Federal Trade Commission

YOUR FTC

What It Is and What It Does

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A GUIDE FOR BUSINESS AND CONSUMERS

The Federal Trade Commission is an independent law enforcement agency charged by Congress with protecting the public – consumers and businessmen alike – against anticompetitive behavior and unfair and deceptive business practices.

The Commission has authority to stop business practices that restrict competition or that deceive or otherwise injure consumers, as long as these practices fall within the legal scope of the Commission's statutes, affect interstate commerce and involve a significant public interest. Such practices may be terminated by cease and desist orders issued after an administrative hearing, or by injunctions issued by the Federal courts upon application by the Commission.

In addition, the FTC defines practices that violate the law so that businessmen may know their legal obligations and consumers may recognize those business practices against which legal recourse is available. The Commission does this through Trade Regulation Rules and Industry Guides issued periodically as "dos and don'ts" to business and industry, and through business advice – called Advisory Opinions – given to individuals and corporations requesting it.

Both businessmen and the general public may participate in the shaping of Trade Regulation Rules and Industry Guides. Before a rule or guide is officially issued, any interested individual or group may comment on its provisions either in writing or at a public hearing. Ample notice of these hearings is given through news releases and by publication in the *Federal Register.*

In their final form, Advisory Opinions, Trade Regulation Rules, and Industry Guides are widely publicized, so that businesses, industries, and consumers affected, as well as trade associations and others who are interested, will be aware of the Commission's actions.

These preventive measures have proved to be effective deterrents to unfair and deceptive practices occurring throughout an entire industry. But deterrence is not the only function of Trade Regulation Rules. Recent legislation authorizes the Commission to sue for civil penalties and to obtain redress, including damages, for violation of such rules.

When law violations are isolated rather than industry-wide, the FTC exercises its corrective responsibility also by issuing complaints and entering orders to halt false advertising or fraudulent selling or to prevent a businessman or corporation from using unfair tactics against competitors. The Commission itself has no authority to imprison or fine. However, if one of its final cease and desist orders or Trade Regulation Rules is violated, it can seek civil penalties in Federal court of up to $10,000 a day for each violation. It can also seek redress for those who have been harmed by unfair or deceptive acts or practices. Redress may include cancellation or reformation of contracts, refunds of money, return of property, and payment of damage.

Of all the federal agencies, the FTC has the broadest authority over domestic business practices. It is guide and counselor to that vast majority of American businessmen and corporations who want to operate within the law; it challenges, and eliminates or corrects, business practices that are against the law. For consumers the Commission and its regional offices offer convenient reference points where complaints may be registered and information obtained on matters within FTC jurisdiction.

ORIGINS AND DEVELOPMENT

During the 1800's, businesses in the United States began consolidating into huge combines or trusts. These mammoth businesses operated under single ownerships and could often overwhelm their competitors.

As a deterrent to this abuse of economic power, the Sherman Antitrust Act was passed in 1890. It was soon apparent, however, that additional legislation was needed to curb industrial concentration.

The misuse of economic power by the trusts made nationwide newspaper headlines, aroused the public's wrath, and became an issue in the Presidential campaign of 1912.

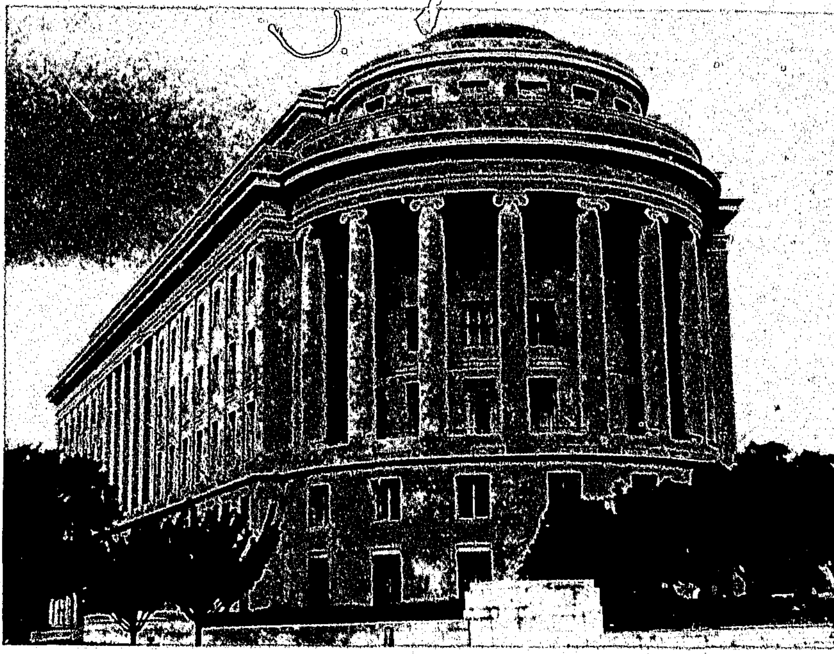
Three candidates were running for the Presidency — Republican William Howard Taft, trying for re-election; Progressive candidate Theodore Roosevelt; and Democrat Woodrow Wilson. All three agreed something had to be done about the trusts.

Wilson was elected and was sworn into office March 3, 1913. On December 2, 1913, in his State of the Union Message to Congress, he called for new antitrust legislation. His call set the course for creation of the Federal Trade Commission.

In 1914, Congress, after much debate, enacted not one, but two laws to combat economic abuses.

The first was the Federal Trade Commission Act, passed September 26, 1914. The new law summarized its own purpose in a ten-word statement:

"Unfair methods of competition in commerce are hereby declared unlawful."



The Federal Trade Commission headquarters building in Washington, D.C., is situated at the apex of the "Federal Triangle" — six blocks west of the Capitol.

But Congress did not attempt to define with precision "unfair methods of competition." It left this task to the FTC and to the courts, giving them broad power to determine what specifically constituted an unfair practice.

The second 1914 law was the Clayton Act, signed by President Wilson on October 15. Its provisions cover activities of corporations, such as mergers, that tend to lessen competition or to create a monopoly. The Clayton Act was Congress' response to the widespread demand for a specific antitrust statute that would leave no doubt that certain practices were prohibited.

Created by the FTC Act, the Federal Trade Commission began operating March 15, 1915, when the first five Commissioners were sworn into office. Congress had also directed that the existing Bureau of Corporations (whose duties were to observe and report U.S. corporate activity) be made part of the FTC. The personnel of this bureau, now the FTC's Bureau of Economics, formed the original FTC staff.

In 1936 the Robinson-Patman Act was passed to amend and strengthen the Clayton Act. This new act was based on the theory that, to compete on the same footing, merchants should be able to buy their goods at the same price from the same supplier.

It was apparent that if, because of high-volume purchases, a large business could obtain price cuts not available to a smaller competitor, the small seller might not be able to compete successfully – might even be forced out of business.

According to Congressman Wright Patman, co-author of the act, "it was designed...to protect the independent merchant, the public whom he serves, and the manufacturer from whom he buys, from exploitation by his chain competitor."

In 1938 Congress passed the Wheeler-Lea Amendment to the FTC Act which declared illegal, in addition to unfair methods of competition:

"Unfair or deceptive acts or practices in commerce."

Under this new authority, the FTC could proceed in situations where consumers were being deceived or treated unfairly, without also showing adverse effects on competition. The Wheeler-Lea Amendment was the first express statement by Congress of the need for direct protection of consumers. This authority was reaffirmed by the Supreme Court in 1972.

Over the years, the FTC was given additional legal responsibilities in various fields. Its authority and powers today are drawn primarily from these statutes:

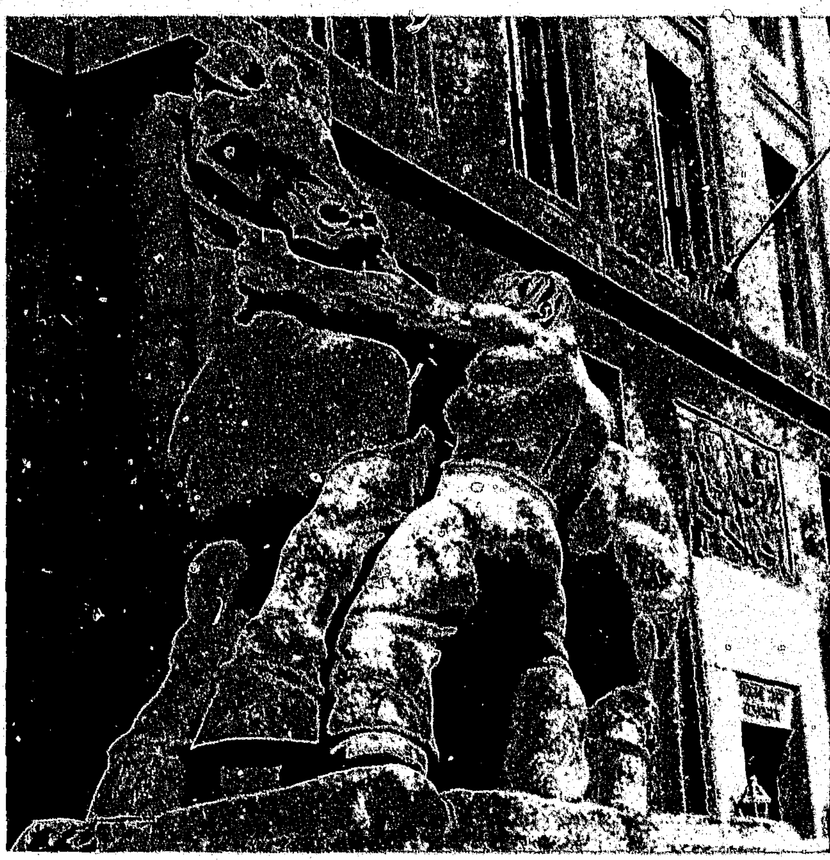
Federal Trade Commission Act, approved September 26, 1914: the act, as amended, declares unfair methods of competition and unfair or deceptive acts or practices in commerce to be unlawful.

Clayton Act, approved October 15, 1914: the act forbids mergers or acquisitions that might substantially lessen competition or tend to create a monopoly.

Webb-Pomerene Export Trade Act, approved April 10, 1918: an act to promote export trade by permitting certain cooperative activity.

Wool Products Labeling Act of 1939, approved October 14, 1940: the act protects producers, manufacturers, distributors, and consumers from undisclosed substitutes and mixtures in spun, woven, knitted, felted, or other types of manufactured wool products.

Lanham Trade Mark Act, approved July 5, 1946: the act requires registration and protection of trademarks used in commerce and implements the provisions of certain international conventions.



The FTC's man-and-horse statues, which flank the eastern end of the Commission building, have been seen by millions of passersby since they were erected in 1942.

Fur Products Labeling Act, approved August 8, 1951: the act protects consumers and others against misbranding, false advertising, and false invoicing of furs and fur products.

Textile Fiber Products Identification Act, approved September 2, 1958: the act protects producers and consumers against misbranding and false advertising of the fiber content of textile fiber products.

Fair Packaging and Labeling Act, approved November 3, 1966: the act prevents unfair or deceptive packaging or labeling of certain consumer commodities.

Truth in Lending Act, approved July 1, 1969: the act requires full disclosure of related credit terms before a consumer credit account is opened or a credit transaction is completed. The act requires that, if any of certain credit terms are specified in advertising, others must be also. An amendment to the act limits the liability for unauthorized use of any credit card to $50 on cards issued on or before January 25, 1971, and no liability on cards issued after that time unless the credit card issuer takes several steps such as: notifying the card holder of limited liability, providing a postage free means of notification of loss, and providing a means of identification such as signature, thumb print, or photograph.

Fair Credit Reporting Act, approved October 26, 1970: the act is designed to ensure that a consumer's credit report will contain only accurate, relevant and recent information and will be confidential unless requested for an appropriate reason by a proper party.

Magnuson-Moss Warranty — Federal Trade Commission Improvement Act, approved January 4, 1975: the act expands the Commission's authority to represent itself in court (including the Supreme Court), to promulgate substantive Trade Regulation Rules in the consumer protection area, to obtain civil penalties and consumer redress for violations of the Federal Trade Commission Act, and to pursue any unlawful act "affecting commerce" rather than only those acts defined as "in commerce."

Fair Credit Billing Act, became law October 28, 1975. The act is designed to provide consumers with an opportunity to dispute errors in billing statements and to require creditors to make efforts to correct such errors.

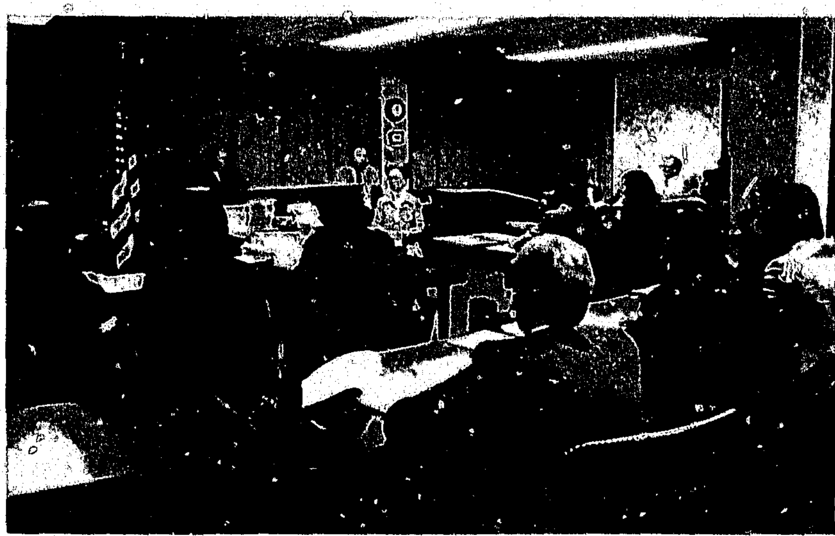
Equal Credit Opportunity Act, became law October 28, 1975. The act is designed to ensure that consumers are not denied credit for reasons of sex, marital status, age, race, religion or national origin.

The Commission's administrative duties are many and varied under these statutes, but the policy underlying all of them is the same:

> to prevent the free enterprise system from being stifled or fettered by monopoly or anticompetitive practices and to protect consumers from unfair or deceptive trade practices.

COMMISSIONERS

Each of the FTC's five Commissioners is appointed for a term of seven years by the President of the United States, with the advice and consent of the U.S. Senate. The President designates one of the Commissioners as Chairman.



When a respondent contests a Commission complaint, the matter is tried in a public hearing before an Administrative Law Judge of the FTC.

Not more than three Commissioners may be members of the same party. Their terms are staggered to assure continuity of experience in judgment of cases and, according to Congressional intent, to keep the Commission nonpartisan.

The Chairman has responsibility for the management-personnel aspects of the Commission's operations. The full Commission, however, must act on all matters involving development and implementation of FTC law enforcement policies, including, e.g., approval of the budget.

All staff appointments are made by the Chairman. But a number of major appointments – Director of Public Information, Executive Director, General Counsel, Chief Administrative Law Judge, Secretary, Director of Policy Planning and Evaluation, and Directors of the Bureaus of Competition, Consumer Protection, and Economics – must also be approved by the full Commission.

BUREAU OF COMPETITION

This Bureau is responsible for enforcing the antitrust laws. It investigates and, when necessary, litigates matters arising under the Clayton Act and restraint of trade matters under Section 5 of the Federal Trade Commission

Act. It also administers the Export Trade Act. In order to encourage voluntary compliance with the law, it offers industry guidance and small business counseling.

Many of the Commission's antitrust activities may seem remote and complex to the layman. They are fundamental, however, to ensure competition, quality products and services, and fair prices.

In addition to the Bureau's law enforcement personnel, three specialized divisions are individually staffed:

The Accounting Division performs accounting services connected with the investigation and litigation of the Bureau's cases. It also does accounting work for the Bureau of Economics.

The Compliance Division is responsible for securing compliance with all final orders the Commission issues to protect and maintain competition. When the orders require companies to divest themselves of certain stock, assets, or both, the division oversees the divestitures. It also reviews prospective purchasers of the stock or assets when Commission approval of the purchasers appears necessary to protect free and fair competition.

When a Commission order in an antitrust matter is violated, the division sees that civil penalty proceedings are initiated. Actions in civil penalty cases are undertaken either by the staff of the Compliance Division or by the Department of Justice on the Commission's behalf. The division also helps develop Advisory Opinions involving compliance with orders issued in Bureau of Competition cases.

The Litigation Support Division implements, manages and operates automated information management systems and associated facilities in support of the litigation activities of the Bureau.

Working closely with the Antitrust Division of the Department of Justice, the Bureau seeks to discover and remedy anticompetitive practices and to eliminate unreasonable or unfair restraints of trade resulting from illegal business methods.

Sometimes only a clarification of the law is needed. With practices or "standard operating procedures" that have developed within an industry, for instance, it may not be clear to members of the industry how some of these methods should be viewed under antitrust or trade laws. One of the Bureau of Competition's tasks is to determine the need for industry guidance on antitrust matters. It then must develop the best ways of giving this guidance.

Publications rack near main entrance to headquarters building provides public easy access to consumer publications of the Federal Trade Commission.

The right to go into business for one's self is basic to our free enterprise system. Small business problems, consequently, receive attention within the Bureau of Competition. Staff attorneys advise and assist small businessmen under the Commission's antitrust jurisdiction.

Vital to antitrust law enforcement is the principle of maintaining a clear overview of business in general while dealing with individual violations. Problems affecting entire markets or industries may be more critical than are individual, isolated violations. Failure to cope with industry-wide problems on an industry-wide basis, as well as failure to consider the long-term consequences of certain business practices, can produce enforcement policy that is misdirected and ineffective. In its enforcement work, consequently, the Bureau of Competition places major emphasis on reviewing and acting against industry-wide situations that may prompt anticompetitive practices.

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To ensure that the Bureau's work is effective and that priorities are properly set, six assistant directors share responsibility for industry-wide matters and oversee specialized areas such as special projects involving certain types of business practices; development of industry guidance measures, as well as enforcement of existing rules and Industry Guides; consideration of small business problems; and general enforcement and litigation.

The Bureau also is responsible for coordination and review of the antitrust activities of the Commission's regional offices.

To coordinate these activities, the Director of the Bureau of Competition looks to his Assistant Director for Evaluation, who assigns staff to conduct them, designates assistant directors' project responsibilities, and determines workloads and work completion schedules. The Bureau's evaluation office is also responsible for review of congressional correspondence on antitrust matters, and for preparation of Bureau comments on legislative proposals affecting the enforcement work of the Bureau.

Investigations are initiated by a Merger Screening Committee, comprised of representatives from the Bureaus of Competition and Economics, which determines which investigations should be initiated in merger matters; or, by an Evaluation Committee, comprised of representatives from the Bureaus of Competition and Economics, for all other matters.

The fact that a full range of activity – industry guidance to case-by-case enforcement action – is handled within the Bureau gives the Commission flexibility, enabling it to use the procedures that can best ensure compliance with the law.

Antimonopoly cases may involve violations of the FTC Act, the Clayton Act, or both. The FTC Act is broad enough to cover any monopolistic practice not specifically covered by the Clayton Act and encompasses violations of the civil provisions of the Sherman Act. The Clayton Act is also enforced by the Department of Justice, and the two agencies maintain close liaison to prevent duplication of effort.

The following are among practices the Commission has attacked as violations of Section 5 of the FTC Act prohibiting "unfair methods of competition in commerce:"

- Combinations or agreements among firms to raise or otherwise control prices, exclude competitors, tamper with price structure, divide sales territories, or curtail competitors' sources of supply.

- Restrictions by a seller of the freedom of independent customers to purchase competing products.

- Boycotts or combinations to force sellers into giving preferred treatment to some customers over their competitors.

- Agreements among competitors to restrict exports or imports.

- Conscious receipt by a customer from his supplier of discriminatory allowances or unlawful payments.

- Secret bribery of a customer's buyers or other employees.

- Bans on the advertising of competitive fees by professional associations, and other exclusionary practices of such associations.

Many other practices, of course, have been challenged under the act. The likelihood that in the future still others will be construed as violations was the principal reason Congress did not make the law more specific. It believed the FTC would be in the best position to evaluate questionable business activities and to identify those that injure legitimate businesses or infringe on the public interest.

Through passage of the Clayton Act, Congress chose to stop specific anticompetitive practices such as price discrimination that illegally favors one customer over another, exclusive dealing agreements and tying contracts, anticompetitive joint ventures, mergers of corporations where the probable effect would be substantially to lessen competition or to tend to create a monopoly, and interlocking directorates of competing corporations.

Experience, however, proved the need to tighten the law further. For this reason, Section 2 of the act was amended and strengthened by the Robinson-Patman Act outlawing discriminatory price concessions.

Section 7 of the Clayton Act was also strengthened. Originally it prohibited only anticompetitive mergers made through stock acquisitions. The Celler-Kefauver Act, passed in 1950, amended this provision to cover acquisitions of assets as well as stock, where the effect of the acquisition or merger might be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

BUREAU OF CONSUMER PROTECTION

The Bureau of Consumer Protection investigates and litigates cases involving acts or practices alleged to be deceptive or unfair to consumers. It guides and counsels businessmen, consumers, and federal, state, and local officials to promote understanding of and encourage compliance with trade laws. The Bureau also develops and administers a nationwide education program to alert the public to deceptive trade practices and to the role a citizen can play in correcting them. Its Special Assistant for Education maintains close communication with consumers, attorneys, and businessmen to explain the scope and impact of FTC initiatives in the consumer protection field.

Specialized divisions carry out the Bureau's many functions through both case-by-case enforcement and development of Trade Regulation Rules.

The Compliance Division is responsible for obtaining and maintaining compliance with Trade Regulation Rules and all cease and desist orders prohibiting false and deceptive trade practices under Sections 5 and 12 of the FTC Act, the Wool Products Labeling Act, the Fur Products Labeling Act, the Textile Fiber Products Identification Act and other statutes for which the FTC has enforcement responsibilities. Regional offices handle the compliance aspects of the cases initiated in their offices.

The Marketing Practices Division is responsible for enforcement of the FTC Act with respect to deceptive or unfair marketing practices which are national in scope.

The National Advertising Division is responsible for enforcing those provisions of the FTC Act which forbid misrepresentation and unfairness in national advertising, particularly food, drug and cosmetic advertising. It is also responsible for reporting under the Public Health Cigarette Smoking Act of 1969.

The Federal Trade Commission library is used by staff members in the preparation of cases and is available to outside attorneys and others.

The Special Projects Division has primary responsibility for developing and implementing the "unfairness" doctrine announced in 1972 by the Supreme Court in the *Sperry and Hutchinson* decision to combat a broad spectrum of abusive practices.

The Special Statutes Division undertakes special non-litigative assignments from the Commission or the Director of the Bureau of Consumer Protection. The division also enforces the Fair Packaging and Labeling Act, the Truth in Lending Act, and the Fair Credit Reporting Act. Additionally, the division has enforcement responsibility for the Wool Products Labeling Act, the Textile Fiber Products Identification Act, the Fur Products Labeling Act, and all other special legislation within the Commission's jurisdiction. It has specific responsibility for developing rules relating to warranties.

The Evaluation Division is responsible for advising the Bureau Director and the Commission on how resources should be allocated to most effectively remedy consumer losses. Existing enforcement and rulemaking programs are monitored by an Evaluation Committee, comprised of representatives from the Bureaus of Consumer Protection and Economics and the Office of Policy Planning and Evaluation. Division staff also develop new programs and analyze the economic impact of past programs.

The Commission believes many violations result from ignorance and that compliance with the statutes the FTC administers may often be obtained by the implementation of Industry Guides and Trade Regulation Rules. Although responsibility for developing rules lies within all the Bureau's operating divisions, a Special Assistant for Rulemaking and his staff are responsible for conducting rulemaking hearings and for developing guides.

A Trade Regulation Rule may be nationwide in scope or it may be limited to certain markets or geographic areas. Once effective, a rule has the force of law; a violation of a rule is considered to be a violation of the FTC Act. Therefore, before adopting a rule concerning a particular business, industry, practice, product, or service, all interested persons are given an opportunity to express to the Commission their views on the rule as proposed. (See Appendix C)

When adopted, after a careful consideration of all these views, a rule represents the Commission's final conclusions about the legality of the practices in question, and the Commission may rely on it to resolve any future issue to which the rule is relevant, after the business or corporation involved has had a fair hearing on whether the rule is legally applicable to the particular facts at issue.

Guides are intended to clarify legal approaches to such single-industry concerns as cigarette advertising, tire advertising, and shoe labeling. Other guides may discuss illegalities such as deceptive pricing, bait advertising and other violations of the law. Not only do the guides alert the industries involved, but they also educate consumers and protect them from being victimized by improper sales practices.

BUREAU OF ECONOMICS

This Bureau aids and advises the Commission on the economic aspects of its activities and prepares economic reports and surveys. The Bureau has three divisions:

The Division of Economic Evidence works with the Bureaus of Competition and Consumer Protection in investigating and evaluating possible law violations and developing the economic logic of cases entering litigation.

The Division of Industry Analysis conducts economic studies of individual industries and trade practices along with broad cross-industry comparisons. The information thus assembled supports decision-making by both the Commission and Congress.

The Division of Financial Statistics collects, analyzes, and consolidates financial data from a cross section of U.S. corporations. Aggregated statistics from its surveys are published in quarterly financial reports covering manufacturing, mining, retailing, and wholesaling corporations and in the newly-established annual Line of Business report series.

OFFICE OF EXECUTIVE DIRECTOR

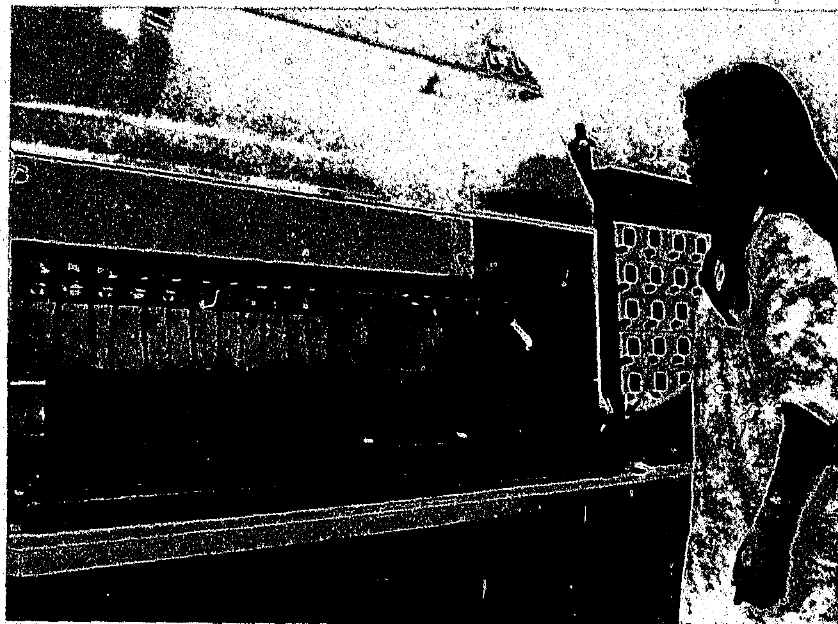
Under the direction of the Chairman, the Executive Director is the Commission's chief operating officer. He exercises executive and administrative supervision over all FTC offices, bureaus, and staff members, focusing on overall program formulation and execution. He implements Commission policy throughout the staff, coordinating, where necessary, the related activities of the bureaus and offices, and is responsible for the Commission's financial management.

OFFICE OF POLICY PLANNING AND EVALUATION

The purpose of this office is to assist the Commission in determining where and how Commission resources should be used to serve the public interest.

Working closely with the Office of the Executive Director and with the law enforcement bureaus, the office performs three functions.

First, it evaluates the Commission's programs twice each year, offering advice on the amount of consumer benefit that may be expected from each. At the same time, it suggests new programs to yield large consumer benefits. Second, in coordination with the law enforcement staff, it develops questions to elicit the information needed by the Commission to assess where the public's interest lies in a given matter. Finally, using quantitative techniques, it evaluates the impact of past Commission actions on consumer welfare.



The FTC began testing cigarettes for tar and nicotine content in 1967 at the request of Congressional leaders and others. Results are published twice yearly.

OFFICE OF ADMINISTRATIVE LAW JUDGES

Administrative Law Judges are officials to whom the Commission delegates the initial fact-finding procedures in an adjudicative case. The judges are guided in their work by Commission decisions, policy directives, and the FTC Rules of Practice.

From the time the Commission issues a complaint until a judge in charge hands down his initial decision, the Office of Administrative Law Judges is in charge of the case. An Administrative Law Judge is like a court judge. He conducts trials and reviews evidence in the form of documents and testimony of witnesses. All FTC Administrative Law Judges serve under the authority and with the approval of the Civil Service Commission, and hold tenure similar to that of federal court judges.

OFFICE OF GENERAL COUNSEL

The General Counsel is the Commission's chief law officer and advisor. He represents the FTC in federal courts; advises the Commission on questions of law and policy, including legislative matters; coördinates all liaison activities with other federal agencies and Congress; and is responsible for developing the Commission's position on legislative proposals and presenting those positions to Congress.

The General Counsel's Office has three sections:

Legal Counsel. This section provides advice to the Commission regarding general and specific questions of law and policy. The section assists in drafting, revising and interpreting Commission rules and procedures. It advises the Commission on appeals from denials of access to Commission files under the Freedom of Information Act and on compliance with the Privacy Act. It administers the Commission's advisory opinion program, described below. The section also provides advice to the bureaus and other offices of the Commission.

Legislation. This section prepares comments on legislative proposals and assists in preparing and coordinating testimony for presentation at Congressional hearings. The section monitors Congressional activity of interest to the Commission and is responsible for general liaison with Congress.

Litigation. Lawyers in this section represent the Commission in all federal court proceedings except compliance matters. The section handles all appeals from Commission final orders in the United States Courts of Appeals and represents the Commission in actions challenging Trade Regulation Rules. It represents the Commission in a variety of collateral actions such as enforcement of Commission subpoenas and orders to file special reports, injunctions, and review of Commission determinations under the Freedom of Information Act. Although the General Counsel represents the Commission on his own in most instances, in certain collateral actions and in matters that reach the Supreme Court, the General Counsel works in conjunction with the Department of Justice, except in those instances in which the Department determines not to participate.

Advisory Opinions.

The General Counsel's office also has responsibility for preparing advisory opinions.

The FTC established the advisory opinion procedures to enable businessmen to learn, before implementing a practice, whether the practice might violate the laws the FTC administers. To obtain an advisory opinion, the requestor must submit complete information on the proposed action to the Secretary of the Commission. If a business practice is formally approved by the Commission, the Commission will not initiate enforcement action against the requestor for engaging in that practice without advance notice and the opportunity to change the practice.

OFFICE OF SECRETARY

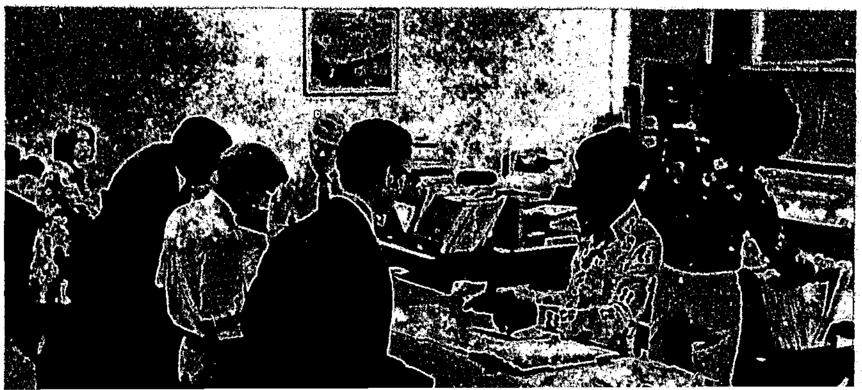
The Secretary is responsible for the minutes of Commission meetings, and he is custodian of the Commission's seal, papers, and records, including all legal and public records. He signs all Commission orders, and he is responsible for handling requests from the public arising under the Freedom of Information and Privacy Acts.

OFFICE OF PUBLIC INFORMATION

The premise underlying the Commission's public information program is the public's right to know what the FTC is doing. The Office has three general responsibilities: (1) to inform the general public about the Commission's law enforcement actions (this is done primarily through the issuance of news releases and the publication of a weekly calendar and a weekly News Summary); (2) to advise the Commission on public information policy; and (3) to guide and coordinate the public information programs of the FTC regional offices.

* * *

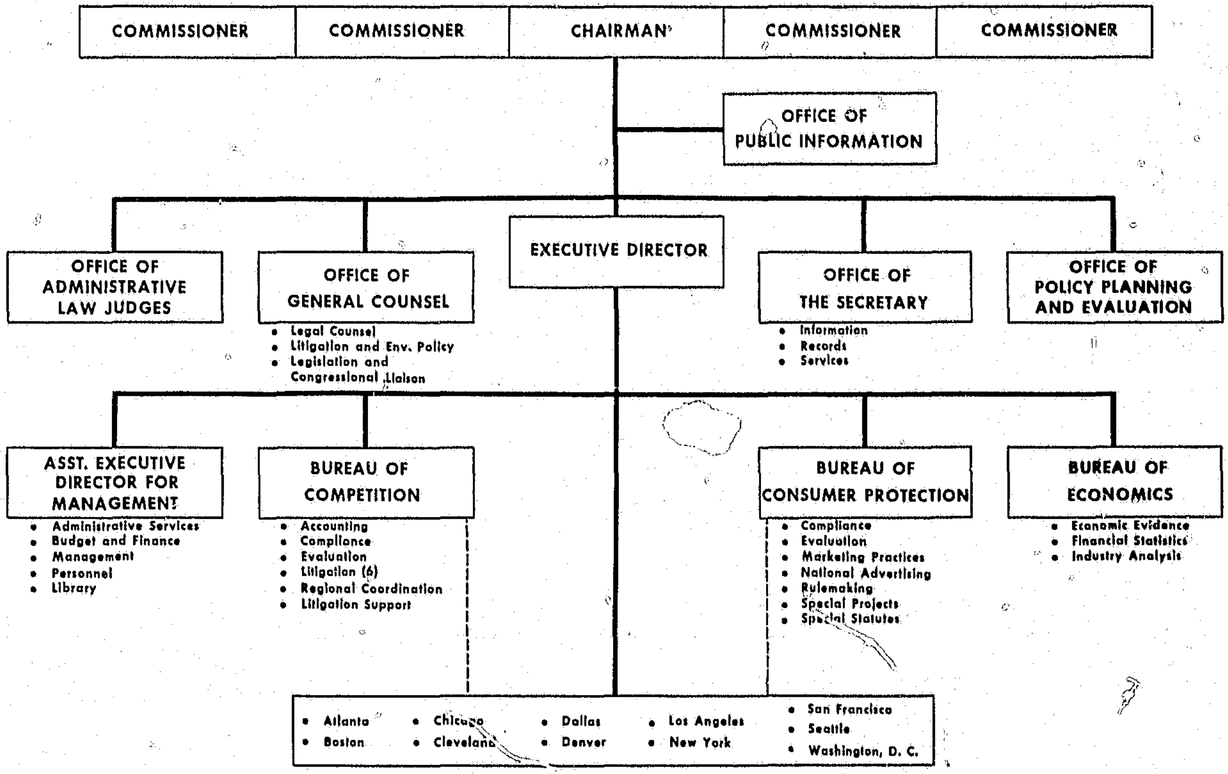
Citizens may inspect public documents in the Public Reference Branch, Room 130, in the Washington, D.C., headquarters of the Federal Trade Commission.



In 1974, the Commission adopted policies designed to open Commission activities to increased scrutiny by the public. Under these policies:

- Individual votes of the Commissioners are released on a far larger range of official actions of the Commission than was previously done.
- News releases announce investigations that cover an entire industry or involve practices that pose substantial risks to public health or safety.
- When investigations of individual firms are closed, that fact is disclosed by placing on the public record the closing letter sent to the party under investigation.
- Analyses of consent orders are now available to give the public a better understanding of the order's terms, and the period for public comment on settlements has been extended to 60 days.
- A more rapid method of handling requests for access under the Freedom of Information and Privacy Acts has been instituted.
- Internal staff memoranda will normally be disclosed to the public after a file has been closed for three years; and nearly all internal documents in closed files will be released after 10 years unless some specific reason makes disclosure contrary to the public interest.
- Staff members of the Commission are required to keep records of all outside contacts relating to pending investigations or cases, with these records becoming part of the public record when the case files become public. Also, each Commissioner maintains a log of all outside contacts relating to pending investigations or cases.
- Meetings between the Commission, as a body, and outside (non-government) groups, where the planned or expected discussion will deal with the Commission's official duties, are open to the public unless the Commission by a vote of its members determines that such a meeting must be closed because a statute or regulation prevents the disclosure of certain information or the public interest otherwise requires such closing.

FEDERAL TRADE COMMISSION



Appendix B

TYPICAL FTC CASE FLOW

How does a case start at the Federal Trade Commission? What happens to it along the way? Where does it end?

Formal FTC complaints develop from Commission investigations. The investigations may be initiated by the Commission or they may arise from letters sent to the FTC by businessmen or consumers citing alleged illegal practices. These letters are called "applications for complaints" to distinguish them from formal complaints brought by the Commission.

Applications for complaints also come from members of Congress, other federal, state, and local government agencies, and trade associations.

Each application is reviewed to determine whether the practice questioned involves interstate commerce, or may affect interstate commerce, the public interest, and violation of a law administered by the FTC.

If it does, an investigation is begun. This may start with correspondence from the Commission requiring the business concerned to file a special report, or with a request of a subpoena for information by the staff of a bureau or regional office.

From the information obtained during the investigation, the decision is made (1) to close the case (for lack of public interest, or failure to find that a violation has occurred), or (2) to issue a complaint, along with a proposed cease and desist order (see Appendix E, page 25, for brief definition of various FTC actions).

Cases can also be settled by consent order, a formal document signed by the businessman or company involved certifying that the challenged practices will be corrected or discontinued. The public has the opportunity to comment on a proposed consent order and the Commission takes these comments into consideration before the order is finally issued. Violations of consent orders can result in assessment of civil penalties.

Cases which are not settled are litigated before an FTC Administrative Law Judge. Following hearings, either the respondent or the Commission's complaint counsel can appeal the judge's initial decision to the five Commissioners.

The Commission hears the argument and announces its decision: to issue a cease and desist order or to dismiss some or all of the charges.

If the Administrative Law Judge's initial decision is not appealed, it may be adopted — with or without modifications — by the Commission. FTC staff cannot appeal an adverse decision by the Commission.

If a cease and desist order is issued, the respondent has 60 days to appeal the Commission's decision to a U.S. Court of Appeals. Either side may ultimately appeal to the United States Supreme Court.

TYPICAL FTC TRADE REGULATION RULE FLOW

An FTC Trade Regulation Rule is a statement of general or particular applicability which defines unfair or deceptive acts or practices within the meaning of Section 5 of the Federal Trade Commission Act. FTC Trade Regulation Rule proceedings are commenced by the Commission either upon its own initiative or in response to a written petition by any interested person stating reasonable grounds.

An investigation takes place prior to the formal commencement of the proceeding to determine whether such action is warranted. Once a determination to propose a rule has been made, a presiding officer is appointed to conduct the public proceedings.

Formal commencement begins with publication in the *Federal Register* of an initial notice of proposed rulemaking. This notice includes the substance of the proposed rule or a description of the issues involved, the legal authority for the proposed rule, the particular reason for it, and an invitation to interested persons to propose specific issues and to comment on the proposed rule.

After sufficient time for receiving comments and proposed issues from interested persons, the presiding officer publishes a final notice in the *Federal Register*. This indicates the designated issues upon which limited cross-examination may be permitted, the time and place of informal hearings, and instructions for those wishing to appear at the hearings.

Informal hearings are then held to receive the views of interested persons. After the hearings have been completed, the presiding officer prepares a summary of the record and initial findings and conclusions with regard to those issues designated by the presiding officer and such other findings and conclusions as he sees fit. The FTC staff then prepares a report containing its recommendations based upon the rulemaking record, taking into account the presiding officer's findings. Both of these reports are placed on the public record for 60 days for public comment.

Next, the Commission reviews the rulemaking record, including the reports of the presiding officer and the staff. The Commission may issue, modify, or decline to issue the proposed rule. If it determines to issue a rule, it must adopt a Statement of Basis and Purpose to accompany the rule. The final rule is published in the *Federal Register*. Once a rule is promulgated, any interested person has 60 days to petition the appropriate U.S. Court of Appeals for judicial review of the rule.

Appendix D

FEDERAL TRADE COMMISSION

REGIONAL OFFICES*

Atlanta Regional Office: Federal Trade Commission, Room 1000, 1718 Peachtree St., N.W. Atlanta, Georgia 30309.

Boston Regional Office: Federal Trade Commission, Room 1301, 150 Causeway St., Boston, Massachusetts 02114.

Chicago Regional Office: Federal Trade Commission, Suite 1437, 55 East Monroe Street, Chicago, Illinois 60603.

Cleveland Regional Office: Federal Trade Commission, Room 1339, Anthony J. Celebrezze Federal Office Building, 1240 East 9th Street, Cleveland, Ohio 44199.

Dallas Regional Office: Federal Trade Commission, Suite 2665, 2001 Bryan Street, Dallas, Texas 75201.

Denver Regional Office: Federal Trade Commission, Suite 2900, 1405 Curtis Street, Denver, Colorado 80202.

Los Angeles Regional Office: Federal Trade Commission, Room 13209, Federal Building, 11000 Wilshire Boulevard, Los Angeles, California 90024.

New York Regional Office: Federal Trade Commission, 2243-EB, Federal Building, 26 Federal Plaza, New York, New York 10007.

San Francisco Regional Office: Federal Trade Commission, 450 Golden Gate Avenue, Box 36005, San Francisco, California 94102.

Field Station:

Federal Trade Commission, Room 605, Melim Building, 333 Queen Street, Honolulu, Hawaii 98613.

Seattle Regional Office: Federal Trade Commission, 28th Floor, Federal Building, 915 Second Avenue, Seattle, Washington 98174.

Washington, D.C. Regional Office: Federal Trade Commission, 6th Floor, Gelman Building, 2120 L Street, N.W., Washington, D.C. 20037.

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* Each of the regional offices is supervised by a Regional Director, who is available for conferences with attorneys, consumers, and other members of the public on matters relating to the Commission's activities.

Appendix E

A BRIEF FTC LEXICON

GENERAL PROCEDURES FOR INDUSTRY GUIDANCE

Advisory Opinions

Commission advice, in response to a request by an individual or company, concerning the legality of a course of action proposed by the individual or company.

Industry Guides

Administrative interpretations by the Commission intended to show the public how business may be conducted in a manner that conforms with the laws the Commission administers.

Trade Regulation Rules

Rules and regulations that implement the substantive requirements of statutes administered by the Commission. They have the force and effect of law.

INVESTIGATIONS

Initiation

Investigations may be opened by the Commission on its own initiative or in response to the request of an individual, when it is determined to be in the public interest.

Subpoenas

The Commission, during an investigation, may issue orders and subpoenas requiring persons to testify and/or to produce documents or information. The person under order or subpoena is allowed 10 days to file his opposition.

Hearings and Depositions

The Commission may hold investigational hearings and may order depositions, which are usually nonpublic.

REMEDIES

Assurance of Voluntary Compliance (Non-Adjudicative)

If the Commission believes the public interest will be fully safeguarded, it may dispose of a matter under investigation by accepting a promise that the questioned practice will be discontinued. A number of factors are considered by the Commission in the rare cases in which it accepts such a promise, including (1) the nature and gravity of the practice in question, and (2) the prior record and good faith of the party.

Consent Order

Instead of litigating a complaint a respondent may execute an appropriate agreement containing an order for consideration by the Commission. If the agreement is accepted by the Commission, the order is placed on the public record for sixty (60) days during which time comments or views concerning the order may be filed by any interested persons. Upon receipt of such comments or views, the Commission may withdraw its acceptance and set the matter down for a formal proceeding, issue the complaint and order in accordance with the agreement, or take such action as it may consider appropriate. Respondents in consent orders do not admit violations of the law, but such orders have the same force and effect as adjudicative orders.

Adjudicative Order

An adjudicative order is based on evidence of record obtained during an adjudicative proceeding that starts when a complaint is issued. The proceeding is conducted before an Administrative Law Judge who serves as the initial trier of facts. After the hearings the judge within 90 days issues his initial decision, which is subject to review by the Commission on the motion of either party or on the Commission's own motion. Appeals from a final Commission decision and order may be made to any proper Court of Appeals and ultimately to the Supreme Court.

Preliminary Injunctions

The Federal Trade Commission has statutory authority to seek preliminary injunctive relief in Federal district court against anyone who is violating or about to violate any provision of law enforced by the FTC.

COMPLIANCE REPORTS

Requirements

At such times as the Commission or its rules may designate, a party subject to an adjudicative order or consent order must submit reports describing in detail the manner and form of its compliance with the order or assurance.

Penalties

Failure to report or to be in compliance with an order may result in civil penalties of $10,000 a day for each violation.

U.S. GOVERNMENT PRINTING OFFICE : 1977 O-225-554

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