



# PRIORITY SETTING AND RESOURCE ALLOCATION IN THE UNITED STATES



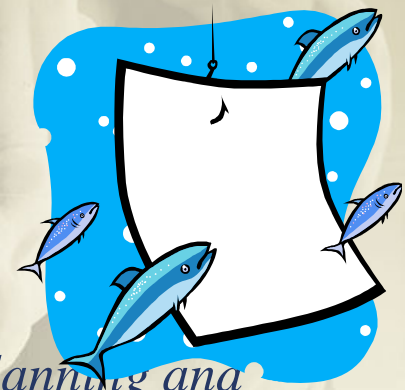
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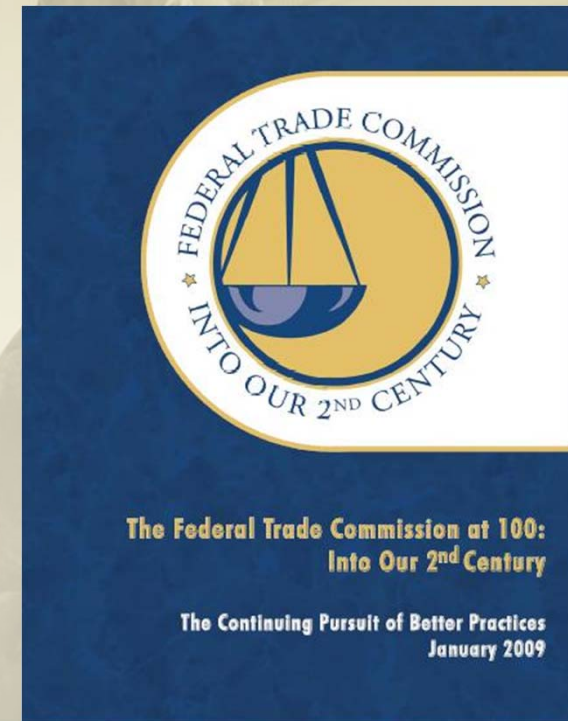
# Towards a Proactive Agenda

- Avoiding the nightmare scenario
  - A full diet of mandatory tasks can leave no time or resources to address conduct that seriously injures consumer welfare
- Strategy needed to identify the practices that cause the greatest injury to competition
  - Fish where the fish are
  - Studies on identification of priorities
    - FTC at 100 Study (2009)
    - ICN Agency Effectiveness Handbook, *Strategic Planning and Prioritization* (2010)
  - Specific priorities will vary among countries



# Learning from FTC at 100 Study

- Identification of the Goals
- Focus on outcomes, not outputs
- Building internal and external support
- Application of full range of tools
  - Enforcement
  - Advocacy within government
  - Studies and publicity



# ICN Identifies “Good Practices”

- 2010 Chapter of Agency Effectiveness Handbook
- Strategic Planning
  - Establish mission, strategy, objectives, means of assessing success
  - Recognition of constraints
  - Commitment of agency leadership
  - Buy-in from staff
- Prioritization
  - Delivers on objectives in strategic plan
  - Allocation of resources
  - Develop an appropriate portfolio of activities
  - Prioritization criteria (consumer welfare, sectoral, institutional)
  - Prioritization procedures can vary



# Discretion to Set a Pro-Active Agenda

- Complaints often focus on injury to individual competitor, not on competitive or consumer welfare
- Requiring every case to be addressed can shift resources away from practices that harm consumer welfare
- Having discretion to focus on real problems and to avoid wasting resources is an advantage
- Existence of a private right of action can liberate agency to address the conduct that causes the greatest injury

# Formal Process in the United States

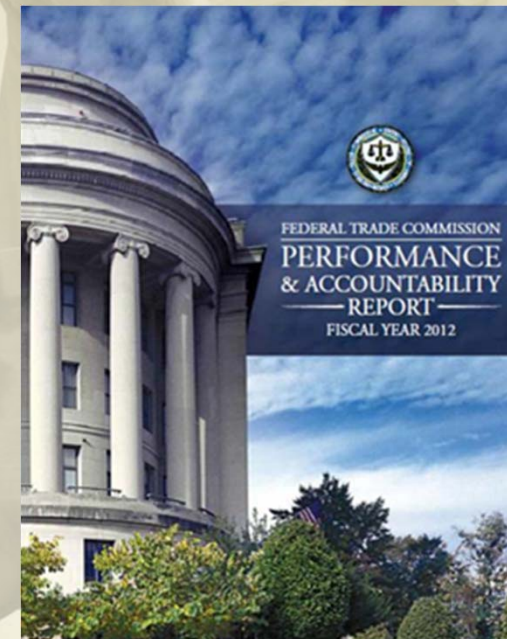
- Government Performance and Results Act applies across government
  - A transparent process to establish:
    - Strategic Goals
    - Objectives
    - Performance Measurements
  - Tends to be at a high level of generality
  - Measurement of law enforcement performance is challenging
    - Difficult to measure ultimate outcomes
    - Measuring deterrent effect is difficult
  - Annual public reporting of results

# Formal Strategic Planning at FTC

- *Competition Strategic goal:* prevent anticompetitive mergers and other anticompetitive business practices
- *Objectives:*
  - Take action against anticompetitive mergers and practices that may cause significant consumer injury
  - Prevent consumer injury through education.
  - Enhance consumer benefit through research, reports, and advocacy.
  - Protect American consumers in the global marketplace by providing sound policy recommendations and technical advice to foreign governments and international organizations to promote sound competition policy.

# Measurement and Publication of Results

- *Example of Measures:* Consumer savings of at least 13 times the amount of FTC resources allocated to the merger program, and 20 times the amount allocated to the non-merger program
- *2012 Results:* Savings 14.9 times resources (merger) and 18.3 times resources (non-merger)
- Results are published annually
  - See <http://www.ftc.gov/opp/gpra/2012parreport.pdf>





# Prioritization at the FTC

- Translates strategic goals into operational priorities.
- Identification of practices that cause greatest injury to consumer welfare and where government intervention is appropriate
- Sources of prioritized matters
  - Internal research and development (workshops, studies)
  - Specialized divisions understand issues in specific sectors
  - Complaints
  - Merger notifications
- Chairman provides overall guidance; Bureau Director selects cases through evaluation committee process that includes all internal stakeholders

# Current FTC Priorities

- Competition priorities focus on areas that touch consumers most, including:
  - Containing health care and drug costs
  - Fostering innovation and competition
  - Advancing competitive principles
  - Monitoring energy markets
  - Guarding consumer pocketbooks
- Prioritization is not exclusive, and allows for flexibility to address new issues as they arise



# Selection of Appropriate Tools

- Tools selected appropriate to the problem presented
  - Law enforcement: to address private anticompetitive conduct
  - Competition advocacy: to address potentially anticompetitive conduct encouraged or required by state or local governments or other federal agencies
  - Research and policy studies: to provide analysis and information to inform political debate
  - Education: to aid consumer choice
- Avoiding the law of the tool: “to a person with a hammer, everything looks like a nail”

# Example: Pharmaceuticals

- Health care consumes 17% of GDP in the United States
- Generic drugs are substantially cheaper than branded pharmaceuticals
- Special procedures exist for regulatory approval of generics
  - Legislation encourages early litigation of claims of patent infringement by generics
  - Litigation often results in agreements where branded drug manufacturers pay generic firms to stay out of the market
- FTC determined that such agreements cost consumers \$3.5 billion annually



# Result of Pharmaceutical Prioritization

- Identification of tools
  - Legislative changes suggested to Congress, but not adopted
  - Litigation
    - Initial losses in lower courts, followed by
    - June 2013 decision by U.S. Supreme Court that such agreements could be anticompetitive
- A major victory for consumers and vindicated FTC's prioritization

