

**Prepared Statement**

**of the**

**Federal Trade Commission**

**presented by**

**Robert Pitofsky, Chairman**

**on**

**FY 2001 Appropriations**

**before the**

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

**of the**

**Appropriations Committee**

**United States Senate**

**Washington, D.C.**

**April 6, 2000**

Mr. Chairman, I am Robert Pitofsky, Chairman of the Federal Trade Commission (FTC). I am pleased to appear before the Subcommittee in support of the FTC's Fiscal Year 2001 appropriation request.<sup>1</sup> The FTC is the only federal agency with both consumer protection and competition jurisdiction over broad sectors of the economy.<sup>2</sup> Congress has charged the FTC with maintaining a free and fair marketplace by, among other things, protecting American consumers and businesses from unfair methods of competition and unfair or deceptive acts or practices. To accomplish our mission in FY 2001, we request \$164,600,000 and 1,133 FTE, an increase of \$39,610,00 and 154 FTE over our adjusted FY 2000 appropriation.

Funding at the requested level will allow the FTC to build on important initiatives on behalf of American consumers. Highlights of FTC accomplishments in FY 1999 include:

- Saving consumers an estimated \$1.6 billion from law enforcement actions -- a savings of \$14 for each \$1 spent on FTC operations.
- Bringing 41 enforcement actions against Internet fraud in federal court, for a total of over 100 judicial and administrative actions since 1994.
- Reviewing record numbers of Hart-Scott-Rodino merger filings. The number of merger filings tripled from 1,529 in fiscal year 1991 to 4,642 in fiscal year 1999. The dollar value of merger filings through the same period increased over eleven-fold from \$169 billion in 1991 to \$1.9 trillion in 1999.
- Answering and processing monthly more than 40,000 consumer complaints and inquiries into an FTC database, through mail and electronic complaint forms, and a toll-free consumer helpline implemented in June 1999.
- Protecting consumers by distributing more than 8.6 million educational publications through print and electronic media.

### **FTC COST EFFICIENCY AND STREAMLINING EFFORTS**

Throughout the 1990s, the FTC faced significant demands on its resources. The economy became increasingly global and high-tech. Rapidly expanding technologies -- most notably, the

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<sup>1</sup> This written statement represents the views of the Federal Trade Commission. My oral presentation and responses are my own and do not necessarily reflect the views of the Commission or any other Commissioners.

<sup>2</sup> The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. §§ 41 et seq. With certain exceptions, the statute provides the agency with jurisdiction over nearly every sector of the economy. Certain entities, such as depository institutions and common carriers, as well as the business of insurance, are wholly or partially exempt from FTC jurisdiction. In addition to the FTC Act, the FTC has enforcement responsibilities under more than 40 additional statutes and more than 30 rules governing specific industries and practices.

Internet -- enlarged FTC consumer protection responsibilities. The number of merger transactions reviewed under the Hart-Scott-Rodino Act more than tripled. Until FY 1999, however, FTC funding increases covered only mandatory pay and price increases. To respond to the increasing demands on its mission, the FTC has undergone, and continues to undergo, significant streamlining efforts, including:

- Consolidating the efforts of attorneys, investigators, and contact representatives in five consumer protection divisions and ten regional offices into the Consumer Response Center that captures complaint information in a central database, thus allowing professional staff more time for case-related matters;
- Employing more paralegal staff to assist attorneys, particularly in document-intensive merger investigations;
- Reducing staff support positions in the Office of the Executive Director by 24 percent, thereby allowing the transfer of FTE to mission-critical law enforcement programs;
- Reconfiguring regional office operations to improve the nationwide delivery of consumer protection services, including services to under-served communities, and to create “competition centers” in selected regional offices with a staff size sufficient to investigate large and complex competition cases; and
- Leveraging program efforts through cooperative arrangements with state law enforcement agencies and private sector organizations in order to obtain the greatest consumer benefit for each dollar spent.

## **ONGOING CHALLENGES**

The support provided to the FTC in FY 1999, and sustained in our FY 2000 appropriation, was aimed at helping us meet the demands of an increasing workload. The changing and expanding marketplace has, however, outstripped our ability to pursue goals in both our consumer protection and competition missions on a timely basis at current resource levels.

### ***Consumer Protection***

**Commitment to the Internet.** Consumer and business use of the Internet has grown exponentially. Although commercial web browsers only became available in 1994, 130 million Americans now have access to the Internet.<sup>3</sup> Internet purchasing also is skyrocketing, forecasted to rise from \$20 billion in 1999 to \$184 billion in 2004.<sup>4</sup> Developing Internet-related policies and

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<sup>3</sup> Nielsen Media Research and NetRatings Inc., *The Nielsen/Netratings Reporter* (visited Mar. 31, 2000) <[http://www.nielsennetratings.com/press\\_releases/pr\\_000323.htm](http://www.nielsennetratings.com/press_releases/pr_000323.htm)>.

<sup>4</sup> Forrester Research Inc., *Online Retail to Reach \$184 Billion by 2004 as Post-Web Retail Era Unfolds* (visited Sept. 28, 1999) <<http://www.forrester.com/ER/Press/Release/0,1769,164,FF.html>>.

halting cyberfraud during just the few years of the Internet's existence has taxed the FTC's resources. In 1996, the FTC devoted 14 FTEs, about 4 percent of the Consumer Protection resources, to Internet-related activities. In 1999, the workload required 79 FTEs, or about 23 percent of Consumer Protection workforce, which overall remained at about the same level as 1996.<sup>5</sup>

The rapidly growing online marketplace promises enormous benefits for consumers and the economy. Our top priority is to protect consumers and business from the damage that fraud and deception can cause in this extraordinary new marketplace. Fraud on the Internet has become a great concern, as the number of consumer complaints related to online fraud has rapidly increased. In 1997, fewer than 1,000 such complaints were logged in to our *Consumer Sentinel* database; by 1999 that number had grown to over 18,600 – roughly 24% of all fraud complaints received that year. The challenge for the FTC is to stem this trend while the online marketplace is still young.

**Internet law enforcement.** Since 1994, the FTC has brought 116 Internet-related law enforcement actions against over 335 defendants, stopping consumer injury estimated at over \$250 million a year. Many of these cases posed novel challenges: tracking anonymous fraud artists, unraveling complex technology traps, and responding at lightning speed to frauds moving just as rapidly.

A growing number of cases involve ingenious scams that exploit the design and architecture of the Internet. An example is *FTC v. Carlos Periera*, in which defendants “pagejacked” millions of Web pages, including those of Paine Webber and the *Harvard Law Review*. Consumers visiting those pages were unwittingly redirected to pornographic sites where they were effectively “mouse trapped” because their browser’s “back” and “exit” commands had been disabled. The FTC obtained a temporary restraining order stopping the activities and suspending the website registrations. To provide staff with the tools needed to combat high-tech fraud like this, the FTC has established an *Internet Lab* equipped with high speed computers that allow staff to investigate fraud and deception in a secure environment and to preserve evidence for litigation.

One hallmark of Internet fraud is that perpetrators can cover their tracks and mask their locations and identities. Using anonymous, deceptive e-mails, and short-lived websites, fraud operators can strike fast, victimize thousands of consumers, and quickly disappear. In this new medium, old-fashioned scams can grow faster and reach consumers more quickly than in the offline world. To move as fast as the con artists, the FTC has established an *Internet Rapid Response Team*. In two recent cases, involving modem-hijacking and deceptive e-mails or “spam,” the FTC obtained court-ordered injunctive relief within weeks of learning about the scams.

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<sup>5</sup> See attachment 1. Internet-related initiatives include anti-fraud law enforcement, consumer and business education, online privacy initiatives, and the development of international consumer protection guidelines for commerce.

Because the Internet transcends national boundaries, the FTC's cases increasingly involve cross-border scams. In the "pagejacking" case, defendants were located in Portugal and Australia. In one of our largest online pyramid cases, victims were located in the U.S. and 70 foreign countries. A recent surf, "GetRichQuick.Con" targeted Internet fraud around the world and involved 150 partners in 28 countries on five continents. Through *Consumer Sentinel* and organizations such as the *International Marketing Supervision Network*, we are sharing information and cooperating in cross-border fraud investigations.

Although the majority of the FTC's Internet cases involve old-fashioned scams -- such as pyramids, bogus health cures, and money making schemes -- they can grow faster and reach more consumers more quickly in this new medium than in the offline world. One case currently in litigation caused approximately \$45 million in unauthorized charges to consumers' credit cards in a matter of months. The trend is for old-style scams on the Internet to cause greater economic harm in shorter periods of time than similar scams using traditional media, and the FTC's work to stop these schemes requires more law enforcement resources.

**Electronic tools.** The FTC makes extensive use of new technological tools to target the most egregious problems on the Internet and to leverage our resources by partnering with hundreds of law enforcement agencies and private sector organizations. *Business Week* recently called the FTC "a global leader in enforcement" and "in the cybersleuthing vanguard."<sup>6</sup> New funding enabled the FTC to enhance one of our fraud databases, *Consumer Sentinel*, which helps law enforcement track fraud operators on the Internet, and makes complaint data available over a secure website to over 225 law enforcement agencies across the U.S. and Canada. Using this data, the FTC and its law enforcement partners coordinate their efforts and respond quickly to emerging scams.

Another important tool the FTC has pioneered to identify online fraud is the "Surf Day." The FTC has now coordinated or co-sponsored some 21 surf days, with over 250 partners around the world. The surfs have identified and sent email warnings to over 5500 sites making dubious claims about a wide range of products and services, from bogus "cure-all" claims, to get-rich-quick promotions, to credit repair schemes. Sites that do not come into compliance after being warned are targeted for possible law enforcement action.

**Consumer and business education.** Education continues to be a high priority for the FTC. It is the first line of defense against fraud and deception. A major initiative is the FTC's *Consumer Response Center*, which operates a toll-free helpline to counsel callers, take complaints, and provide information to protect consumers from fraud and help businesses avoid deceptive or unfair practices. The Consumer Response Center now handles over 40,000 inquiries from businesses and consumers each month.

To reach consumers before they fall victim to fraudulent online schemes, the FTC has developed "teaser sites" that mimic common Internet scams. After a few clicks from the home

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<sup>6</sup> Dan Carney, *Special Report: Internet Fraud - Online Scambusters*, Business Week, April 3, 2000, at EB-66.

page, the FTC site warns consumers that they could be defrauded by participating in similar schemes and provides tips on how to distinguish fraudulent pitches. The agency has developed 13 such sites on topics such as fraudulent business opportunities to weight loss products, vacation deals and investments.

With its vision of the Internet as a powerful tool for consumer education and empowerment, the FTC organized a group of five small federal agencies in 1997 to develop and launch “*consumer.gov*,” a website that offers one-stop access to federal consumer information. The FTC-managed site now includes contributions from 135 federal agencies.

**Identity theft.** As directed by Congress in the recently enacted Identity Theft Assumption and Deterrence Act, the FTC must establish a central clearinghouse for ID theft complaints, maintain an education campaign, and develop a database to collect incident data which is available to consumer reporting agencies and our law enforcement partners. To date, the FTC has developed an ability to gather basic identity theft data, but lacks the resources needed to effectively analyze or efficiently report and share such data.

**Privacy.** The FTC has been at the forefront of issues involving online as well as offline privacy. Most recently, the FTC published a proposed rule to implement financial privacy protections provided for in the Gramm-Leach-Bliley Act.<sup>7</sup> The FTC also issued a rule to implement the new Children’s Online Privacy Protection Act, which will take effect on April 21, 2000. Additionally, FTC staff conducted another survey of commercial websites to assess the adequacy and progress of self-regulation in the continuing effort to protect online privacy. Finally, the FTC established a Federal Advisory Committee on Online Access and Security, which is expected to report in May on cost and benefit issues of reasonable online access and security. The FTC will address all these issues in reporting to Congress by the end of May.

### *Competition*

**Merger wave.** On the competition side, the corporate merger wave, now in its tenth straight year, places enormous strains on FTC resources. *The Washington Post* recently characterized the merger wave as “a dramatic wave of global corporate consolidation that has been gaining momentum through much of this decade,” quoting merger experts who note that a key force driving merger activity is the Internet.<sup>8</sup> This restructuring may be necessary for companies to compete in the new global, high-tech marketplace. At the same time, antitrust review is necessary to identify and remedy those combinations that could diminish competition in specific markets as this restructuring proceeds.

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<sup>7</sup> Graham-Leach-Bliley Act Privacy Rule, 65 Fed. Reg. 11,174, (2000) (to be codified at 16 C.F.R. 313) (proposed March 1, 2000).

<sup>8</sup> Sandra Sugawara, *Merger Wave Accelerated in '99; Economy, Internet Driving Acquisitions*, Wash. Post, Dec.31, 1999, at E1.

While the number of Hart-Scott-Rodino merger filings has tripled in the past decade, the dollar value of commerce affected by these mergers is on an even steeper trajectory, increasing eleven-fold over the same time period.<sup>9</sup> Individual transactions grow larger, with billion dollar transaction becoming almost commonplace. In each of fiscal years 1995, 1996 and 1997, only seven transactions exceeded \$10 billion in value. In FY 1998, the number of transactions over \$10 billion had grown to 20, and in FY 1999, 29 such mega-mergers were filed. This represents an extraordinary increase in the potential consumer harm that could result from mergers that pose competitive problems if left unaddressed. Merger analysis also has become significantly more complex over the last five years, as economic analysis has become more technical and sophisticated, and as transactions have grown in complexity, including multiple product and geographic markets.<sup>10</sup> As a result, merger investigation and litigation have become far more resource-intensive than before.<sup>11</sup>

**Nonmerger investigations.** The demands of the merger wave and statutory deadlines under Hart-Scott-Rodino have forced a diversion of resources from the FTC's nonmerger responsibilities, such as reviewing potentially anticompetitive agreements in health care, pharmaceuticals, and other industries that serve consumers. While in 1991, the FTC spent 56 percent of competition resources on merger matters and 44 percent on nonmerger matters; in 1999, that ratio changed to 67 percent for mergers and only 33 percent for nonmergers. The number of new nonmerger investigations opened has dropped by more than 40 percent over the 1991-92 average. The nonmerger cases that have been opened in the past several years are proceeding more slowly because of the lack of resources.

**Health care.** Health care costs have grown steadily for all consumers, including elderly consumers. For many years, the FTC has been at the forefront in bringing enforcement actions to protect the competitive process in all types of health care markets, including services provided by hospitals and health care professionals, as well as products provided by the pharmaceutical and medical equipment industries. In the past two years alone, the FTC has brought more than a dozen enforcement actions involving health care, pharmaceuticals, and medical devices.<sup>12</sup>

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<sup>9</sup> See Attachment 2.

<sup>10</sup> For example, the Exxon/Mobil transaction required analysis of oil production, refining, distribution and gasoline and lubricant retailing, in local, national and worldwide geographic markets.

<sup>11</sup> The FTC is working cooperatively with industry and the antitrust bar to assess what changes can be made in Hart-Scott-Rodino merger investigations to minimize burden and make the process work as efficiently as possible. The FTC already has undertaken a number of internal reforms to expedite merger investigations and to provide parties with more complete information on the issues that give rise to a particular investigation.

<sup>12</sup> FTC cases filed with respect to healthcare, pharmaceutical and medical devices in 1998: *FTC v. Cardinal Health Inc.*, 12 F. Supp.2d 34 (D.D.C. 1998); *FTC v. Mylan Laboratories, Inc.*, No. 98CV03114 (D.D.C. 1998); *Medtronic, Inc.*, C-3879 (Dec. 21, 1998) (final order); *M.D. Physicians of Southwest Louisiana, Inc.*, C-3824 (Aug. 31, 1998) (final order); *Institutional Pharmacy Network*, C-3822 (Aug. 11, 1998) (final order); *McKesson Corporation*, No. 981-0025 (July 31, 1998); *Roche Holdings Ltd.*, C-3809 (May 22, 1998) (consent order); *Summit Technology, Inc. and VISX, Inc.*, D- 9286 (Mar. 24, 1998) (complaint filed); *Mesa County Physicians IPA*, D- 9284 (Feb. 27, 1998) (proposed consent agreement); *Urological Stone Surgeons, Inc. and*

In one major case, the FTC, jointly with several states, sued Mylan Laboratories, one of the nation's largest generic pharmaceutical manufacturers, charging Mylan and other companies with monopolization, attempted monopolization and conspiracy to eliminate much of Mylan's competition by tying up the key active ingredients for two widely-prescribed drugs, used by millions of patients.<sup>13</sup> The FTC's complaint charged that Mylan's agreements allowed it to impose enormous price increases – 25 to 30 times the initial price levels – which allegedly cost American consumers more than \$120 million in excess charges. Trial is set for the spring of 2001. Just last month, the FTC charged four other companies with entering into anticompetitive agreements that allegedly delayed the entry of generic drug competition, potentially costing consumers hundreds of millions of dollars a year.<sup>14</sup>

**Energy.** The FTC commits considerable resources to addressing the wave of consolidation in the petroleum and gasoline industry. In FY 1999 and 2000 to date, the Bureau of Competition devoted one-third of its enforcement budget to address issues in energy industries. Recently, after extensive review from oil fields to the gas pump, the FTC obtained a consent agreement from Exxon and Mobil that required major divestitures to protect competition in gasoline refining, retailing, and other petroleum markets. The settlement includes the largest retail divestiture in the FTC's history -- 2,431 gas stations -- to protect competition in the Northeast, Mid-Atlantic, California, and Texas for the benefit of consumers. Currently, the FTC is in negotiations to settle its challenge to the proposed merger of BP Amoco p.l.c. and Atlantic Richfield Company,<sup>15</sup> the two largest firms exploring and producing oil on Alaska's North Slope.

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*Parkside Kidney Stone Centers*, C- 3791 (Jan. 6, 1998) (proposed consent agreement).

In 1999: *FTC v. Tenet Healthcare Corp.* 17 F. Supp. 2d 937 (E.D. Mo. 1998), *rev'd* 1999-2 Trade Case ¶ 72578 (8th Cir. 1999); *North Lake Tahoe Medical Group, Inc.*, C-3855 (July 21, 1999) (final order); *Medtronic, Inc.*, C-3879 (June 3, 1999) (final order); *Zeneca Group PLC*, C-3880 (June 7, 1999) (consent order); *Mesa County Physicians, IPA*, D- 9284 (May 4, 1999) (final order); *Summit Technology, Inc. and VISX, Inc.*, D-9286 (admin complaint filed, Mar. 24, 1998) (June 1999 dismissed); *Asociacion de Farmacias Region de Arecibo*, C-3855 (Mar. 2, 1999)(final order); *Merck and Co., Inc.*, D-3853 ( Feb. 18, 1999) (final order); *Dentists of Juana Diaz, Cuamo and Santa Isabel, Puerto Rico*, C-3851 (Feb. 12, 1999) (final order).

In 2000: *Geneva Pharmaceuticals*, No. 981-0395 (Mar. 16, 2000) (proposed consent agreements); *Abbott Laboratories and Geneva*, No. 981-0368 (Mar. 16, 2000) (proposed consent agreement); *Hoechst Marion Roussel, Inc.*, D- 9293 (Mar. 16, 2000) (complaint); *Colegio de Cirujanos Dentistas de Puerto Rico*, No. 971-0038 (Mar. 6, 2000) (proposed consent agreement); *Hoechst AG*, C-3919 (Jan. 18, 2000) (final order).

<sup>13</sup> *FTC v. Mylan Laboratories, Inc.*, CV-98-3115 (D.D.C., filed Dec. 22, 1998; amended complaint filed Feb. 8, 1999). The drugs in question are used for treatment of anxiety.

<sup>14</sup> An administrative complaint was filed against Hoechst Marion Roussel (now Aventis) and Andrx Corporation alleging that Hoechst agreed to pay Andrx millions of dollars to induce Andrx to delay introduction of a generic drug that would compete with Hoechst's blockbuster drug Cardizem CD, which in 1998 had 12 million prescriptions and sales exceeding \$700 million. A consent agreement was accepted by the Commission on the same day against Abbott Laboratories and Geneva Pharmaceuticals, Inc., involving similar conduct allegations for Abbott's drug Hytrin. Hytrin's sales in 1998 were \$542 million (8 million prescriptions).

<sup>15</sup> *FTC v. BP Amoco, p.l.c.*, No. C 000416 (SI) (N.D. Cal. 2000).



The FTC also has been active in reviewing mergers in other energy industries, including so-called “convergence” mergers where an electric power company proposes to merge with a fuel supplier, such as a coal company or a natural gas pipeline. The potential competitive risk of such mergers is that the electric power company may be able to raise the cost of power generation or market entry for rival electric generating companies, and frustrate attempts to induce competition through deregulation of the industry. Higher generating costs could result in higher wholesale cost of electricity, and those cost increases could in turn be passed on to consumers. In the past approximately two years, the FTC reviewed and obtained consent agreements to resolve two such mergers: PacifiCorp’s proposed acquisition of The Energy Group (Peabody Coal),<sup>16</sup> and Dominion Resources’ proposed acquisition of Consolidated Natural Gas.<sup>17</sup>

**High-technology.** Mergers and acquisitions in the high-technology and telecommunications industries are occurring at a record pace, caused by technological change, deregulation, and other market forces. Recently, the FTC began a review of the proposed merger of AOL and Time/Warner, the largest merger ever, with a value of over \$150 billion. The proposed transaction will combine the premier traditional media company with the premier new media firm, resulting in a convergence of technology, content and commerce. As with any merger involving high technology or rapidly evolving markets, antitrust enforcers must exercise caution to protect consumers from harm but not to hinder the benefits of innovation for new products and services.

**Retailing.** Retail markets are in the midst of dramatic change. To remain competitive, retailers – whether brick-and-mortar or online – are seeking new ways to market new and old products. This dynamic is leading to much pro-consumer innovation in retailing. However, whenever there is a great upheaval in the marketplace, traditional retailers sometimes respond by trying to forestall new forms of competition. Some of those actions may be legitimate defensive maneuvers, but when such conduct steps over the lines drawn by the antitrust laws, enforcement action is needed to ensure that anticompetitive practices do not deter development of procompetitive innovations.

In 1998, for example, the FTC charged 25 Chrysler dealers with an illegal boycott designed to limit sales by a car dealer that marketed on the Internet. These brick-and-mortar dealers allegedly had planned to boycott Chrysler if it did not change its distribution of vehicles in ways that would disadvantage Internet retailers. The danger of such a tactic is obvious: a successful boycott could have limited the use of the Internet to promote price competition and reduced consumers’ ability to shop from dealers serving a wider geographic area via the Internet. The FTC consent order prohibits the dealers from engaging in such boycotts in the future.<sup>18</sup>

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<sup>16</sup> *PacifiCorp*, No. 971 0091 (Feb. 17, 1998) (consent order accepted for public comment; this order was withdrawn when the parties abandoned the transaction).

<sup>17</sup> *Dominion Resources, Inc.*, C-3901 (Dec. 9, 1999) (consent order).

<sup>18</sup> *Fair Allocation System, Inc.*, C-3832 (Oct. 30, 1998) (consent order).

Of course, more traditional concerns still arise in retail markets. Just last month, for example, the FTC and the Attorneys General from 56 U.S. states, territories, commonwealths, and possessions settled charges that Nine West, one of the country's largest suppliers of women's shoes, had engaged in allegedly unlawful resale price maintenance to maintain higher prices for many popular lines of shoes.<sup>19</sup>

### **FISCAL YEAR 2001 REQUEST**

In response to this increasing workload, we have performed our mission over the past decade primarily by stretching our resources, reinventing our processes, and simply doing more with less. If we are to keep up with the growing demands imposed by the 21<sup>st</sup> Century marketplace, we need additional resources. This requested increase would be a sound investment, reaping significant dividends for American consumers and businesses.

For FY 2001, the FTC requests a funding level of \$164,600,000 and staffing level of 1,133 FTE, an increase of \$39,610,000 and 154 FTE over the agency's adjusted FY-2000 appropriation. The increased amount includes:

- \$6,149,000 for base expenses including mandatory pay and inflation costs;
- \$19,146,000 for 154 new staff years; and
- \$14,315,000 for other program expenses, including -
  - \$4,675,000 for case support and program maintenance. This item includes direct case support for travel and expert witness costs, training needed by FTC staff to keep pace with the broadening technological and international scope of our mission, and agency-wide enhancement of administrative systems and telephone operations.
  - \$4,800,000 for technology improvements. This includes an electronic filing system for Hart-Scott-Rodino premerger notifications, website capabilities to support programs that provide consumers with textile and energy information, and greater consumer access to FTC publications, alerts, fact sheets and reports. New technology also will improve document and evidence tracking in enforcement investigations and actions.
  - \$2,815,000 for identity theft activities. The Identity Theft Act was enacted October 30, 1998. Because of the late date of the Act's passage in the budget process, and the time needed to determine total costs, it was not included in the FTC's prior year appropriation request. Preliminary work has begun, and a

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<sup>19</sup> *Nine West Group Inc.*, No. 981-0386 (Mar. 6, 2000) (consent agreement accepted for public comment).

reprogramming request is currently pending before the Subcommittee to support more substantive development. The funds being requested are needed to more fully develop the technology backbone and provide resources needed to receive and respond to consumer complaints related to identity theft.

- \$2,025,000 for new consumer and outreach initiatives. This item establishes a comprehensive education and outreach program to help consumers protect themselves from fraud in today's fast changing and increasingly electronic marketplace. It funds "town hall" style meetings, the creation of mobile consumer information centers with multi-media exhibits, and the establishment and maintenance of a centralized data base of thousands of consumer organizations that exist across the United States.

Of the 154 additional FTE requested for FY 2001, 85 are needed for the Consumer Protection Mission and 69 for the Maintaining Competition Mission.

Within the Consumer Protection Mission:

- 59 FTE will be used in the FTC's antifraud program to apply traditional law enforcement mandates to the Internet. We will combat fraud in the new electronic marketplace, which operates like no other and is growing exponentially. The additional FTE will allow us to keep pace with new technology that allows scams to become larger and develop faster, enables bad actors to hide their identities online, and makes fraud difficult to track and attack in the global marketplace. FTE will be devoted to making sure our rules and guides apply to the electronic marketplace. Resources also will be used to protect consumer privacy by enforcing the Children's Online Privacy Protection Act and supporting self-regulation through public education (e.g., surveys and workshops) and selective law enforcement.
- 16 FTE are needed to use new technology to deliver educational information to consumers, businesses, and the FTC's law enforcement partners through various means such as Internet-based newsletters, dynamic interactive web sites on the Internet, a kiosk-based multimedia education program, Town Meetings, public service announcements delivered through radio, and audio files and banner announcements on the Internet.
- 10 FTE are needed as a direct result of improved capabilities to capture information about consumer complaints, including complaints about identity theft, and from phone calls, mail, and the Internet. We will share this information with other law enforcement agencies and coordinate enforcement actions with them.

Within the Maintaining Competition Mission:

- 47 FTE will help offset the additional workload resulting from an increase in the number and complexity of reported mergers, many of which involve multiple product and

geographic markets. The greater number and complexity of reported mergers requires more staff on these investigations.

- 22 FTE are needed to enhance the FTC's ability to litigate cases involving anticompetitive practices in newly emerging markets -- cases that require complex economic analysis and lengthy proceedings. A major focus for the FTC is the need to respond to market changes, especially in high tech, health care, energy, and retailing markets. Further, additional staff are required to replace nonmerger staff who were diverted in prior years to ensure adequate merger enforcement.

## **INTERNATIONAL MARKETING SUPERVISION NETWORK**

The FTC also requests a one-time change in its "reception and representation" authority. This request would permit the agency to adequately assume its role as the upcoming president of the International Marketing Supervision Network. The IMSN is a network of consumer protection and fair trade organizations from more than two dozen countries – most members of the Organization for Economic Cooperation and Development. These members include, among others, the United Kingdom, France, Germany, Spain, Japan, Australia, Canada, and Mexico. Norway holds the current presidency and past presidents have included Belgium, Ireland, Canada, Austria, Sweden, France, and the United Kingdom. The duties and responsibilities associated with the FTC's position will enhance the agency's ability to fulfill its consumer protection mission in an increasingly global market.

## **HART-SCOTT-RODINO PREMERGER FILING FEES**

Based on an amendment proposed in this request's appropriation language, FY 2001 programs would be fully funded by Hart-Scott-Rodino premerger notification filing fees.<sup>20</sup> The proposed amendment would create a three-tiered schedule of fees based on the size of transaction: (1) \$45,000 on mergers having a total aggregate transaction value in excess of \$35,000,000 but not exceeding \$99,999,999; (2) \$100,000 on mergers equal to or greater than \$100,000,000 but not exceeding \$199,999,999; and, (3) \$200,000 on mergers equal to or in excess of \$200,000,000.

The fee proposal in the request's appropriation language would provide relief to small business by eliminating the current fee of \$45,000 for transactions of between \$15,000,000 and \$35,000,000. Raising the threshold has wide support.<sup>21</sup> Using 1999 filings data, the request's

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<sup>20</sup> Hart-Scott-Rodino filing fees are assessed and collected under Pub. L. No. 101-162, § 605, 103 Stat. 988 (codified as amended at 15 U.S.C. § 18a note (1990)).

<sup>21</sup> Raising the threshold is separately included in S. 1854, "Hart-Scott-Rodino Antitrust Improvements Act of 1999," introduced by Senator Hatch. In contrast to the request, however, S. 1854 would eliminate both the fee and the filing requirement for transactions under \$35,000,000. We do not anticipate that this exclusion of smaller transactions would significantly decrease the agency's workload. The majority of the resources are needed for larger, more complex mergers. In addition, any savings from not reviewing smaller transaction would be offset to some degree by the greater resources needed to identify anticompetitive mergers in the smaller size range that

higher threshold would eliminate filing fees for approximately 40 percent of the filers, and the tiered approach in the request would maintain the \$45,000 fee for approximately 30 percent of the remaining filers.

The use of the appropriations process to increase fees assessed on Hart-Scott-Rodino Act premerger notification filings has a long history. The use of Hart-Scott-Rodino filing fees as a funding source for both FTC and related Justice Department program activities was first authorized at a rate of \$20,000 per filing in the FY 1990 Commerce, Justice, State Appropriations Act (C-J-S Act).<sup>22</sup> The rate was increased to \$25,000 per filing in the FY 1993 C-J-S Act, and then increased again to \$45,000 per filing in the FY 1995 C-J-S Act.<sup>23</sup> Therefore, this FY 2001 request to raise the fees assessed on Hart-Scott-Rodino Act premerger notification filings is the first such request in the six years since 1995.

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Mr. Chairman, thank you for this opportunity to support the FTC's FY 2001 Appropriation request. We would be pleased to respond to any questions you and the other members may have.

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would no longer be reported.

<sup>22</sup> *Supra* at n.20.

<sup>23</sup> Pub. L. No. 101-395, 106 Stat. 1828 (1992) and Pub. L. No. 103-317, 108 Stat. 1724 (1994), respectively.