FEDERAL TRADE COMMISSION

FISCAL YEAR 2006
CONGRESSIONAL JUSTIFICATION

Budget Summary

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Federal Trade Commission
Fiscal Year 2006 Overview Statement

This statement supports the Federal Trade Commission's (FTC) FY 2006 budget request of $211,000,000 and 1,074 FTE. This amount represents an increase of $6,675,889 over the FTC's FY 2005 enacted level.

MISSION

The FTC is the only Federal agency with jurisdiction to enhance consumer welfare and protect competition in broad sectors of the economy. It enforces the laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, and seeks to do so without impeding legitimate business activity. The FTC also promotes informed consumer choice and public understanding of the competitive process. The agency's work is critical in protecting and strengthening free and open markets in both the United States and the world.

HIGHLIGHTS OF FY 2004 ACCOMPLISHMENTS

In FY 2004, the FTC took action on a wide variety of significant consumer protection and competition matters. These actions, detailed below, helped ensure that business and consumers alike reaped the full benefits of market competition and product innovation.

- **Protecting Consumers Against Fraud and Deception.** In FY 2004, the FTC brought 83 actions in federal district court to protect consumers against unfair and deceptive trade practices, and obtained 110 orders requiring the return of more than $380 million in redress to consumers. These cases attacked a wide range of fraud and deception, including bogus weight loss products, advance-fee credit card scams, business opportunity schemes, deceptive spam, fraudulent telemarketing, deceptive credit counseling services, deceptive and unfair debt collection practices, and violations of the Fair Credit Reporting Act (FCRA). Further, in December 2003, the FTC created a Criminal Liaison Unit (CLU). CLU staff works to develop new partnerships and strengthen existing Commission ties with criminal law enforcers, including the U.S. Postal Inspection Service, the Department of Justice (DOJ) Criminal Division's Fraud Section, and the IRS. As of May 2004, CLU had 36 separate matters in which formal criminal litigation was pending against FTC defendants or their associates.

- **Helping Hispanic Consumers.** A Consumer Fraud Survey released by FTC staff in FY 2004 found that Hispanic consumers are disproportionately victimized by fraud. In response, the FTC launched a Hispanic Law Enforcement and Outreach Initiative that has had immediate results. In May 2004, the FTC's national Hispanic Outreach and Law Enforcement Workshop brought together law enforcers, educators, and community-based organizations to develop strategies for effective consumer education and law enforcement collaborations to combat fraud against Hispanics. One outcome of the workshop was a Spanish-language fraud awareness campaign of print, online, and radio communications aimed at the Hispanic community in 11 media markets. Through the close of FY 2004, the FTC brought 13 cases against marketers and announced three settlements of actions that targeted Hispanic consumers.

- **Enforcing the National Do Not Call (DNC) Registry to Stop Unwanted Telemarketing Calls.** The Commission's DNC Registry has been one of the Government's most popular and effective consumer protection programs. The Registry protects consumer privacy by prohibiting calls to consumers who register their telephone numbers on the list. By the end of FY 2004, consumers had registered more than 64 million phone numbers with the FTC. A Harris Interactive® poll conducted in the winter of 2003 indicated that 92 percent of the consumers who signed up were receiving less calls, and 25 percent are not receiving any calls. Although compliance with this new law has been very high, the FTC has actively investigated and prosecuted any violators.

- **Promoting Competition in the Petroleum Industry.** In FY 2004, the Commission took enforcement action in three petroleum industry mergers, and reversed an Administrative Law Judge's decision to dismiss antitrust charges brought against Union Oil of California for actions that the Commission's complaint alleges could cost California consumers hundreds of millions of dollars in higher gasoline prices. The FTC also released a landmark staff report, "The Petroleum Industry: Mergers, Structural Change, and Antitrust Enforcement," which studied structural changes and FTC investigations in the petroleum industry over the last 20 years, and concluded that thorough FTC merger investigations and enforcement actions have helped to avoid potentia l anticompetitive harm and higher gasoline prices for consumers.

- **Promoting Healthy Consumers Through Healthy Competition.** In FY 2004, the FTC required two pharmaceutical firms to disgorge $6.25 million in illegal overcharges for children's pain medication; required divestitures and licensing in two pharmaceutical mergers to protect competition in markets for colorectal cancer treatments, cancer pain medications, and other drugs; took enforcement actions against several groups of physicians for allegedly fixing prices for their services; issued an adjudicative decision and order explaining how a patent settlement between two pharmaceutical manufacturers raised the price of blood pressure medication; and began administrative litigation challenging a consummated hospital merger. Also, the FTC and the DOJ released a joint report, "Improving Health Care: A Dose of Competition," to provide guideposts for policy makers who want to ensure access to quality care and help consumers make informed choices.

- **Fighting Identity Theft Using the Fair and Accurate Credit Transactions (FACT) Act.** Misuse of personal information is a top consumer privacy concern. According to the FTC staff's 2003 Identity Theft survey, more that 27 million consumers have been victims of identity theft in the last five years. Indeed, identity theft is the number one consumer complaint received in the FTC's database. The FACT Act, enacted in December 2003, provides important tools in the fight against ID theft. In FY 2004, the FTC completed 10 FACT Act rules, proposed three additional rules, and published five studies. One completed rule requires the three nationwide consumer reporting agencies to provide consumers, upon request, with a free copy of their credit report once every 12 months. The national rollout of this rule began on the West Coast on December 1, 2004. Another rule defines certain key terms in the law, including "identity theft," and enables active duty military personnel to place special alerts on their credit file. A third rule sets standards for the proper disposal of consumer report information.

- **Preventing Deceptive Lending and Deceptive Debt Counseling.** The Commission brought several cases against deceptive debt counseling, debt collection, and other financial services companies. In one of these cases, one of the nation's largest debt-collection firms agreed to pay a $1.5 million civil penalty to settle charges it violated the FCRA by reporting inaccurate information about consumer accounts to credit bureaus. This is the largest FCRA civil penalty ordered to date. In a case against a company that services home loans to high risk borrowers, the FTC and the Department of Housing and Urban Development obtained three settlements requiring a total of more than $40 million be returned to consumers. Also, the FTC published a consumer education brochure on subprime lending.

- **Promoting Innovation.** The FTC continued efforts to harmonize the application of competition law with the patent system, to benefit consumers by fostering the invention and development of new goods, services, and processes. These efforts included continued administrative litigation in two matters involving alleged abuses of the standards-setting process to exploit patent rights. In one case, the Commission reversed the decision of an Administrative Law Judge (ALJ) to dismiss the complaint on *Noerr-Pennington* grounds; in the second case, the Commission has heard oral argument in an appeal from the ALJ's initial decision. Separately, the Commission released a report, "To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy," based on extensive FTC/DOJ public hearings. The report offers ten recommendations for reducing the number of questionable patents that can harm innovation.

- **Enforcing the CAN-SPAM Act to Protect Consumers.** Experts have estimated that unsolicited email (spam) costs U.S. businesses between $10 billion and $87 billion annually. Additionally, consumers spend countless hours each year dealing with spam. The CAN-SPAM Act, enacted in December 2003, provides the FTC with new tools to address this issue. In FY 2004, the FTC issued two CAN-SPAM rules. The first required spammers to identify sexually explicit content in the header of email, and the second established criteria to determine whether the email's primary purpose is commercial and therefore covered by the Act. In its first CAN-SPAM cases, the FTC sued two spammers whose activities generated nearly one million consumer complaints to the FTC. The defendants were charged with clogging the Internet with millions of deceptive messages. Separately, the FTC released a report to Congress on the feasibility of a Do Not Spam Registry, and held a summit on spam authentication issues – a key component to enhanced law enforcement in this area. Recognizing the evolution of technology in this area, and that any solutions are dependent on the dynamism and flexibility of market-based approaches, the Commission continues to monitor this area carefully. Finally, the FTC continued its work with federal, state, and local law enforcement partners on the Spam Task Force.

- **Promoting Global Competition.** Increasingly, commerce knows few national boundaries, and mergers now often involve global corporations. The FTC is working with other competition entities worldwide on individual cases and on policy issues. In FY 2004, close working relationships between the FTC and its European counterparts greatly facilitated the investigations of border-crossing competitive concerns in merger cases such as Sanofi-Synthélabo's acquisition of Aventis, a joint venture involving Sony Corporation of America and Bertelsmann AG, and General Electric Corporation's acquisition of InVision Technologies. In addition, the agency participates actively in various multilateral competition fora, such as the International Competition Network (ICN) and the Organization for Economic Cooperation and

Development (OECD), to address and minimize policy divergences to ease regulatory burdens on firms that operate on a global basis. The FTC also devoted significant resources to assisting new competition agencies in countries with emerging market economies.

- **Enhancing International Cooperation.** Telemarketing and Internet activities are not dependent on geography. As a result, cross-border fraud continues to be a growing problem that harms consumers and businesses worldwide. Faced with a growing number of cross-border fraud complaints in FY 2004, the Commission enhanced its ability to cooperate with international law enforcement authorities through memoranda of understanding and by seeking legislative improvements. The FTC also brought numerous cross-border enforcement actions involving foreign defendants, assets, and evidence. The FTC worked with consumer protection entities worldwide to minimize policy divergences and ease regulatory burdens on firms that operate globally. Finally, to reduce the proliferation of spam, the FTC and its international law enforcement partners identified tens of thousands of owners or operators of potentially open or vulnerable servers around the world that could have been used by spammers, and sent them letters urging them to secure their computers against such misuse.

- **Evaluating the Impact of New Technology on Consumers.** While innovation provides American consumers powerful technological tools for shopping, communication, and entertainment, it can also raise new consumer concerns. In September 2004, the FTC filed its first case challenging the distribution of spyware as a violation of the FTC Act. In addition, in FY 2004, the FTC hosted two workshops to explore the impact of new technology on consumers. One workshop explored the uses, efficiencies, and implications for consumers associated with radio frequency identification (RFID) technology. A second workshop on spyware, adware, and other software addressed problems associated with software that is loaded on personal computers without users' consent, that gathers and sends information about users to third parties, or adversely affects the computers' functioning.

- **Advocating for Competition before the Courts and Other Government Entities.** In FY 2004, the FTC submitted joint amicus briefs with the DOJ in two U.S. Supreme Court cases in which the Court issued decisions consistent with the positions advanced by the government. In *Verizon v. Trinko,* the Court agreed that the plaintiff had not stated an antitrust claim when it failed to allege exclusionary conduct. In *Empagran, S.A. v. F. Hoffmann-LaRoche,* the Court agreed that U.S. courts do not have jurisdiction over claimed antitrust injuries sustained in transactions taking place outside the United States and having no effect on U.S. commerce.

  Other FTC advocacy efforts contributed to several positive consumer outcomes. The FTC, in amicus briefs before the Supreme Courts of West Virginia and Ohio, successfully opposed attempts to expand unauthorized practice of law rules to limit competition from non-attorneys in real estate closings and in workers compensation proceedings. In California, based on the FTC's comments, the Governor vetoed a bill that the staff concluded could have increased the cost of pharmaceuticals, increased health insurance premiums, and reduced the availability of insurance coverage for pharmaceuticals. In other actions, the FTC opposed proposed state laws in Kansas and Michigan that would have prohibited gasoline sales-below-cost but would also deter procompetitive price- cutting. These proposed laws failed to pass in both states. A key Michigan State Representative credited the FTC's guidance with persuading undecided legislators to oppose the legislation.

- **Advancing Administrative Litigation.** In FY 2004, the FTC had up to a dozen antitrust cases pending at some stage of administrative litigation, more than at any time in the past two decades. These antitrust cases involved a variety of consumer issues including physician and dental services, pharmaceuticals, hospital services, transportation of household goods, computer software and hardware, and gasoline. Besides bringing the benefits of increased competition, these cases also provided opportunities for the FTC and the courts to offer detailed analysis and guidance on key policy questions for businesses, the bar, and the public. In addition, three consumer protection cases were also in administrative litigation during FY 2004.

PLANNED ACTIVITIES IN FY 2005 AND BEYOND

Over the next few years, the FTC will continue to devote resources to significant law enforcement and policy initiatives advanced to protect consumers and the competitive process.

CONSUMER PROTECTION MISSION. The FTC staff released a survey of consumer fraud in the United States that found that nearly 25 million adults – 11.2 percent of the adult population – were victims of consumer fraud other than identity theft during the year studied (2002-2003). A separate FTC staff survey showed that identity theft has adversely affected 27.3 million, or 12.7 percent, of adult consumers in the past five years. Through its Consumer Protection Mission, the FTC focuses broad efforts to fight consumer fraud, deception, and unfair practices and to protect consumer privacy, including fighting identity theft and deceptive spam.

Fighting Fraud and Deception. In the first quarter of FY 2005, the FTC brought 21 actions in federal district court to protect consumers and obtained 16 judgments ordering the return of nearly $160 million in consumer redress. The FTC continues to target the most prevalent consumer frauds by drawing from *Consumer Sentinel*, a secure Web site that provides access to fraud and identity theft complaints to more than 1,200 law enforcement organizations in the United States, Canada, and Australia, and from Internet "surfs" and "sweeps" that ferret out specific claims and solicitations that likely deceive consumers and violate the law. Information from consumer fraud and identity theft surveys will allow the FTC to refine and expand its use of these databases.

Working with Criminal Law Enforcers to Protect Consumers. The FTC's CLU program continues to enhance the Commission's working partnerships with various criminal law enforcers so that scammers do not evade criminal sanctions. In early 2005, the FTC and U.S. Postal Inspection Service jointly held a consumer fraud forum. FTC staff and Postal Inspectors from around the country attended this conference to learn about the latest trends in consumer fraud (including telemarketing fraud) and how best to combat them. Throughout the fiscal year, the FTC will continue to play a major role in joint civil/criminal crackdowns on various frauds, such as Operation Roaming Charge, a civil and criminal attack on telemarketing fraud announced by Attorney General Ashcroft in October 2004. The FTC also will continue to develop new and existing working relationships by strengthening relationships with the various U.S. Attorney Offices, the IRS, and the DOJ's Child Exploitation and Obscenity Section on CAN-SPAM Enforcement. Through CLU's efforts, DOJ staff periodically visits the FTC Internet Lab to search the spam database and identify new targets for prosecution or other enforcement action.

Enforcing the National Do Not Call Registry to Stop Unwanted Telemarketing Calls. In the first three months of FY 2005, consumers registered more than 9 million telephone numbers on the FTC's National DNC Registry. This brings the total telephone numbers registered to over 73 million. While compliance is high, it is not perfect, and thus in 2005, the FTC will give priority to enforcement of the DNC provisions of the Telemarketing Sales Rule to ensure that consumers do not receive unwanted telemarketing calls and the DNC Registry is not used for unintended purposes. Since the DNC Registry provisions became effective in October 2003, the Commission has filed five enforcement actions alleging that the defendants had called consumers whose numbers were on the National DNC Registry, and has forwarded a sixth to the DOJ for filing. Several of these cases also alleged that defendants had failed to pay the fee required to access the Registry. A number of other DNC cases are under investigation and will be completed during FY 2005.

Combatting Cross-Border Fraud. To halt international scammers and give the agency additional tools to fight cross-border fraud, the FTC developed legislative recommendations which were introduced in the last Congress as the International Consumer Protection Act. The FTC will work with the new Congress to support the reintroduction and consideration of these legislative proposals. Administratively, the FTC will develop memoranda of understanding with international law enforcement agencies and lead joint enforcement and educational activities. The FTC also will continue to promote consensus on the adoption of sensible, effective consumer protection policies worldwide to protect consumers and consumer choice in the increasingly global marketplace.

Focusing on Health Fraud. The deceptive marketing of products that affect consumer health and safety remains an FTC priority. The FTC focuses on dietary supplements and other health products that are promoted falsely or deceptively to prevent or cure serious diseases or conditions. Consumer demand for such products is increasing, and fraudulent or deceptive claims about these products can pose risks to consumers' well-being. Over the last decade, the FTC brought more than 100 law enforcement actions challenging false or unsubstantiated claims about the efficacy or safety of a wide variety of dietary supplements and misleading claims for all types of weight loss products. Going forward, the FTC will continue its aggressive program by focusing its law enforcement on violations that create the greatest risks to consumer health.

Using FTC Expertise to Protect Hispanic Consumers. To focus on frauds aimed at Hispanic consumers, the FTC will use the findings of the staff's 2004 fraud survey, ideas generated at the Hispanic Outreach Forum and Law Enforcement Workshop, and partnerships developed as part of the Hispanic Initiative. For example, using the Law Enforcement Workshop as a launching point, the FTC will hold regional follow-up workshops to meet with enforcement officials and community-based organizations to discuss law enforcement and outreach to protect Hispanic consumers in that region. The FTC also will continue to expand dedicated space on its Web site devoted to Spanish-language information and to promote the Spanish language complaint form. To date, the FTC has produced nearly 100 consumer and business education pieces in Spanish, and will continue this important initiative. The agency will continue to bring enforcement actions, including sweeps with its law enforcement partners, against scams aimed at vulnerable groups, including minority groups identified in staff's fraud survey.

Protecting Consumer Privacy. Privacy continues to be an important concern of American consumers. New legislative initiatives, including the FACT Act and CAN-SPAM Act, provide consumers with valuable tools to protect their privacy. The FTC's approach in this arena encompasses both enforcement and education, and will focus on identity theft and enforcement of the Telemarketing Sales Rule and the Gramm-Leach-Bliley Act. The agency will direct other privacy enforcement efforts at the failure to take reasonable steps to protect the security of sensitive personal or financial information and to enforce other representations made to consumers concerning the privacy and security of their personal information.

Fighting Spam. Spam is a growing threat to consumer privacy. The FTC receives roughly 300,000 spam messages a day from groups and individuals worldwide; to date, the agency has received more than 180 million spam messages. This spam is stored in a searchable database, enabling the FTC staff and other law enforcement agencies to track trends and identify law enforcement targets. In January 2005, the FTC filed suit against a network of individuals and corporations distributing pornographic spam, alleging that they had violated nearly every provision of the CAN-SPAM Act. The court issued a temporary restraining order the day the complaint was filed, and the litigation is ongoing. In FY 2006, the FTC will enhance the spam database to provide improved case generation, evidentiary support in litigation, and trend analysis. Separately, the FTC will continue to work with its federal, state, and local law enforcement partners on the Spam Task Force, and will continue to encourage the private sector to develop technological remedies to help stem this problem.

Protecting Children in the Marketplace. The FTC maintains an active program to monitor, report on, and provide educational materials about marketing to children, including advertising and marketing of violent entertainment products, online gambling, pornography, and alcohol. The FTC also focuses on children's interests through its enforcement of the Children's Online Privacy Protection Act. In FY 2004, the FTC released its fourth follow-up report to Congress on issues relating to the marketing of violent entertainment to children. As described in that report, the FTC will continue to monitor the entertainment industry's marketing practices. Additionally, the FTC will work with video game publishers and retailers to ensure that Teen- and Mature-rated games are marketed or sold to children in keeping with the rating's age guidelines, and will educate parents about video game content. Finally, the FTC will review recommendations by the Institute of Medicine concerning industry self-regulation addressing food advertising and marketing practices aimed at children.

Preventing Deceptive Lending Practices, Deceptive Debt Counseling, and Other Credit Schemes. The FTC will continue its law enforcement efforts against those unscrupulous lenders who deceive consumers about loan terms, rates, or fees. The FTC also will continue its law enforcement actions against bogus organizations that target consumers with bad credit or significant consumer debt, deceptively promising to help them manage their debt and instead damaging these consumers' credit and finances even further. The FTC also will continue to bring actions against companies that harass, intimidate, and deceive consumers in their debt collection practices.

Enforcing New Legislation. Three bills enacted in FY 2004 provide the FTC with new tools and responsibilities for addressing spam, identity theft, and non-federally-insured depository institutions. As noted earlier, the CAN-SPAM Act and FACT Act provide new and important measures to prevent identity theft, help victims recover from identity theft, and enhance the accuracy of and consumer access to credit information. Separately, the Consolidated Appropriations Act of 2004 directs the FTC to issue a rule that requires non-federally-insured depository institutions to disclose that they do not have federal insurance and that the federal government does not guarantee that the depositor will get back his or her money. The FTC will continue to implement these laws by issuing rules and taking appropriate enforcement actions.

MAINTAINING COMPETITION MISSION. Competition is the ultimate consumer protection. The work of the FTC's competition mission is critical to protect and strengthen the free and open markets that are the cornerstones of a vibrant economy. Robust competition promotes lower prices, higher quality products and services, and greater innovation, all of which benefit consumers.

Reviewing a Higher Number of Mergers. Increases in economic activity generally and in the number of HSR merger filings submitted during FY 2004 foreshadow the beginning of a trend toward a higher volume of FTC merger activity and enforcement work. During FY 2004, the FTC experienced an increase of more than 40 percent in the number of required merger filings over the previous year, with a commensurate increase in the number of mergers requiring investigation. The total dollar value of merger transactions reported under HSR also increased substantially over the FY 2003 level, rising by about 54 percent. Filings during the first part of FY 2005 indicate a continuation of this trend, portending a very demanding merger review workload in FYs 2005 and 2006.

Developing a Commentary on the Merger Guidelines. During FY 2004, the FTC jointly sponsored with the DOJ a three-day workshop to assess the practical efficacy of the 1992 Merger Guidelines in light of 12 years of experience. The workshop revealed: (1) a strong consensus among antitrust practitioners that the Guidelines work well and require no significant revision, but (2) that some further explanation of how the agencies apply the Guidelines in practice would be helpful. Accordingly, the two agencies plan to develop a Commentary on the Guidelines, which should bring greater transparency to the agencies' merger analysis.

Improving the Merger Review Process. The FTC has implemented a number of improvements in the merger review process in recent years. Because further improvements would be valuable, the agency is pursuing several initiatives both to ease the burden on affected parties and to increase internal efficiency. These initiatives include seeking methods to identify responsive materials stored electronically, improving our ability to receive electronic productions, developing instructions and specifications for electronic productions, producing an updated model second request with annotations, as well as additional efforts to improve the timeliness and efficiency of the review process.

Promoting Competition in Health Care and Prescription Drugs. The rapidly rising cost of health care is a matter of concern for consumers, employers, insurers, and the nation as a whole. Health-related products and services now account for more than 15 percent of gross domestic product (GDP), and that share has grown by 25 percent since 1990. Thus, promoting competition in the health care sector will continue to be a major priority for the FTC. Among other activities, the FTC will continue to stop anticompetitive agreements between physicians and hospital service organizations and monitor hospital and other mergers that may raise the cost of health care. The FTC also will address rising prescription drug prices by monitoring pharmaceutical company mergers and working to ensure the continued availability to consumers of lower-cost generic drugs.

Preventing Anticompetitive Activity in Energy Industries. The price of gasoline, always an important factor affecting consumers' pocketbooks, remains a concern for consumers, and is a commensurately high priority for the FTC. While the price of crude oil, dictated by the world oil market, is the primary determinant of fuel prices, the FTC nevertheless will continue to focus closely on gasoline markets and will move quickly to address any anticompetitive activity. To this end, the FTC recently announced the appointment of a senior energy counsel to initiate and coordinate the agency's response to developments in the petroleum industry.

Also, the FTC recently hosted a public conference to evaluate two studies examining price effects within the petroleum industry: a Government Accountability Office report on the effects of mergers and market concentration in the industry; and an FTC staff case study of the effects of the recent Marathon/Ashland Corp. joint venture. In addition, under its Gasoline Price Monitoring Project, the FTC will continue to track retail gasoline prices in 360 cities nationwide and wholesale prices in 20 major urban centers to identify unusual changes in gasoline prices; if any such changes are detected, the FTC staff promptly will investigate the cause. If the investigation reveals evidence of anticompetitive conduct, the FTC will not hesitate to take strong enforcement action, as it has in one case, currently in administrative litigation, against a major petroleum company in which the allegations involve hundreds of millions of dollars in potential consumer harm.

Increasing Our Emphasis on High Technology. FTC antitrust investigations increasingly involve high-technology sectors of the economy, such as those that produce computer hardware and pharmaceutical products. Moreover, issues in antitrust matters increasingly intersect with intellectual property concerns, raising difficult questions about how to reconcile these two bodies of law, both of which have a goal of promoting innovation. As the importance of these issues grows, the FTC requires additional technical and legal expertise. In FY 2005 and beyond, the FTC will enhance its ability to investigate and litigate complex matters involving high-tech segments of the economy by increasing the technical support it receives from independent experts and consultants. In addition to bringing enforcement actions, FTC staff will participate in a series of Town Meetings on patent reform, co-sponsored with the American Intellectual Property Law Association and the National Academies Board on Science, Technology, and Economic Policy.

Preventing Misuse of Government Processes. An important part of the FTC's competition agenda includes efforts to identify, investigate, and, where appropriate, prosecute the misuse of government processes. The FTC's activities regarding these types of anticompetitive efforts include, for example, enforcement actions challenging efforts to deter generic drug market entry by improperly listing patents in the Food and Drug Administration's "Orange Book" or otherwise abusing government regulatory processes. The FTC is also focusing on the misuse of government processes involving intellectual property rights, such as when a firm improperly obtains intellectual property rights, or litigates to enforce them in bad faith.

Promoting Global Competition. The FTC will continue to work with competition agencies worldwide to promote best practices and to address and minimize policy divergences to ease burdens on private firms that operate on a global basis. Given international differences in laws, cultures, and priorities, complete policy convergence on competition policy is unlikely in the foreseeable future. Nonetheless, the agencies have found significant areas of agreement through participation in international bodies. Two key venues for competition officials to work toward more consensus are the OECD and the ICN, a group launched two years ago by the FTC, the DOJ, and 13 other competition agencies from around the world that now has almost 90 member agencies.

Pursuing Ongoing Administrative Litigation. Administrative litigation provides an opportunity for the FTC to apply its institutional expertise to the development of antitrust jurisprudence. Currently, the FTC has a large number of competition matters in administrative litigation, and this heavy litigation workload is expected to continue through FYs 2005 and 2006. Antitrust litigation, whether in an administrative proceeding or in federal court, requires major expenditures for travel, stenographic reporting, and expert witnesses, in addition to significant staff time.

Advocating for Competition before the Courts and Other Government Agencies. The FTC works to eliminate public impediments to a competitive marketplace by persuading other government policy makers to apply competition principles as they make decisions affecting consumer welfare. Among other activities, the FTC, at the request of state legislators, expects to file a number of comments on proposed legislation affecting competition from laypersons in real estate closings, document preparation services, and the sale of replacement contact lenses. FTC staff also will complete a study requested by Congress on the state of competition in the contact lens industry and will continue to provide comments and other statements on issues affecting e-commerce. In addition, FTC staff will continue to provide guidance on important competition policy issues, through issuing scholarly reports on antitrust immunities and filing amicus briefs to help courts resolve important competition issues.

Enforcing FTC Orders. The FTC must maintain an effective compliance program so that consumers receive the benefits of competition obtained through FTC orders issued after the culmination of investigation and litigation. The FTC focuses on devising and drafting effective orders for each individual matter, a highly fact-specific process. In addition, the agency conducts general and historical analyses on the effectiveness of various kinds of merger and nonmerger remedies, such as divestiture orders. The FTC also must litigate, when necessary, to vindicate its authority to order relief to protect competition. As the number and complexity of enforcement actions rise, so do the FTC's resource needs.

NEEDED RESOURCES - FY 2006

The FTC's FY 2006 budget request for $211,000,000 supports 1,074 FTE. The net increase over the FTC's FY 2005 enacted level is $6,675,889 and consists of only mandatory costs -

Salary and Contract Expenses [$6,175,889]. Mandatory salary and contract expenses include -

- The annualized three-month cost of the January 2005 pay increase of 3.5 percent, and nine-month cost of a January 2006 pay raise at an annual rate of 1.5 percent [$2,669,000].
- One less work day than in FY 2005 [savings of $492,000].
- Upward grade classifications pursuant to 5 C.F.R. 531.401 et seq. [$1,268,000].
- Contract and health benefit cost increases [$2,730,889].

Financial Management System [$500,000]. The FTC's current financial management system, the Federal Financial System (FFS), is provided through a cross-servicing agreement with the Department of Interior's National Business Center (NBC). Unfortunately, the FFS is almost two decades old, uses outdated technology, and is no longer supported by its designer, American Management Systems, Inc. And, while the NBC has promised to support its FFS users as long as is feasible, NBC has also encouraged FFS users to consider the other more modern financial systems that have been approved for government-wide use by the Joint Financial Management Improvement Program. FTC staff already has begun to explore all available options and anticipate beginning to replace and integrate all of the FTC's major financial management systems in FY 2006. The requested resources are needed to fund these activities and ensure that the FTC can continue to provide its staff, managers, and stakeholders, such as Congress, with accurate, timely, and reliable financial management information.

APPROPRIATION LANGUAGE PROVISIONS

Federal Deposit Insurance Corporation Improvement Act. The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) amended the Federal Deposit Insurance Act. As originally enacted, the FDICIA imposed various statutory responsibilities on the FTC that the agency did not have the resources or expertise to perform effectively. Accordingly, since 1992, Congress, with Administration support, has prohibited the FTC from spending funds on some or all of the responsibilities assigned to it under section 151 of the Act. The attached appropriation language related to FDICIA is identical to the language in the FTC's FY 2004 and FY 2005 appropriations acts.

Other Provisions. The attached appropriation language continues in effect provisions in prior-year appropriation acts that (1) allow for the purchase of uniforms and hire of motor vehicles; (2) allow services as authorized by 5 U.S.C. 3109; (3) limit to $300,000 the amount available for contracts for collection services in accordance with 31 U.S.C. 3718; (4) allow up to $2,000 for official reception and representation expenses; (5) allow for the collection of offsetting fees; (6) allow for the gross sum appropriated to be reduced as offsetting fees are collected; and (7) allow all funding to be available until expended.

OFFSETTING FEE COLLECTIONS

This submission assumes that total offsetting collections from Hart-Scott-Rodino filing fees and Do Not Call fees will provide the FTC $139,000,000 in FY 2006. The FTC assumes the $72,000,000 difference between offsetting collections and the $211,000,000 request will be funded through a direct appropriation.

Hart-Scott-Rodino (HSR) Premerger Filing Fees. This submission assumes offsetting HSR fee collections will provide the FTC $116,000,000 in FY 2006. These fees are authorized by section 605 of Public Law 101-162, as amended effective February 1, 2001, in the FY 2001 Commerce-Justice-State Appropriations Act (Section 630, Public Law 106-553).

Do Not Call Fees. This submission assumes offsetting collections of $23,000,000 from Do Not Call fees. These fees, first collected in FY 2003, will be used to maintain and enforce a national database of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers, and to carry out other Telemarketing Sales Rule activities.

GOVERNMENT PERFORMANCE AND RESULTS ACT (GPRA)

The FY 2006 budget request is based on the FTC's GPRA Strategic Plan for FYs 2003 - 2008 and supported by the FY 2005 and FY 2006 Performance Plans included in this submission. The FTC also will continue to work closely with OMB and its stakeholders to ensure that its strategic goals, objectives, and measures continue to provide relevant information.

PRESIDENT'S MANAGEMENT AGENDA

As described in more detail in a following section also titled "President's Management Agenda," the FTC is committed to managing its resources effectively and achieving immediate, concrete, and measurable results in each of the five management initiatives: human capital; competitive sourcing; e-government; financial management; and integration of budget and performance. Over the past decade, the agency has found new ways to meet growing demands and reach out to more consumers and businesses without an appreciable addition of personnel. To address these issues, the FTC has been engaged in long-term, concerted efforts to work better and smarter. These efforts dovetail with the President's Management Agenda. To date, the agency has established an outstanding record of assessment, realignment, innovation, and improvement. Also, there are several continuing efforts underway to address, among other areas, recruitment and training, performance and costs, and reporting and systems.

Budget Summary

($ in thousands)

Budget by Mission:	**Fiscal Year 2005** FTE	**Fiscal Year 2005** Dollars	**Fiscal Year 2006** FTE	**Fiscal Year 2006** Dollars	**Change** FTE	**Change** Dollars
Consumer Protection	567	$115,162	567	$119,004	0	$3,842
Maintaining Competition	507	89,162	507	91,996	0	2,834
Total	1,074 *	$204,324	1,074	$211,000	0	$6,676

Budget by Funding Source:

	Fiscal Year 2005	Fiscal Year 2006	Change
Offsetting Collections			
HSR Filing Fees	$101,000	$116,000	$15,000
Do-Not-Call Fees	21,901	23,000	1,099
Subtotal Offsetting Collections	$122,901	$139,000	$16,099
General Fund	81,423 **	72,000	-9,423
Total	$204,324 **	$211,000	$6,676

*Reflects absorption of costs for pay parity in FYs 2004 & 2005.

**Reflects rescission of $1.1M.

Summary of Changes

($ in thousands)

	FY 2005	FY 2006	Change
Budget Authority	$204,324	$211,000	+$6,676
Full-time Equivalents	1,074	1,074	+0

Explanation of Change:

	Dollars
Mandatory Costs	
1. Annualized three-month cost of the January 2005 pay increase of 3.5 percent, and a nine-month cost of January 2006 pay raise at an annual rate of 1.5 percent.	+$2,669
2. One less pay day in FY 2006.	-492
3. Upward grade classifications pursuant to 5 C.F.R. 531.401 et seq.	+ 1,268
4. Contract health benefit costs increases.	+ 2,731
5. Financial Management System.	+ 500
Total Change	**+ $6,676**

Annual Performance Plan Objectives by Program FTE

Consumer Protection Mission

	Fiscal Year 2005					Fiscal Year 2006			
	CP Obj. 1	CP Obj. 2	CP Obj. 3	Prgm. Total		CP Obj. 1	CP Obj. 2	CP Obj. 3	Prgm. Total
Advertising Practices	6	55	2	63		6	55	2	63
Marketing Practices	11	109	4	124		11	109	4	124
Financial Practices	8	66	2	76		8	66	2	76
Enforcement	3	50	2	55		3	50	2	55
Planning & Information	43	3	4	50		43	3	4	50
International Consumer Protection	2	6	1	9		2	6	1	9
Consumer & Business Education	0	0	16	16		0	0	16	16
Economic & Consumer Policy Analysis	0	4	1	5		0	4	1	5
Program Management	6	17	3	26		6	17	3	26
CP Mission Support	33	95	15	143		33	95	15	143
Total Mission	**112**	**405**	**50**	**567**		**112**	**405**	**50**	**567**

Maintaining Competition Mission

	Fiscal Year 2005					Fiscal Year 2006			
	MC Obj. 1	MC Obj. 2	MC Obj. 3	Prgm. Total		MC Obj. 1	MC Obj. 2	MC Obj. 3	Prgm. Total
Premerger Notification	15	0	9	24		15	0	9	24
Merger & Joint Venture Enforcement	11	168	11	190		11	168	11	190
Merger & Joint Venture Compliance	1	11	1	13		1	11	1	13
Nonmerger Enforcement	8	108	7	123		8	108	7	123
Nonmerger Compliance	0	3	0	3		0	3	0	3
Antitrust Policy Analysis	2	3	2	7		2	3	2	7
Other Direct Mission	3	14	3	20		3	14	3	20
MC Mission Support	14	102	11	127		14	102	11	127
Total Mission	**54**	**409**	**44**	**507**		**54**	**409**	**44**	**507**

Fiscal Years 2000 - 2006
Annual Performance Measures

	FY 2000 Actual	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 Target	FY 2006 Target
Consumer Protection Mission							
Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.							
Objective 1.1–Identify fraud, deception, and unfair practices that cause the greatest consumer injury.							
Measure 1.1.1: (FY 2001-2006) Annual number of consumer complaints and inquiries entered into database.	----	430,000	680,000	944,000	994,000	750,000	825,000
Measure 1.1.2: (FY 2003-2006) Annual number of consumer complaints and inquiries related to identity theft entered into database.	----	----	----	321,000	314,000	300,000	350,000
Objective 1.2–Stop fraud, deception and unfair practices through law enforcement:							
Measure 1.2.1: (FY 2000-2006) Dollar savings for consumers from FTC actions which stop fraud.	$265 million	$487 million	$561 million	$606.3 million	$349 million	$400 million	$400 million
Measure 1.2.2: (FY 2001-2002) Total expenditures of deceptive or unfair advertising campaigns stopped.	----	$86 million	$40 million	----	----	----	----
Measure 1.2.3: (FY 2003-2006) Number of data searches conducted by FTC and other law enforcement personnel of the FTC's Consumer Sentinel.	----	----	----	27,685	87,000	26,000	32,000
Measure 1.2.4: (FY 2003-2006) Number of data searches conducted by law enforcement personnel reviewing the FTC's Identity Theft complaints.	----	----	----	2,167	2,120	1,850	2,100
Objective 1.3–Prevent consumer injury through education:							
Measure 1.3.1: (FY 2000-2006) Number of education publications distributed to or accessed electronically by consumers.	11.0 million	15.0 million	19.3 million	28.0 million	26.5 million	20.0 million	25.0 million
Measure 1.3.2: (FY 2003-2006) Annual number of education publications related to Identity Theft distributed or accessed electronically.	----	----	----	3.0 million	3.7 million	3.0 million	3.3 million
Measure 1.3.3: (FY 2003-2006) Annual number of Spanish-language education publications distributed or accessed electronically.	----	----	----	458,000	737,000	500,000	550,000

Fiscal Years 2000 - 2006
Annual Performance Measures

	FY 2000 Actual	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 Target	FY 2006 Target
Maintaining Competition Mission **Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.**							
Objective 2.1–Identify anticompetitive mergers and practices that cause the greatest consumer injury:							
Measure 2.1.1: (FY 2001-2006) Percent of HSR second requests resulting in enforcement action.	----	68%	68%	70%	55%	60-80%	60-80%
Measure 2.1.2: (FY 2000-2003) Number of nonmerger investigations opened per year.	25	56	59	50	----	----	----
Measure 2.1.3: (FY 2004-2006) Percent of nonmerger investigations which result in enforcement action.	----	----	----	----	63%	60-80%	60-80%
Objective 2.2–Stop anticompetitive mergers and practices through law enforcement:							
Measure 2.2.1: (FY 2000-2006) Positive outcome of cases brought by FTC due to alleged violations.	95%	94%	100%	100%	100%	80%	80%
Measure 2.2.2: (FY 2000-2003) Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.	$2,980 million	$2,500 million	$726 million	$292 million	----	----	----
Measure 2.2.3: (FY 2004-2006) Volume of commerce in markets in which FTC took action to prevent anticompetitive mergers.	----	----	----	----	$8.5 billion*	$40 billion	$40 billion
Measure 2.2.4: (FY 2001-2004) Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.	----	$157 million	$86 million	$211 million	----	----	----
Measure 2.2.5: (FY 2004-2006) Volume of commerce in markets in which FTC took action to prevent anticompetitive conduct.	----	----	----	----	$2.6 billion*	$20 billion	$20 billion

*External factors may cause the results for Measures 2.2.3 and 2.2.5 to fluctuate significantly from year to year. Therefore, it is more appropriate to evaluate the Measures results over a greater period than one year. See *Federal Trade Commission Performance and Accountability Report for Fiscal Year 2004* at 51-52.

Fiscal Years 2000 - 2006
Annual Performance Measures

	FY 2000 Actual	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 Target	FY 2006 Target
Maintaining Competition Mission							
Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.							
Objective 2.3–Prevent consumer injury through education:							
Measure 2.3.1: (FY 2001-2003) Quantify number of education and outreach efforts.	----	Determine Baseline (141)	285	306	----	----	----
Measure 2.3.2: (FY 2001-2006) Quantify number of hits on antitrust information on FTC Web site.**	----	Determine Baseline (2.6 million)	4.4 million	Over 10 million	----	10 million	10 million
Measure 2.3.3: (FY 2004) Measure and establish appropriate targets for the number of hits on the FTC antitrust Web site relevant to business and legal communities.	----	----	----	----	7.7 million	----	----
Measure 2.3.4: (FY 2004) Measure and establish appropriate targets for the number of hits on the FTC antitrust Web site relevant to policy makers and the general public.	----	----	----	----	0.3 million	----	----

**For FY 2004, Objective 2.3 has two different components – educating the legal and business communities about enforcement policies and standards to facilitate compliance with the law, and (2) educating the public in general, as well as policymakers, about the benefits of competition. For this reason, the FTC established two performance measures based on the volume of traffic on the FTC's Internet site. See *Federal Trade Commission Strategic Plan, Fiscal Years 2003 - 2008* at 17. While the underlying rationale remains sound, this distinction has proved far more difficult to implement than first anticipated. Much of the antitrust-related content on the FTC's Internet site, such as press releases and speeches, is of interest to the general public as well as the business and legal communities. Some material is likely relevant primarily to the business and legal communities, very little (e.g., the FTC's "Plain English Guide to the Antitrust Laws") could be said to be of interest only to the general public. Because it is therefore very difficult to make a meaningful distinction between the FTC's relative success in educating the business and legal communities versus the general public, the agency will discontinue Measures 2.3.3 and 2.3.4 and will re-establish Measure 2.3.2 which is the total volume of antitrust-related Internet traffic on the FTC Web site. See *Federal Trade Commission Performance and Accountability Report for Fiscal Year 2004* at 55-56.

Proposed Appropriations Language

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed $2,000 for official reception and representation expenses, [$205,430,000] *$211,000,000*, to remain available until expended: *Provided*, That not to exceed $300,000 shall be available for use to contract with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718: *Provided further*, That, notwithstanding any other provision of law, not to exceed [$101,000,000] *$116,000,000* of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation: *Provided further*, That [$21,901,000] *$23,000,000* in offsetting collections derived from fees sufficient to implement and enforce the Telemarketing Sales Rule, promulgated under the Telephone Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.), shall be credited to this account, and be retained and used for necessary expenses in this appropriation: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year [2005] *2006*, so as to result in a final fiscal year [2005] *2006* appropriation from the general fund estimated at not more than [$82,529,000] *$72,000,000*: *Provided further*, That none of the funds made available to the Federal Trade Commission may be used to enforce subsection (e) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) or section 151(b)(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1831t note).

Program and Financing

($ in millions)

Identification Code: 29-0100-0-1-376	FY 2004 actual	FY 2005 est	FY 2006 est
Obligations by program activity:			
00.01 Consumer Protection	49	45	41
00.02 Maintaining Competition	38	36	31
01.92 Subtotal, Direct Program	87	81	72
09.01 Consumer Protection	56	70	78
09.02 Maintaining Competition	45	53	61
09.03 Reimbursable Program	1	1	1
09.99 Total Reimbursable Program	102	124	140
10.00 Total New Obligations[1]	189	205	212
Budgetary resources available for obligation:			
21.40 Unobligated balance carried forward, start of year	9	8	8
22.00 New budget authority (gross)	186	205	212
22.10 Resources available from recoveries of prior year obligations	2	...	...
23.90 Total budgetary resources available for obligation	197	213	220
23.95 Total new obligations[1]	-189	-205	-212
24.40 Unobligated balance carried forward, end of year	8	8	8
New budget authority (gross), detail:			
Discretionary:			
40.00 Appropriation	88	82	72
40.35 Appropriation permanently reduced	-1	-1	...
43.00 Appropriation (total discretionary)	87	81	72
Spending authority from offsetting collections (Discretionary)			
68.00 Offsetting collections (HSR Fees)	84	101	116
68.00 Offsetting collections (Do Not Call Fees)	14	22	23
68.00 Offsetting collections (Fed. Reimb. Programs)	1	1	1
68.90 Spending authority from offsetting collections (total discretionary)	99	124	140
70.00 Total new budget authority (gross)	186	205	212
Change in obligated balances:			
72.40 Obligated balance, start of year	32	36	32
73.10 Total new obligations[1]	189	205	212
73.20 Total outlays (gross)	-183	-209	-210
73.45 Recoveries of prior year obligations	-2	...	...
74.40 Obligated balance, end of year	36	32	34
Outlays (gross), detail:			
86.90 Outlays from new discretionary authority	170	190	195
86.93 Outlays from discretionary balances	13	19	15
87.00 Total outlays (gross)	183	209	210
Offsets:			
Against gross budget authority and outlays:			
Offsetting collections (cash) from:			
88.00 Federal sources	1	1	1
88.40 Non-Federal sources - HSR Fees	84	101	116
88.40 Non-Federal sources - Do Not Call Fees	14	22	23
88.90 Total, offsetting collections (cash)	99	124	140
Net budget authority and outlays:			
89.00 Budget authority	87	81	72
90.00 Outlays	84	85	70

[1]Includes $1 million in each fiscal year for obligation of funds reimbursed by other federal agencies.

Object Classification

($ in millions)

Identification Code: 29-0100-0-1-376	FY 2004 actual	FY 2005 est	FY 2006 est
Direct Obligations:			
Personnel Compensation:			
11.1 Full-time permanent	43	40	33
11.3 Other than full-time permanent	4	3	3
11.5 Other personnel compensation	1	1	1
11.9 Total Personnel compensation	48	44	37
12.1 Civilian personnel benefits	11	10	9
21.0 Travel and transportation of persons	1	1	1
23.1 Rental payments to GSA	8	7	6
23.3 Communications, utilities, and miscellaneous charges	1	1	1
24.0 Printing and Reproduction	...	1	1
25.1 Advisory and assistance services	11	10	9
25.2 Other services	1	1	1
25.3 Other purchases of goods and services from Government accounts	1	1	1
31.0 Equipment	4	4	3
32.0 Land and structures	1	1	1
99.0 Subtotal, obligations, Direct obligations	87	81	70
Reimbursable Obligations:			
Personnel Compensation:			
11.1 Full-time permanent	47	54	64
11.3 Other than full-time permanent	4	5	5
11.5 Other personnel compensation	1	1	1
11.9 Total personnel compensation	52	60	70
12.1 Civilian personnel benefits	12	15	17
21.0 Travel and transportation of persons	1	1	1
23.1 Rental payments to GSA	9	11	12
23.3 Comm., utilities & misc. charges	2	2	2
24.0 Printing and reproduction	1	1	1
25.1 Advisory and assistance services	12	19	23
25.2 Other services	2	2	2
25.3 Other purchases of goods and services from Government accounts	2	2	2
25.4 Operation & maint. of facilities	1	1	1
25.7 Operation & maint. of equipment	1	1	1
26.0 Supplies and materials	1	1	1
31.0 Equipment	5	7	8
32.0 Land and structures	1	1	1
99.0 Subtotal, Reimbursable obligations [1]	102	124	142
99.9 Total new obligations	189	205	212

[1] Includes $1 million in each fiscal year for obligation of funds reimbursed by other federal agencies.

Personnel Summary

Identification Code: 29-0100-0-1-376	FY 2004 actual	FY 2005 estimate	FY 2006 estimate
Direct			
1001 Full-time equivalent employment	493	430	365
Reimbursable			
2001 Full-time equivalent employment	564 [1]	650 [2]	715 [2]

[1]Includes 4 FTE reimbursed by other federal agencies.
[2]Includes 6 FTE reimbursed by other federal agencies.