support Allocation 1/	<u>129</u>	<u>\$22,824</u>	<u>128</u>	<u>\$23,876</u>
TOTAL MISSION	<u>467</u>	<u>\$49,254</u>	<u>470</u>	<u>\$51,948</u>

1/ Includes the cost of support organizations plus space and equipment rents, telecommunications, postage, Federal Register printing, library materials and other overhead expenses.

Maintaining Competition
Premerger Notification
(\$ in thousands)

<u>FY 1995</u> <u>Enacted</u>		<u>FY 1996</u> <u>Request</u>		<u>Difference</u> <u>1995/1996</u>		<u>Percent</u> <u>Difference</u>	
FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
51	\$3,946.1	51	\$4,150.0	0	+\$203.9	0%	+5.2%

'FTE include: 48 for BC, 1 for BE, and 2 for RO.

Introduction

The Hart-Scott-Rodino (HSR) Premerger Notification Program, enacted as Sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 and codified as Section 7A of the Clayton Act (HSR Act), requires persons meeting certain size requirements, who are planning significant acquisitions, to file notification with the Commission and the Department of Justice and to delay consummation for a prescribed period of time. The HSR Premerger Notification Program was enacted to provide the antitrust enforcement agencies with a meaningful opportunity to review proposed transactions and to take enforcement action, if appropriate, to prevent consummation of transactions that violate the antitrust laws.

The Commission is responsible for administering the program and taking steps to ensure compliance with the program's requirements. The Commission's long-range goal is to ensure that the program continues to provide the enforcement agencies with an opportunity to review significant proposed transactions before they are consummated. In conjunction with this goal, the Commission strives to minimize the burden on filing parties to the extent that objective can be achieved consistent with its enforcement responsibilities. This program's objectives are to encourage voluntary compliance by individuals and organizations subject to the HSR Act, and to review all reported transactions to identify those that may pose serious antitrust concerns.

To insure voluntary compliance, the Commission provides assistance to individuals and organizations subject to the HSR Act, and aggressively investigates and prosecutes violators. The FTC's Premerger Notification Office provides informal advice regarding the application and interpretation of the HSR Act and rules; makes recommendations for improving the HSR rules through rules changes and formal interpretations; and strives to improve efficiency in the processing and review of reported transactions through increased reliance on automated systems. When it appears that individuals or

organizations may not have complied with the HSR reporting requirements, the Bureau of Competition's Compliance Division conducts an investigation and recommends an enforcement action for civil penalties, or other relief when appropriate.

To identify those transactions that may pose serious antitrust concerns, the Premerger Notification Office prepares a summary description and a preliminary antitrust analysis of every transaction reported. Those summaries are then reviewed by the Bureau of Competition's litigation divisions, the Bureau of Economics, and the Merger Screening Committee.

Fiscal Year 1996 Budget Request

Program efforts will remain the same for fiscal years 1995 and 1996.

Fiscal Year 1995 Program Activities

The Premerger Notification Program will continue to review transactions for compliance with the Hart-Scott-Rodino Act reporting requirements and perform preliminary antitrust review for every transaction for the Merger Screening Committee. In addition, staff will provide advice regarding the interpretation and application of the HSR Act and rules through verbal and written communications.

Staff will continue to evaluate and, as necessary, propose modification to the HSR rules to minimize evasion of the reporting requirements while maximizing the ease of compliance. The Premerger Notification Office and litigation divisions will continue to monitor transactions to ensure compliance and cooperate in investigating possible violations of the HSR Act, and where necessary, recommend that the Commission institute enforcement action.

Fiscal Year 1994 Program Activities

The Commission administers the Hart-Scott-Rodino Premerger Notification Program to review certain proposed transactions of a significant size and to take enforcement action, prior to consummation, against those that may pose substantial competitive harm to consumers. During fiscal year 1994, 2,302 proposed mergers and acquisitions were submitted in compliance with the notification and filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). This represents an increase of approximately 25 percent over the number reported to the Commission during fiscal year 1993.

The staff of the Premerger Office reviewed each reportable transaction for compliance with the HSR Act and prepared analytical summaries with recommendations to the senior management staff, litigation attorneys and merger investigators throughout the Bureau to either monitor the activities of the parties, investigate proposed

mergers for possible anticompetitive implications or grant the filin parties' request for an early termination of the waiting period. These recommendations have resulted in 46 requests by the litigation attorneys to investigate proposed mergers that could threaten competition and 1,491 grants of early termination. In addition, the Premerger staff provided oral communications, informal opinions and general information on the Premerger Rules, formal interpretations, the Premerger Notification Source Book and the two Premerger Introductory Guides in approximately 18,000 instances.

The Premerger Office is also responsible for collecting a filing fee from each acquiring person required to report a transaction on the Notification and Report Form in compliance with the HSR Act. Under the statute, the waiting period required under the HSR Act does not begin until payment of the filing fee. Legislation, signed into law in August 1994, increased the filing fee to \$45,000. During fiscal year 1994, the Commission collected \$58.2 million in filing fees. This amount is divided equally between the Commission and the Antitrust Division of the Department of Justice.

"A Model Request for Additional Information and Documentary Information", a guide designed to aid the public in the submission of documents and materials usually requested when the Commission issues a request for additional information, was made available to the public. Guide V is the third in a set of five proposed guides developed to assist the public's understanding and compliance with the filing and reporting procedures under the premerger notification statute and rules.

The U.S. Court of Appeals for the Seventh Circuit reversed a lower court decision that dismissed a complaint brought by the United States at the Commission's request, alleging that William F. Farley acquired voting securities in West Point Pepperell, Inc. in excess of \$15 million without observing the reporting and filing requirements of the HSR Act. The District Court for the Northern District of Illinois previously had dismissed the complaint with prejudice after the Commission declined to produce nine internal documents protected by the work product and deliberative process privileges. The matter has been remanded to the District Court for further proceedings on the merits of the complaint.

On September 27, 1994, a judgment was entered in federal district court requiring Pennzoil Company to pay \$2.6 million in civil penalties to settle charges that they failed to comply with the premerger notification and waiting period requirements in the acquisition of certain voting securities of the Chevron Corporation.

Stephan Schmidheiny paid \$414,650 to the U.S. Treasury Department to settle charges that he violated the HSR Act when he acquired control of two Swiss firms without observing the notification and waiting period requirements of the HSR Act. The complaint was filed last year by the United States at the Commission's request, with

Commission attorneys specially deputized to act as government counsel.

The Commission invited the public to comment on several proposed changes to the Notification and Report Form that, if adopted, would require filing persons to provide certain current information and eliminate the need for parties to submit information non-essential to the antitrust review of a reportable transaction.

The staff continues its efforts in four investigations to determine if the parties violated the filing and waiting period requirements of the HSR Act when they consummated certain acquisitions.

Statistical Summary - Fiscal Year 1994

HSR Filings	2,302
Inquiries	18,000

New Enforcement Matters

Total Civil Penalties Collected During the Fiscal Year	\$414,650
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Civil Penalties Not Collected by End of Fiscal year 1994	\$2,600,000
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Enforcement Matters Pending from Earlier Fiscal Years

- 1 Complaint

**Maintaining Competition
Mergers and Joint Ventures**
(\$ in thousands)

<u>FY 1995 Enacted</u>		<u>FY 1996 Request</u>		<u>Difference 1996/1995</u>		<u>Percent Difference</u>	
FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
151	\$11,820.0	153	\$12,590.7	+2	+\$770.7	+1.3%	+6.5%

'FTE include: 98 for BC, 36 for BE and 19 for RO.

Introduction

Mergers and joint ventures (hereinafter collectively referred to as mergers) constitute an important and dynamic aspect of U.S. economic activity. In general, mergers can play an important role in promoting the efficient allocation of economic resources. At the same time, certain mergers may be harmful to competition and, ultimately, to consumers. The mission of the Merger Program is to prevent the latter. Thus, the task is to identify those mergers that are likely to result in the lessening of actual or potential competition, increase the market power of the joining firms, and lead to market dominance or significantly increase the likelihood of collusion. Such transactions can result in increased prices to consumers and limitations on the selection of goods and services. In addition, certain mergers may increase barriers to entry or expansion, foster interdependent conduct among firms, and suppress competitive vitality at various levels of production and marketing. Interlocking directorates among competing firms also may result in effects similar to those of anticompetitive mergers.

The ultimate objective of the Merger Program is to protect consumers by preventing or undoing mergers that threaten to restrict competition and result in high prices or other forms of consumer harm in violation of Section 7 of the Clayton Act, or Section 5 of the Federal Trade Commission Act, and to prevent or undo interlocking directorates that would violate Section 8 of the Clayton Act.

The Commission uses a three-part process to carry out its mission in the Mergers Program: detect all potentially harmful mergers before they occur by monitoring merger activity and screening all significant mergers; thoroughly investigate those mergers that the screening process has targeted for further inquiry; and take action to prevent (or undo) those mergers that, after investigation and analysis, appear likely to lessen competition.

The first step is the major objective of the Premerger Program, while the Merger Program is responsible for the second and third steps of the process.

The investigatory strategy is to rely upon all processes available, particularly "Requests for Additional Information" under the Hart-Scott-Rodino Act. To achieve the ultimate objective of protecting consumers against mergers that may substantially lessen competition, the Commission's preferred strategy is to prevent such mergers before they occur. Thus, we will continue to rely on our authority to seek injunctive relief under Section 13(b) of the Federal Trade Commission Act.

Where injunctive relief is inappropriate or unavailable, the Commission will rely on its administrative remedial powers to seek to restore competition lost as the result of illegal mergers. The available tools include administrative litigation and consent proceedings. The available remedy is divestiture.

To ensure effective remedial relief, the Commission will monitor compliance with orders, initiate enforcement action as appropriate, and modify orders that harm rather than benefit consumers.

Fiscal Year 1996 Budget Request

The Commission is requesting an increase of two FTE for the Mergers and Joint Ventures program for fiscal year 1996. The additional FTE will be devoted to working with the State Attorneys General to coordinate antitrust law enforcement activities in individual states.

Fiscal Year 1995 Program Activities

1. Merger Cases: The core of the Commission's merger enforcement program focuses on mergers among direct competitors. The Commission will also act against vertical and potential competition mergers and joint ventures that harm or threaten to harm consumers. A substantial portion of the program's resources is directed at transactions in industries in which the Commission has particular expertise, including energy and natural resources, food, transportation, health care, and various manufacturing industries.
2. Interlock Cases: Undertake enforcement action against unlawful interlocking directorates.
3. Analysis: Continue or undertake projects to increase our understanding of the economic effects of mergers and the legal and policy implications of such effects.

4. **Compliance:** Monitor compliance with orders, initiate enforcement action as appropriate, and modify orders that harm consumers.

Fiscal Year 1994 Program Activities

Under the Mergers and Joint Ventures Program, the Commission authorized staff to file motions in federal district court to prevent the consummation of three proposed hospital mergers and to prevent the sale of certain supermarkets listed in the Notice of Contemplated Relief section of an administrative complaint; accepted 15 consent agreements for public comment; and issued one administrative complaint. In addition, 55 investigations (four initial phase, 51 full phase) were opened; and 46 requests for additional information or documentary information were issued under the HSR Act.

In the provision of acute care hospital services, the Commission authorized five new enforcement actions. The Sisters of Charity Healthcare Systems, Inc. abandoned their proposed acquisition of Parkview Episcopal Medical Center of Pueblo County, Colorado after the Commission sought to enjoin the transaction; HealthTrust, Inc. agreed to divest certain assets under terms of a proposed consent agreement accepted for comment after the Commission announced plans to file a motion for a preliminary injunction in federal district court to bar the acquisition of three hospitals in the Salt Lake City area of Utah. The Eleventh Circuit granted the Commission's emergency motion for an injunction pending appeal after a district court in Florida granted Lee Memorial Hospital's motion to dismiss on state action grounds. The district court's dismissal of the Commission's suit to enjoin the merger is on appeal to the Eleventh Circuit. In the largest merger ever undertaken in the U.S. hospital industry, Columbia Healthcare Corporation (formerly Columbia Hospital Corporation) agreed, under terms of a proposed consent agreement placed on the public record for comment, to divest a hospital in Augusta, Georgia to settle Commission antitrust concerns stemming from its proposed \$4 billion acquisition of HCA-Hospital Corporation. (Two other consent agreements require Columbia Healthcare to: (1) divest Kissimmee Memorial Hospital to settle charges relating to its proposed acquisition of Galen Health Care, Inc.; and (2) obtain prior Commission approval before acquiring any hospital in Charlotte County, Florida to settle charges that its proposed acquisition of Medical Center would have violated the antitrust laws.) Finally, under terms of a proposed consent agreement, Columbia/HCA Healthcare Corporation agreed to divest the Alaska Surgery Center to settle charges that its proposed acquisition of Medical Care America, Inc. could result in higher prices and reduced quality for outpatient surgical services in Anchorage, Alaska.

Twelve of the 15 consent agreements accepted for public comment require divestiture of the acquired assets to entities pre-approved by the Commission. Consents were accepted in a wide variety of industries - coating resins used in paints and other surface coatings; cable television programming; computer driven storage and retrieval

devices; acute care hospital services; drug store chains; specialized chemicals used in the jet engines industry; and satellite development and launch vehicles.

An administrative law judge upheld a 1990 complaint and ordered the nation's largest printing service company to divest the four printing plants acquired from Meredith/Burda Company L.P. in 1990.

The Commission affirmed the decision of the administrative law judge and dismissed the complaint that challenged the acquisition of Ukiah General Hospital. The Commission ruled that the evidence did not support the relevant California geographic markets alleged in the complaint.

The Coca-Cola Company was ordered to obtain prior Commission approval before acquiring certain soft drink concentrate manufacturers. The decision accompanying the order upholds the decision by an administrative law judge that ruled that Coca-Cola's proposed acquisition of the Dr Pepper Company could substantially reduce competition in the production and distribution of carbonated soft drink concentrate in the United States.

The Commission decision in Coca-Cola Bottling Company of the Southwest upheld the complaint and ruled that the acquisition of the Dr Pepper franchise acquired from San Antonio Dr Pepper Bottling could substantially reduce competition for branded carbonated soft drinks in the ten-county area around San Antonio. The decision reverses the 1991 dismissal by an administrative law judge.

Two final orders were modified in accordance with decisions rendered by the higher courts. A settlement in the U.S. Court of Appeals for the Second Circuit requires the divestiture of a polyvinyl chloride plant in Addis, Louisiana and the divestiture of the suspension and dispersion polyvinyl plant in Burlington, New Jersey to a Commission approved acquirer. The Commission's 1990 decision requiring divestiture of facilities for producing chlorinated isocyanurates acquired from FMC Corporation became final on February 22, 1994 when the Supreme Court denied Olin's petition for certiorari.

A settlement filed in a federal district court requires Rubus Development Corporation (successor to Supermarket Development Corporation) and Furr's Supermarkets, Inc. (successor to Furr's Inc.) to pay \$400,000 in civil penalties to settle allegations that they violated several provisions of a 1988 divestiture order. The first installment of \$150,000 was paid to the U.S. Treasury on February 18, 1994.

One other consent agreement settling charges relating to Textron Inc.'s 1989 acquisition of Avdel PLC was made final. Textron agreed to license certain technology and know-how for the manufacturing and distribution of Monobolt rivets used in aerospace and ground-

transportation vehicles. The Commission approved Textron's application to issue a Monobolt License to Celus Fasteners Mfg. Inc.

The Commission and the Department of Justice issued updated and expanded enforcement policy statements clarifying the agencies antitrust position on joint ventures, networks and other joint activities in the health care industry. As a result of the guidelines, first issued in September 1993, the Commission staff responded to six requests from the industry for advice about whether specific health care arrangements or conduct might violate antitrust laws.

Statistical Summary - Fiscal Year 1994

Investigations Opened	
Full Phase	51
Second Request Investigations	46

Preliminary Injunctions Authorized	4
- 1 Filed	
(1 - Administrative Complaint Issued)	
- 1 Consent accepted for comment	
- 1 Transaction Abandoned	
- 1 Authorized to protect a Notice of Contemplated Relief	

Part II Consents Accepted for Comment	15
- 7 Final	
- 1 Withdrawn	
- 7 Pending Final Action	

Civil Penalties Collected During the Fiscal Year
\$150,000

Administrative Complaints	1
- 1 Awaiting Start of Administrative Trial	

Enforcement Actions Initiated in Earlier Fiscal Years

Adjudicative Matters	2
- 1 Awaiting Start of Administrative Trial	
- 1 Awaiting Commission Action on Final Order	

Maintaining Competition
Horizontal Restraints
(\$ in thousands)

<u>FY 1995</u> <u>Enacted</u>		<u>FY 1996</u> <u>Request</u>		<u>Difference</u> <u>1995/1996</u>		<u>Percent</u> <u>Difference</u>	
FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
81	\$6,267.3	83	\$6,748.6	+2	+\$481.3	+2.5%	+7.7%

¹FTE include: 44 for BC, 13 for BE, and 26 for RO.

Introduction

Horizontal restraints, such as price-fixing and other anti-competitive behavior among direct competitors, generally harm consumers by raising prices and reducing the quantity and quality of goods and services.

The forms taken by horizontal restraints include collusive behavior, conduct that facilitates collusion, and governmental restraints on competition. These practices may deny purchasers access to the optimal variety, quantity and quality of goods and services at competitive prices, and deny sellers the opportunity to produce, distribute, and sell goods and services in the variety and quantity and at the prices they would select under competitive conditions.

A particular focus of the program is the health care sector which has been marked by rapidly rising costs. The Commission has used the antitrust laws to challenge unlawful conspiracies among health care providers, such as price fixing and coercive boycotts of cost-containment programs or alternative providers. More generally, this program targets other professionals such as lawyers and accountants, as well as service industries.

The major objectives of this program are to: detect, investigate, prevent and remedy anticompetitive collusion or courses of action that facilitate collusion among competitors; reduce the incidence of private agreements, such as possibly anticompetitive industry standards, ethical codes, and other activities of trade and professional associations and standards-setting organizations, that raise prices and lower the quality and quantity of goods and services; and limit the extent to which businesses and professionals are permitted to engage in collusive activities that may distort pricing mechanisms or otherwise restrain competition under the aegis of government or self-regulation.

The Commission employs a strategy combining investigation, litigation, voluntary compliance, and negotiation in striving to eliminate to the fullest extent possible governmental and private restraints that limit the right to engage in competition. In addition, reports and comments to federal, state, and local government agencies; amicus curiae briefs; and advisory opinions will be provided where appropriate.

Fiscal Year 1996 Budget Request

The Commission is requesting two additional FTE for the Horizontal Restraints program for fiscal year 1996. The additional FTE will work with the State Attorneys General to coordinate antitrust law enforcement activities of individual states.

Fiscal Year 1995 Program Activities

1. Traditional Collusion: Pursue investigations and, if appropriate, litigation involving possible collusion among competitors in various industries and professions.
2. Practices Facilitating Collusion: Conduct investigations and, if appropriate, litigation involving possible anti-competitive activities of trade and professional associations, and standards-setting organizations.
3. Horizontal Restraints Under Aegis of Regulation: Conduct investigations and, if appropriate, litigation involving possible horizontal restraints under the aegis of government regulation, particularly involving health care services and other licensed occupations.
4. Analysis: Continue to undertake projects that examine the legal, economic and policy implications of agreements among competitors.
5. Compliance: Monitor compliance with orders, initiate enforcement action as appropriate, and modify orders that harm consumers.

Fiscal Year 1994 Program Activities

The Horizontal Restraints Program began fiscal year 1994 with 180 open matters. During fiscal year 1994, the Commission opened 55 initial phase investigations and one full phase investigation. At the end of the year, the program carried a full workload of over 140 investigations, cases in litigation, projects, and compliance matters involving allegedly anticompetitive conduct among private professional and trade associations, individuals, private entities and state licensing boards.

Under the Horizontal Restraints Program, the Commission has initiated nine new enforcement actions. Six of the nine consent agreements placed on the public record for comment were made final: Personal Protective Armor Association and the Arizona Automobile Dealers Association -- separate trade associations that allegedly conspired with their respective members to restrict comparative advertising; McLean County Chiropractic Association; American Society of Interpreters; and The American Association of Language Specialists -- professional organizations allegedly engaged in separate price fixing conspiracies; and Community Associations Institute -- professional association representing managers of residential properties adopted a code of ethics allegedly restricting members' solicitation of clients. Three proposed consent agreements are pending final Commission action: Boulder Ridge Cable TV allegedly entered into an anticompetitive agreement with a competitor not to compete in the operation and distribution of cable systems; Trauma Associates of North Broward, Inc. -- surgeons who allegedly conspired to stabilize the fees charged for their services; and the Medical Staff of the Good Samaritan Regional Medical Center -- a group of physicians allegedly conspired to boycott a hospital in an attempt to limit health care services in the area.

The Commission's 1989 final order in Tigor Title Insurance Company became final on March 21, 1994 when the Supreme Court denied Tigor's petition for certiorari to review the Third Circuit's decision ruling that title search and examination services are not part of the "business of insurance".

The District Court for the District of Columbia found that although Abbott Laboratories submitted a plausible explanation for its second round bid strategy, the submission of three noncompetitive second round bids is questionable and raises the possibility of a collusive bidding pattern. The judge dismissed the complaint and ruled that the Commission failed to prove that Abbott was acting in collusion with its competitors. The judge commented that while the Commission was not able to sustain its case against Abbott, "there is little doubt in this court's view that violative conduct occurred." The court also praised the Commission for bringing the case and for obtaining the restitution that was received from Mead Johnson & Company and American Home Products. The Commission determined not to appeal the decision. The 1992 administrative complaint alleged that Abbott Laboratories, the largest U.S. manufacturer of infant formula, communicated with its competitors in an effort to submit similar types of bids to supply formula to Puerto Rico under the U.S. Government's funded Special Supplemental Food Program for Women, Infants and Children (WIC).

The Commission dismissed the 1990 administrative complaint that challenged the College Football Association's agreements to market and sell certain college football television rights. In its decision, the Commission held that it did not have jurisdiction over the activities

of the College Football Association because the revenues generated by the CFA did not benefit any private individual or for-profit entity.

Settlements in three different administrative matters opened in earlier fiscal years were placed on the public record for comment during the year. Abbott Laboratories agreed not to conspire with its competitors to restrict advertising of infant formula directly to consumers. Under terms of a final consent order, two trade associations, the Baltimore Metropolitan Pharmaceutical Association and The Maryland Pharmacists Association are prohibited from participating in any agreement to boycott a prescription drug plan in an effort to increase rates paid to its member pharmacists. Final consents with James Daniel Hayes, the Detroit Auto Dealers Association, Inc., 144 Detroit-area automobile dealerships, owners and managers of dealerships, and other dealer associations settled charges that they illegally conspired to limit their hours of operation. The respondents also agreed not to enter into any agreement or exchange information concerning a limitation on the hours of operation in the automobile showroom. Also in the Detroit Motor Vehicle Dealers case, the Commission dismissed charges against Autobahn Motors, Inc., John L. Drumney, Sr., and McAlister Motors, Inc.

Statistical Summary - Fiscal Year 1994

Investigations Initiated	56
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Enforcement Actions

Part II Consents

- | | |
|--------------------------|---|
| - 6 Final | 9 |
| - 3 Pending Final Action | |

Enforcement Matters Initiated in Earlier Fiscal Years

Matters in Adjudication

- 1 On Remand from the Sixth Circuit
- 1 Administrative Trial Continuing

**Maintaining Competition
Distributional Arrangements
(\$ in thousands)**

<u>FY 1995 Enacted</u>		<u>FY 1996 Request</u>		<u>Difference 1995/1996</u>		<u>Percent Difference</u>	
FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
19	\$1,478.2	19	\$1,554.7	0	+\$76.5	0%	5.2%

¹FTE include: 10 for BC, 2 for BE, and 7 for RO.

Introduction

The Distributional Arrangements Program generally covers restrictions on the distribution of goods from manufacturers to consumers. Such practices can limit sources of supply or restrict channels of distribution in ways that increase prices or reduce quality. Potentially unlawful conduct includes restriction on resale prices (and other terms of sale), as well as restrictions on the marketing decisions of firms in the distribution chain. Such practices may result from agreements between suppliers and purchasers, or from the coercion of purchasers by sellers (or vice-versa). The program also includes discrimination in price, terms of sale, advertising allowances and other merchandising services that tend to deny competitive opportunities to firms in the distribution chain and that may injure consumers.

The overall goal of the Distributional Arrangements program is to detect and remedy coercive, collusive, discriminatory, or other harmful arrangements that may exist between sellers and purchasers, and to restore competition and its benefits. More specifically, the Commission seeks to prevent unlawful agreements between suppliers and distributors or retailers on resale prices; eliminate harmful discrimination in prices and promotional opportunities; and prevent the anticompetitive foreclosure of distributors or dealers from sources of supply or access to customers.

The Commission's principal strategies are investigation and litigation. As appropriate, the Commission will also issue guidelines or policy statements and advisory opinions and engage in competition advocacy.

Fiscal Year 1996 Budget Request

Program efforts will remain the same for fiscal years 1995 and 1996.

Fiscal Year 1993 Program Activities

1. **Resale Price Maintenance:** Continue or commence investigation and litigation involving alleged resale price-fixing agreements.
2. **Discrimination in Price or Promotional Opportunities:** Continue or initiate investigations or litigation involving alleged discrimination in price, advertising allowances, or merchandising services or facilities.
3. **Nonprice Distributional Arrangements:** Continue or initiate investigations or litigation involving alleged exclusive dealing, tying, and other nonprice vertical restrictions.
4. **Analysis:** Continue or undertake projects to study the legal and economic implications of various distributional arrangements and issue appropriate enforcement policy statements or other guidance.
5. **Compliance:** Monitor compliance with orders, initiate enforcement action as appropriate, and modify orders that harm consumers.

Fiscal Year 1994 Program Activities

Under the Distributional Restraints Program, the Commission initiated eight investigations and is currently engaged in pursuing over 40 matters opened in earlier fiscal years. These investigations and projects have involved allegedly unlawful distributional practices in such industries as ophthalmic goods, pharmaceuticals, motor vehicle parts and accessories, records and prerecorded tape stores, casual wear, machinery and electronics.

The Commission gave final approval to the consent agreement with The Keds Corporation, a subsidiary of The Stride Rite Corporation, settling charges that Keds entered into an understanding with some of its dealers to control the prices at which Keds athletic and casual footwear could be advertised and sold. The consent agreement was accepted for public comment during fiscal year 1993.

Statistical Summary - Fiscal Year 1994

Major Projects/Studies	4
Investigations Opened During the Year	8
Total Investigations Open	13
Compliance Matters Open	12
Administrative Complaints Withdrawn from Adjudication (6 separate dockets)	1

**Maintaining Competition
Single Firm Violations
(\$ in thousands)**

<u>FY 1995 Enacted</u>		<u>FY 1996 Request</u>		<u>Difference 1995/1996</u>		<u>Percent Difference</u>	
FTE	Amount	FTE ¹	Amount	FTE	Amount	FTE	Amount
10	\$795.8	10	\$837.2	0	+\$41.4	0%	+5.2%

¹ FTE includes: 6 for BC, 2 for BE, and 2 for RO.

Introduction

A single firm with market power can reduce output and increase prices above the competitive level, thereby injuring consumers and misallocating society's resources. When there are high entry barriers into the market, these harmful effects can persist for long periods. This can occur in instances where a firm monopolizes a market, uses its market power in one market to affect another ("tying"), or through other conduct designed to increase its rivals' costs.

The long range goal of the program is to prevent or remedy instances in which market power has been created or maintained through anticompetitive behavior. In particular, the program focuses on cases of monopolization or attempts to monopolize, tying arrangements, and cases of non-price predation, such as abuse of government processes to create or enhance market power.

Strategies to be employed include investigation of and litigation against anticompetitive practices, competition advocacy, and legal and economic policy analysis.

Fiscal Year 1996 Budget Request

Program efforts will remain the same for fiscal years 1995 and 1996.

Fiscal Year 1995 Program Activities

1. **Cases:** Initiate and continue ongoing matters involving alleged monopolization, attempted monopolization, predation or other conduct abuses by single firms, including those enterprises in the health care industry.
2. **Analysis:** Continue legal and economic analysis involving issues related to single firm anticompetitive behavior.

3. **Compliance:** Monitor compliance with orders, initiate enforcement action as appropriate, and modify orders that harm consumers.

Fiscal Year 1994 Program Activities

The Commission opened 11 initial phase investigations under the Single Firm Violations Program during fiscal year 1994 involving alleged monopolization activities in such areas as gas transmission, surgical, medical and dental appliances and supplies, pharmaceutical preparations, hospitals, physician joint ventures and plastics and electrical products.

The Commission finalized the two proposed consent agreements accepted for public comment in Home Oxygen & Medical Equipment Company and its 17 pulmonologist-owners and with Homecare Oxygen and Medical Equipment Company and its 11 pulmonologist-owners. Under the terms of the orders, both home medical-equipment firms and their investor physicians agree, among other things, to reduce the number of physician partners so that each venture would have 25 percent or less of the total number of pulmonologists in their respective geographic markets.

Statistical Summary - Fiscal Year 1994

Enforcement Actions	2
- 2 Part II Consents	
Major Projects/Studies Open	3
Investigations Opened During the Year	11
Investigations Open	15
Compliance Matters	5

**Maintaining Competition
Antitrust Policy Analysis**
(\$ in thousands)

<u>FY 1995 Enacted</u>		<u>FY 1996 Request</u>		<u>Difference 1995/1996</u>		<u>Percent Difference</u>	
<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
7	\$550.4	7	\$579.7	0	+\$29.3	0%	+5.3%

'FTE include: 7 for BE.

Introduction

The goal of this program is the development and dissemination of historical and analytical information needed to devise sound competition policy. The major objectives of the Antitrust Policy Program are to: (1) increase our knowledge about those situations in which antitrust action will increase consumer welfare, (2) further the understanding of the role of trade restraints in advancing or retarding a competitively functioning economy, and (3) insure that consumer interests are represented before various governmental and self-regulatory bodies.

The strategies that will be followed for this program include: (a) conducting original empirical studies of how antitrust policies, market institutions, market structure, and domestic and international trade restraints may effect market performance; (b) performing analyses drawing extensively on existing research to advise policy makers on specific antitrust and trade policy decisions; (c) providing access to the Line of Business data for qualified academic researchers; and (d) presenting the findings of these analyses in reports, testimony, invited commentary, and other means as appropriate.

Fiscal Year 1996 Budget Request

Program efforts will remain the same for fiscal years 1995 and 1996.

Fiscal Year 1995 Program Activities

In addition to continuing to provide access to the line-of-business data and responding to invitations to comment on various proposals related to our competition mission, we expect to develop one new study dealing with current antitrust policy issues. Areas of current interest include: an examination of the aftereffects of FTC merger decisions, and entry into the pharmaceutical industry.

In addition, we may develop one new study dealing with international trade restraints.

Fiscal Year 1994 Program Activities

Through July of fiscal year 1994, the Bureau of Economics released two studies: (1) Resale Price Maintenance: An Economic Analysis of the FTC's Case Against Corning Glass Works, and (2) Effects of Unfair Imports on Domestic Industries. The Bureau also forwarded two studies to the Commission for their consideration. The first, The Salt Producers' Discount Practices Before and After the Robinson-Patman Act and the FTC's Challenge to Them: The Morton and International Salt Cases, closely examines the historical record of these two price discrimination cases and more generally examines the concentration levels of industries in which the FTC obtained Orders for violations of the Robinson-Patman Act. The second study, The Effectiveness of Collusion in Ocean Shipping: Conferences, Concentration, and Shipping Rates examines the effects of ocean shipping conferences and industry concentration on shipping rates. The Bureau also continued work on several antitrust and trade-related studies including: (1) the regional effects of trade restraints, (2) the effects of vertical integration in financial markets (broker/specialist mergers), (3) the aftermath of mergers in the oil industry, (4) the effects of bottler mergers in the carbonated soft drink industry, (5) the effects of divestitures in FTC antitrust cases, (6) an experimental economics approach to merger analysis, (7) cable TV carriage of broadcast stations, and (8) the sources of injury in the International Trade Commission's unfair trade cases, 1989-1993. The Bureau also continues to provide access to the line-of-business data to several unpaid academic researchers. In addition, the Commission staff provided responses to six requests for comments on antitrust related issues, covering subjects such as: AT&T's market power, regulations that may diminish competition in car sales, and guidelines for examining the competitive effects of ocean shipping conferences.

**Maintaining Competition
Other Direct Mission
(\$ in thousands)**

<u>FY 1995 Enacted</u>		<u>FY 1996 Request</u>		<u>Difference 1995/1996</u>		<u>Percent Difference</u>	
FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
19	\$1,571.7	19	\$1,611.1	0	+\$39.4	0%	+2.5%

'FTE include: 14 for BC, 4 for BE and 1 for RO.

Introduction

The Maintaining Competition Mission requires that the diverse goals of its substantive programs be coordinated in budgeting and administration through the efforts of the Director, Deputy Director and senior management staff of the Bureau of Competition and the Bureau of Economics, with the assistance of Bureau Assistant Directors and Regional Directors. The overall goal of this program is to maximize the efficient utilization of all the resources of the Commission's Maintaining Competition Mission, and to provide for more effective management control of those resources.

The objectives of this program are to provide sufficient personnel and funds to effectively and efficiently manage all Mission resources and to: insure that appropriate information regarding mission activities is maintained, that responses are made to proper inquiries and that correspondence is processed expeditiously; and, insure proper liaison with the Department of Justice and other government agencies and execute responsibilities under treaties and legislation governing international notification.

Strategies will include careful policy and budget systems analysis; continued development of our automated systems programs; efficient assignment of staff; improved recruiting policies and procedures; and on-going evaluation and training of Bureau personnel.

Fiscal Year 1996 Budget Request

Program efforts will remain the same for fiscal years 1995 and 1996.

Fiscal Year 1995 Program Activities

This activity will continue to provide overall supervisory control of all litigation, compliance, and allied divisions through improved coordination of activities involving the Bureau of Economics and Regional Offices.

Fiscal Year 1994 Program Activities

This program continued activities in liaison with other federal agencies, international activities, correspondence, human resource management, improvement of our automated data management processes, budget and financial management, contracting, procurement, and records and space management.

Consumer Protection Budget Justification
(\$ in thousands)

<u>Program Description</u>	<u>Fiscal Year 1985</u>		<u>Fiscal Year 1986</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Advertising Practices	72	\$5,390	72	\$5,683
Service Industry Practices	56	4,441	56	4,639
Marketing Practices	96	7,180	96	7,582
Credit Practices	53	4,063	53	4,298
Enforcement	57	4,277	57	4,507
Economic and Consumer Policy	7	550	7	580
Program Management	31	2,701	31	2,711
Subtotal Direct Mission	<u>371</u>	<u>\$28,622</u>	<u>371</u>	<u>\$30,000</u>
Direct Support	68	\$10,613	68	\$11,314
Indirect Support	73	14,439	70	14,587
Subtotal Support Allocation 1/	<u>141</u>	<u>\$25,052</u>	<u>138</u>	<u>\$25,901</u>
TOTAL MISSION	<u>512</u>	<u>\$53,674</u>	<u>509</u>	<u>\$55,901</u>

By Organization

Bureau of Consumer Protection	216	\$16,704	216	\$17,548
Bureau of Economics	32	2,526	32	2,664
Regional Offices	123	9,392	123	9,790
Subtotal Direct Mission	<u>371</u>	<u>\$28,622</u>	<u>371</u>	<u>\$30,000</u>
Direct Support	68	\$10,613	68	\$11,314
Indirect Support	73	14,439	70	14,587
Subtotal Support Allocation 1/	<u>141</u>	<u>\$25,052</u>	<u>138</u>	<u>\$25,901</u>
TOTAL MISSION	<u>512</u>	<u>\$53,674</u>	<u>509</u>	<u>\$55,901</u>

1/ Includes the cost of support organizations plus space and equipment rents, telecommunications, postage, Federal Register printing, library materials and other overhead expenses.

**Consumer Protection
Advertising Practices
(\$ in thousands)**

<u>FY 1995 Enacted</u>		<u>FY 1996 Request</u>		<u>Difference 1995/1996</u>		<u>Percent Difference</u>	
FTE	Amount	FTE ¹	Amount	FTE	Amount	FTE	Amount
72	\$5,389.8	72	\$5,683.4	0	+\$293.6	0%	+5.4%

¹FTE include: 41 for BCP, 8 for BE, and 23 for RO.

Introduction

Advertising is a vital means by which American consumers receive information about the availability of, and relative merits of, competing products and services, and an important vehicle of competition among American businesses. In 1993, American business spent \$138.1 billion on all advertising, a 5.2 percent increase over 1992. This follows a 3.9 percent increase from 1991 to 1992. National media advertising expenditures totaled \$80 billion, almost 60 percent of total advertising.

Media advertising continues to be an important source of information for consumers about the nutrition, health, environmental, and safety aspects of goods and services. There are often rapid new developments in these areas, and the advertisers often must convey complex scientific or technical information in a manner that is truthful and non-deceptive. The Advertising Program is designed to protect consumers by taking action to stop misleading claims and providing guidance to businesses about how to make lawful claims.

One of the most important areas is nutritional or health claims in food advertising. In 1992, advertisers spent almost \$3.5 billion on food advertising. Consumers' interest in and concern about nutrition and health messages in food advertising remains at a high level. Seventy-six percent of shoppers consider nutrition a very important factor in their grocery purchases, second only to taste. In addition, consumer concern over specific nutrients is rising. When surveyed about their nutritional concerns, 59 percent of shoppers expressed interest in the fat content of food, more than three times the percentage of consumers concerned about fat in 1987. That interest has sparked the rapid development of a variety of new food products. For example, the number of "low fat" or "fat reduced" foods introduced into supermarkets has jumped from 38 in 1981 to 1,257 in 1992. This area has been a particularly active one, due to the degree of public interest in reducing the incidence of long term chronic diseases by improving diet; the growing body of

scientific research on this issue; the new FDA food labeling regulations pursuant to the Nutrition Labeling and Education Act of 1991 (NLEA), (which became effective in 1994); and the recent issuance of the FTC's Enforcement Policy Statement on Food Advertising. The Policy Statement, issued in May 1994, provides guidance on how the Commission intends to harmonize its food advertising enforcement program with FDA's food labeling regulations. The Food Advertising Program will continue to pursue a strong enforcement program consistent with the principles set forth in the Policy Statement.

Like food advertising, advertising and promotion of dietary supplements continues to increase as new scientific evidence becomes available regarding the potential health benefits of various nutrients. Because of increasing consumer interest in dietary supplements and concerns about deceptive claims, this product category will continue to be closely monitored. Staff will continue to take action against deceptive or unsubstantiated health claims for dietary supplements. Staff will monitor any legislative or regulatory developments, and will take steps to coordinate FTC's advertising enforcement policy with that of FDA.

Staff will also continue to work closely with FDA staff with respect to the advertising of over-the-counter drugs. In 1992 more than \$2 billion was spent on advertising of drugs and other remedies. In addition, a growing number of drugs that traditionally were available only through prescription are now allowed by FDA to be sold directly to consumers over-the-counter. Close contact with FDA staff, and careful monitoring of the advertisements for this category of products helps to ensure that these drugs are not promoted to consumers in a deceptive manner.

Studies show that consumers remain concerned about the environment and want to do something about it. More and more people are recycling newspapers, bottles and cans, and bagging their yard waste for local composting operations. Consumers are also checking product labels to see if the product or packaging is made from recycled material and whether less packaging and refillable packaging is being used. "Green" new product introductions are rising. Almost 13 percent of all new product introductions made green claims in 1993. Green products have clearly established their market presence, especially in the categories of health/beauty aids, household products, and food/beverages. In July 1992, the FTC issued guidelines which furnish the basis for voluntary modification of environmental labeling and advertising claims, as well as provide the basis for a coordinated enforcement policy between the states and the FTC. Some states have since enacted the guides into law. The FTC has continued to bring cases against deceptive environmental advertising consistent with the principles enunciated by the guides. The Commission will be formally reviewing the guides in late 1995 to determine their effectiveness at preventing

deception and encouraging truthful claims. The FTC will decide at that time whether modification or further guidance is needed.

Advances in telecommunications have shifted a growing portion of consumer spending from the marketplace to the living room. Infomercials, home shopping channels, catalogs, on-line shopping services, and other forms of non-retail direct sales continue to be a growing and dynamic segment of the advertising market. Infomercial sales alone are reported to have reached \$1 billion in 1993. Marketers appear to be shifting away from the baldness creams, impotence cures, diet products, and get-rich-quick schemes that were the subject of vigorous Commission enforcement in the infant years of the industry. However, the relatively low costs of infomercial advertising still makes the medium attractive to the marketers of questionable health-related and financial products. To date, the Commission has brought more than thirty infomercial cases and now has more than seventy-five individual and corporate members of the industry under order. Similarly, the growth in home shopping and interactive television continues the need to adapt traditional consumer protection principles to this rapidly developing area.

The Commission also has important responsibilities for administering the Federal Cigarette Labeling and Advertising Act, and for administering and enforcing the Comprehensive Smokeless Tobacco Health Education Act. Each of the statutes applies to substantial amounts of advertising and promotion expenditures: \$4.65 billion for cigarettes and \$104 million for smokeless tobacco products in 1991. The Commission staff is also in the process of revising regulations regarding advertising of smokeless tobacco products through sports related promotion, and is reviewing the methodology currently used to measure the tar, nicotine and carbon monoxide content of cigarettes, as well as the advertising concerning those ratings.

Fiscal Year 1996 Budget Request

Program efforts will remain the same for fiscal years 1995 and 1996.

Fiscal Year 1995 Program Activities

The program will place an emphasis on advertising addressing health issues, and particularly on ensuring that advertising for products that claim to assist consumers in maintaining a healthy lifestyle are fully substantiated. One major thrust of the program's efforts will be the implementation of the Commission's 1994 Enforcement Policy Statement on Food Advertising. This Policy Statement sets forth the principles for harmonization of the Commission's Food Advertising program with the Food and Drug Administration's labeling regulations. Other areas of focus will

be the advertising of over the counter drugs, food supplements, diet products, and alcohol products.

In addition to its focus on health related claims, the program will also focus on safety related product use claims in such areas as pesticides, automobiles and tobacco products, and claims concerning the environmental soundness of commercial and consumer products. This includes claims that products comply with criteria established by EPA under the President's Executive Order to encourage the purchase of environmentally sound products by federal agencies. The program will also focus on developing cases applying traditional FTC consumer protection principles to rapidly evolving "information highway" marketing techniques, particularly infomercials, home shopping, computer buying services and interactive marketing. Finally, the program will continue to focus on other areas of economic injury, including fraudulent advertising.

Fiscal Year 1994 Program Activities

In the advertising program area, the Commission issued 32 final consent agreements, accepted six consent agreements subject to final approval, and issued two administrative complaints. One final consent agreement resulting from an administrative complaint requires the payment of \$3.5 million in consumer redress. A consent agreement subject to final approval requires disgorgement of \$1.45 million to the U.S. Treasury. In addition, the Commission won nine stipulated permanent injunctions in federal court, with a total of \$972,430 in consumer redress ordered in four of these cases. Two complaints filed in federal district court in fiscal year 1994 remained pending final disposition.

Seventeen of the consent agreements obtained involve environmental claims, including: biodegradable, recyclable, and recycled claims for plastic, foam, and paper plates and other food service products, plastic products containing a cornstarch additive, adhesive tape and its dispenser, fast food containers, and a coffee filter and its packaging; benefits of an ice-melting product; ozone friendly claims for aerosol products; chlorine free claims for a coffee filter; and claims by the largest residential lawn care service company for making unsubstantiated safety claims for its pesticides. In addition to bringing cases in the environmental marketing area, staff participated in conferences and met with groups interested in environment related issues to explain the environmental marketing guidelines issued by the Commission in order to promote voluntary compliance with the principles contained in those guides.

Seven consent agreements involve health claims for foods and supplements, such as allegedly unsubstantiated claims about the health benefits of pectin and betacarotene in grapefruit, alleged

deceptive osteoporosis claims by a calcium supplement marketer, allegedly false and misleading representations about the total fat and saturated fat content of a liquid non-dairy creamer, and allegedly deceptive and unsubstantiated claims that a company's eggs are superior to other eggs because they do not increase consumers' serum cholesterol. A major national pharmaceutical manufacturer agreed to settle charges regarding its weight loss and nutritional claims about a high-fiber product.

The Commission issued an enforcement policy statement to provide guidance regarding its enforcement policy with respect to the use of nutrient content and health claims in food advertising, and how it intends to harmonize its food advertising enforcement policy with the new food labeling regulations issued by the FDA pursuant to the NLEA of 1990.

Eighteen orders, as well as ongoing litigation, involve Commission allegations of false, deceptive, and unsubstantiated claims for nutritional supplements, drugs, and medical devices, including: an algae-based food supplement to treat or cure AIDS; six cases involving pin-hole eyeglasses claimed to improve eyesight; weight loss claims for metabolism-stimulating diet pills and an acupuncture device; arthritis pain relief claims for a handheld mechanical roller device; three products to reduce cellulite; a sunscreen product advertised by one of the country's largest cosmetic companies; a cholesterol reducing product; a baldness cure; an electro-stimulation device to increase one's I.Q.; and an exercise device. One company and its founder agreed to pay \$1.45 million to the U.S. Treasury to settle charges they made numerous false and unsubstantiated claims in the advertising and sale of their bodybuilding and weight-loss products.

In the energy-saving area, the Commission signed consent agreements with a second major electric products company that made allegedly exaggerated claims about energy and cost savings for incandescent bulbs, and with a catalog company that made alleged deceptive gas mileage improvement performance and emissions reductions claims for a fuel additive and an automobile retrofit device. Other advertising cases include orders against: the largest residential lawn care service company for making alleged unsubstantiated safety claims for its pesticides; a major manufacturer and distributor of computer communications equipment for allegedly misrepresenting the risks of competing modems that do not contain its escape sequence feature; an advertiser of a non-aerosol spray air cleaner for alleged unsubstantiated efficacy claims; a major auto company that allegedly failed to disclose significant restrictions in its promotional offer; an advertiser of a self-protection spray product for use against assailants; and a major oil company and its advertising agency for allegedly unsubstantiated performance claims for high octane gasoline. In the latter case, the order contains a requirement to send corrective notices to credit card consumers.

Nine of the consent agreements approved by the Commission involve complaints against infomercial companies. In addition to some of the products mentioned above, challenged claims in these infomercial consent agreements involved the success rate and performance of a system to purchase real estate and obtain credit, and a book about the availability of government grants and loans. In addition to challenging advertising claims for the product, in several infomercial cases the Commission also charged that the advertisements misrepresented that they were independent television programs, rather than commercials, and the orders require the companies to disclose that the program is a paid ad. One of the settlements was for \$3.5 million in consumer redress, and another for \$425,000.

In the tobacco area, the Commission published a Notice of Proposed Rulemaking to amend the smokeless tobacco rules to require health warnings on sponsored racing-event vehicles and other related products. A consent agreement accepted subject to final approval prohibits a tobacco company from disseminating ads containing misrepresentations about the relative amount of tar and nicotine consumers will get by smoking various brands of cigarettes.

Commission staff coordinated the monitoring of the advertising of lawn care pesticides with the Environmental Protection Agency. Staff also consulted regularly with EPA on technical environmental questions and attended EPA meetings on environmental issues. In addition, the Commission closely coordinated with EPA in its implementation of Executive Order No. 12873 on Federal Acquisition, Recycling, and Waste Prevention, in order to ensure that marketers do not make deceptive claims concerning their participation in this program. Staff set up a liaison with the Food and Drug Administration to monitor health fraud activities. Staff also worked closely with FDA on drug, cosmetic, and medical devices issues: staff regularly coordinated activities with FDA on these issues, attended FDA-sponsored scientific meetings, and filed comments on the FDA proposed sunscreen labeling regulations.

**Consumer Protection
Service Industry Practices
(\$ in thousands)**

<u>FY 1995 Enacted</u>		<u>FY 1996 Request</u>		<u>Difference 1995/1996</u>		<u>Percent Difference</u>	
FTE	Amount	FTE ¹	Amount	FTE	Amount	FTE	Amount
56	\$4,440.9	56	\$4,639.4	0	+\$198.5	0%	+4.5%

¹FTE include: 42 for BCP, 3 for BE, and 11 for RO.

Introduction

Telemarketing sales exceeded \$250 billion in 1991, losses to consumers each year from telemarketing fraud may range from three to \$40 billion, in addition to the probable loss of hundreds of millions of dollars for financial institutions. Over eight billion telemarketing calls are made each year. Although the great majority of this business activity is legitimate, the potential for fraud is enormous. Indeed, a consumer hotline operated by the National Consumers' League receives about 6,000 inquiries per month from consumers who believe they may have been subjected to a deceptive telemarketing sales pitch.

Consumers, especially the elderly, annually purchase billions of dollars in goods that are claimed to be rare coins, valuable art, vintage movie posters, precious metals, gemstones and other hard assets, all of which are sold as investments that will appreciate in value. Alternative investments involve the sale of investment or advisory services -- e.g., application preparation services in connection with the FCC's lottery for wireless cable licenses or sales of partnerships in mobile radio operations. These investments are often made on the basis of deceptive representations by unscrupulous telemarketers that the investment will dramatically increase in value. As a consequence of relying on these misrepresentations, consumers lose hundreds of millions of dollars each year.

This program seeks to reduce the extent to which false and misleading information about potential profit, risk and liquidity of alternative investments is disseminated to prospective investors. In furtherance of this effort, staff assigned to this program are responsible for operating and maintaining a national fraud information database that is used by over 80 law enforcement agencies--including the Federal Bureau of Investigation, the U.S. Postal Inspection Service, the Department of Justice and 38 state Attorneys General--to obtain information about fraudulent telemarketers.

Consumers spend \$200 billion on health care professional services per year -- over two billion dollars on diet services alone. Some prospective patients base their decisions to purchase these services on promotional materials that misrepresent the likely success or efficacy of the promoted medical procedures, or the risks involved in or benefits of undergoing those procedures. These ads seem credible to consumers because the advertiser is often a hospital, a physician or other health care provider, or because the consumer does not have the information to evaluate their truthfulness. Other consumers are victimized by telemarketing schemes and other promotional scams that seek to bilk consumers and their insurance providers for goods or services that are not as represented or are not provided.

Private product standards and seals of approval help make our complex economic system function more efficiently. If misused, however, standards may greatly harm our economy: innovative products may be excluded from the market; product safety may be compromised; products may be less efficient; and consumers may receive deceptive information about products, causing them to pay more for products than they would if they had accurate information. Such harms have, for example, resulted from the misuse of government adopted standards intended to conserve energy by using energy efficient building products and to promote workplace health and safety. These harms have prevented the realization of important public policy goals such as energy conservation and protection of the environment.

This program also seeks to reduce the extent to which marketers of health care services use deceptive advertising to mislead prospective purchasers about the efficacy and risks associated with certain health care services. The standards component of this program seeks to reduce consumer losses associated with standards development, accreditation of laboratories to test pursuant to standards, and product certification, including manufacturer self-certification and certification by independent third parties. It also provides guidance to federal, state, and local governments in their consideration of the effects of standards.

Fiscal Year 1996 Budget Request

Program efforts will remain the same for fiscal years 1995 and 1996.

Fiscal Year 1995 Program Activities

The program will continue a strong law enforcement presence in all the investment fraud areas pursued during the last several years: art, gemstones, strategic metals, FCC licenses, rare coins, precious metals, and wireless cable partnerships. Cases