

Federal Trade Commission  
Office of Inspector General



Evaluation of the Federal Trade  
Commission's Bureau of Economics

*OIG Evaluation Report No. 15-03*

June 30, 2015

## EXECUTIVE SUMMARY

The Federal Trade Commission (FTC) is an independent law enforcement agency, founded in 1914 with the passage of the Federal Trade Commission Act. The mission of the FTC is to protect consumers by preventing anticompetitive, deceptive, and unfair business practices; enhancing informed consumer choice and public understanding of the competitive process; and accomplishing this without unduly burdening legitimate business activity.

The enforcement and outreach objectives of the FTC are performed primarily by its three bureaus:

- **Bureau of Economics (BE)** – Performs research and analysis to determine economic impacts of FTC actions, as well as the impact of government regulation on competition and consumers.
- **Bureau of Consumer Protection (BCP)** – Enforces consumer protection laws enacted by Congress and trade regulation rules issued by the FTC.
- **Bureau of Competition (BC)** – Enforces antitrust laws to prevent anticompetitive mergers and other anticompetitive business practices.

While the BE collaborates with each of the other bureaus in support of investigations and litigation, each bureau provides independent recommendations regarding enforcement actions to agency leadership based on its sphere of expertise (i.e., economic analysis for the BE, legal analysis for the BCP and BC).

The FTC Office of Inspector General (OIG) performed an evaluation of the BE to determine whether it optimizes its resources to efficiently and effectively accomplish its mission. While the scope of this review was focused on the BE, the assessment included interviews and data gathering from stakeholders across the FTC, including the BC and BCP, to which the BE provides economic analyses and research support.

A key finding of this evaluation is that, although the BE stakeholders have a common understanding of its mission and processes, much of this knowledge is undocumented. In addition, it was found that incomplete or inconsistent communication may impede the BE's ability to effectively plan and coordinate with the BC and BCP.

The findings informed the identification of opportunities that, if implemented, could further improve the efficiency and effectiveness of the BE's strategies, policies, procedures, and coordination with stakeholders across the FTC. A full list of these recommendations is provided at the end of this report (Section IV).

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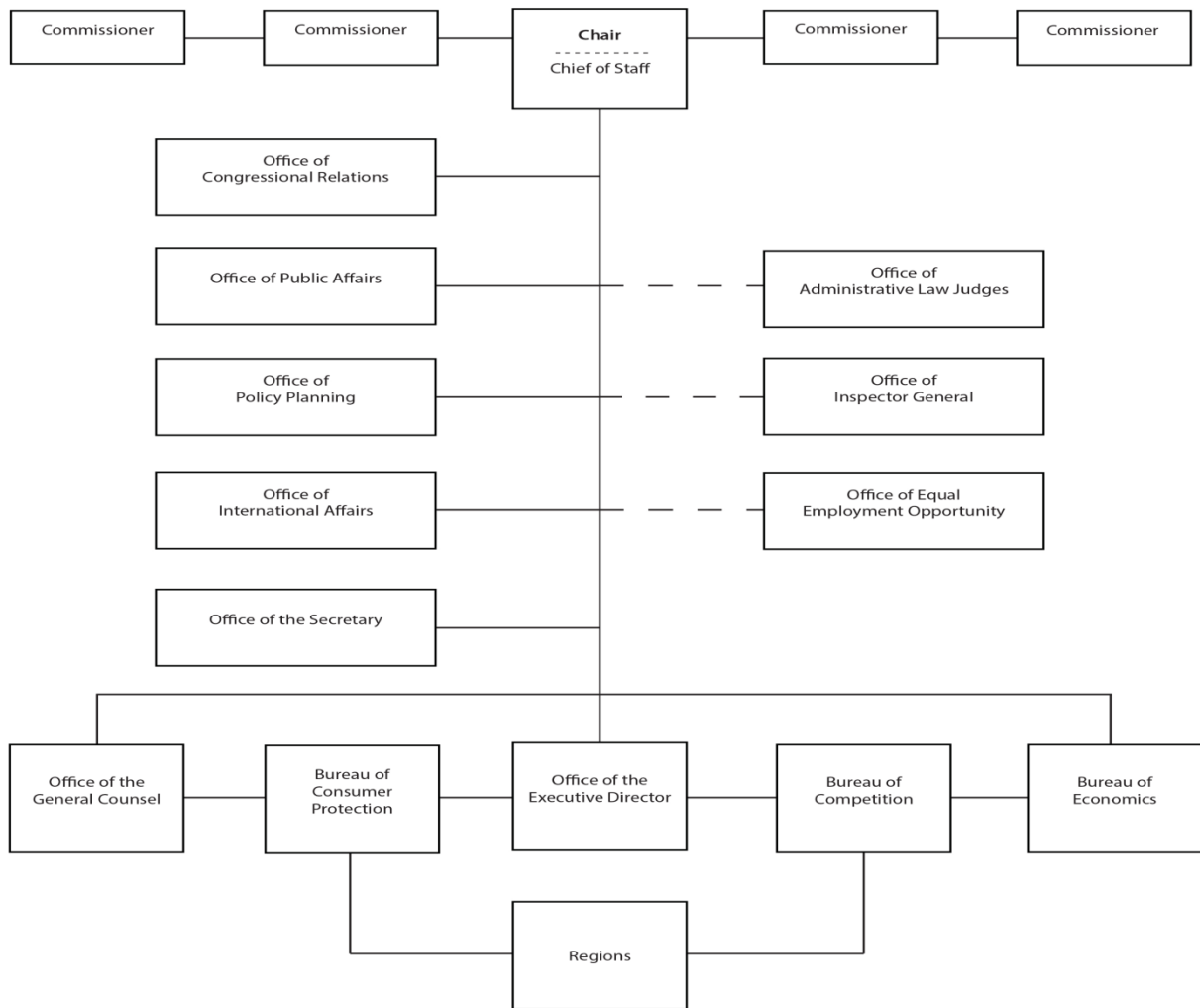
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## I. INTRODUCTION

The Federal Trade Commission (FTC) is an independent law enforcement agency, founded in 1914 with the passage of the Federal Trade Commission Act. The mission of the FTC is to protect consumers by preventing anticompetitive, deceptive, and unfair business practices; enhancing informed consumer choice and public understanding of the competitive process; and accomplishing this without unduly burdening legitimate business activity.

The FTC is led by a Commission of 5 members, each of whom is nominated by the President, approved by the Senate, and serves for a period of 7 years. The President chooses one commissioner to act as Chair. No more than three members may be from the same political party. Figure 1 provides the organizational structure of the FTC.

**Figure 1: FTC Organizational Chart**



The enforcement and outreach objectives of the FTC are performed primarily by its three bureaus, which provide recommendations to agency leadership:

- **Bureau of Economics (BE)** – Performs research and analysis to determine economic impacts of FTC actions, as well as the impact of government regulation on competition and consumers.
- **Bureau of Consumer Protection (BCP)** – Enforces consumer protection laws enacted by Congress and trade regulation rules issued by the FTC.
- **Bureau of Competition (BC)** – Enforces antitrust laws to prevent anticompetitive mergers and other anticompetitive business practices.

This evaluation focuses on the performance of the BE and examines the relationship and dynamics between the BE and the other bureaus.

#### A. Purpose of this Evaluation and Report

The Office of Inspector General (OIG) within the FTC evaluates the overall effectiveness and efficiency of FTC operations in delivering on its core mission. The purpose of this evaluation is to determine the BE's performance of core mission execution and strategic support among its programs, processes, and coordination functions in accordance with established agency policies and procedures. Additionally, this evaluation examined whether the BE optimizes its resources to efficiently and effectively accomplish its mission.

#### B. Scope

The scope of this evaluation was to assess how effectively the BE is performing its mission. The OIG established a list of evaluation objectives that touch on one or more analysis areas as demonstrated in Figure 2. These analysis areas guided the data gathering and evaluation approach, described in greater detail in section C below.

**Figure 2: Analysis Areas for BE Evaluation**

Evaluation Objective	Analysis Area							
	Strategic Planning	Measures & Reporting	Organizational Design	Products & Services	Workload Management	Program & Resource Management	Stakeholder Feedback	Coordination across Bureaus
Determine effectiveness of BE strategies, goals, policies, and procedures	✓		✓			✓		
Determine whether the BE should conduct more trend analysis on emerging issues that feed the planning process for the BCP and BC				✓				✓
Evaluate the manpower required to perform BE missions and the proper alignment and allocation of all resources			✓	✓	✓			
Quantify the BE's impact on consumers		✓						
Evaluate how the BE assesses the value added/return on investment of its divisions		✓						
Determine effectiveness of the BE's support for and coordination with the BCP, BC, and other stakeholders				✓			✓	✓
Evaluate the effect of BE procedures on the BCP's and BC's planning processes				✓				✓
Determine effectiveness of the BE's use of cost data and ability to determine how much it costs to provide certain economic analyses						✓		
Compare BE practices to best practices in at least three other organizations with similar missions	✓		✓	✓	✓			

### C. Methodology

This evaluation was conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of Inspectors General on Integrity and Efficiency (CIGIE). The evaluation team gathered data through review of existing documents and processes and received feedback from stakeholder interviews.

#### 1. Analysis of Current Documents/Processes

For the first step of the evaluation, the team requested access to BE planning and process documents. The list of requested documents was based on leading industry standards guiding process and planning documentation for organizations. Available documents were reviewed to determine what processes exist, and additional documents were identified and obtained during stakeholder interviews.

## 2. Stakeholder Interviews

Following the review of documents provided by the BE, the evaluation team conducted interviews with key stakeholders from the BE, BC, BCP, Office of the Executive Director, and Office of the Chairwoman to obtain their input regarding the BE's structure, services, and processes and to fill remaining gaps in knowledge following the review of the documents. Interview questions were developed using the analysis areas described in Figure 2. In interviews participants with subject matter expertise (e.g., FTC-wide strategic planning) were asked more focused questions based on their knowledge base.

## II. OVERVIEW OF THE BUREAU OF ECONOMICS

The BE is composed of 110 full-time equivalent (FTE) employees (approximately 10% of the FTC workforce), who are organized into six divisions based on the functional area of support they provide. The majority of BE employees work in one of three divisions that provide economic analysis support for the BC and BCP, as follows:

- **Consumer Protection** (29 FTEs) – Supports all aspects of the FTC's consumer protection mission, including, but not limited to, case development and review, litigation support, development and review of rules and policies, research, and supporting public outreach.
- **Antitrust I** (31 FTEs) – Supports the FTC's competition mission, including, but not limited to, case development and review, litigation support, development and review of rules and policies, and research.
- **Antitrust II** (30 FTEs) – Provides the same support as Antitrust I, but is separated into another division for better management and oversight due to the large size of the antitrust economist staff.

The Antitrust I, Antitrust II, and Consumer Protection Divisions are staffed based on the relative demand for economic services supporting each of the missions. Currently, the number of antitrust economists and research analysts (collectively) is roughly twice the size of consumer protection resources.

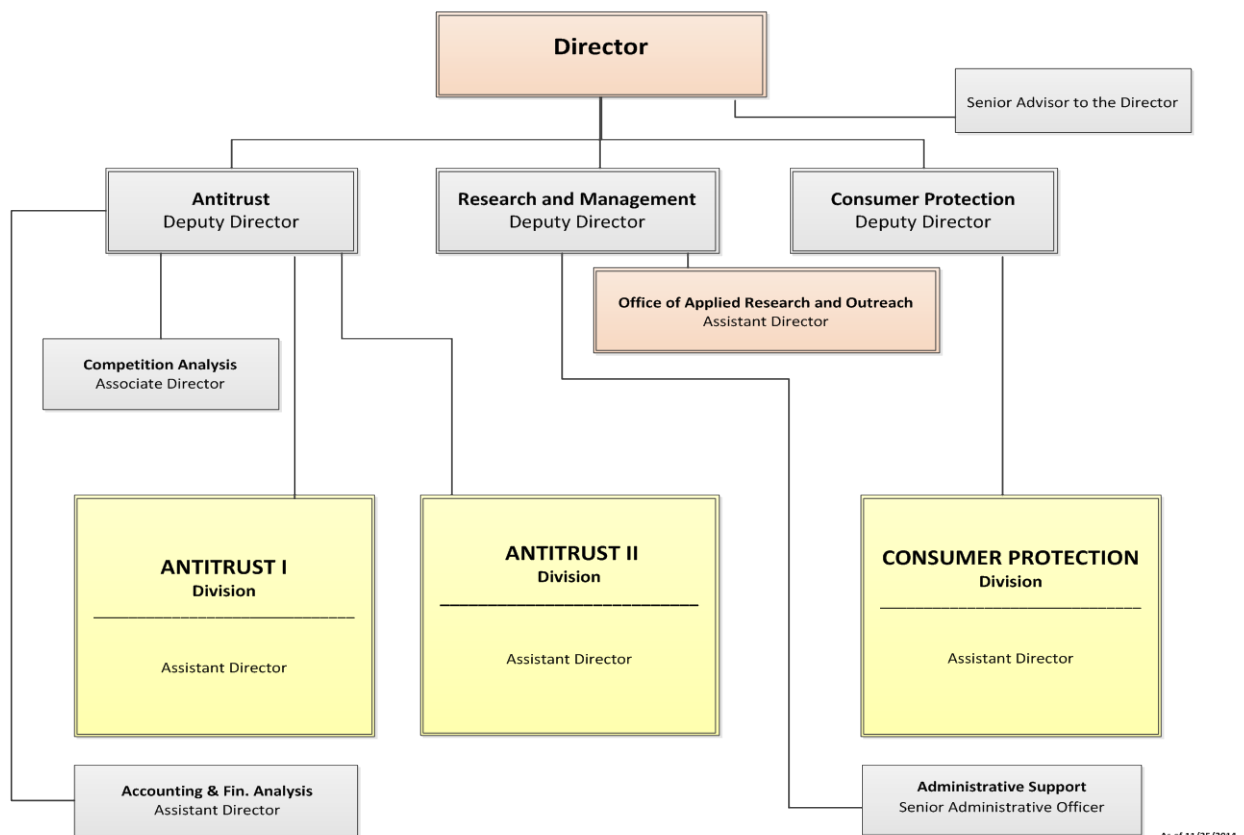
The remaining two divisions and one office within the BE provide oversight or support to the above divisions, as follows:



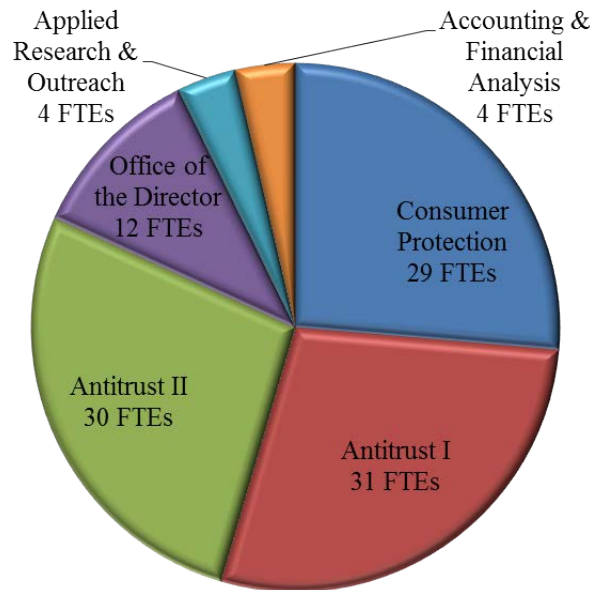
- **Applied Research & Outreach** (4 FTEs) – Manages and coordinates research activities for BE; draws resources from divisions to support research efforts, as needed.
- **Accounting & Financial Analysis** (4 FTEs) – Focuses exclusively on antitrust investigations, primarily dealing with the issues of “failing firm” defenses of otherwise anticompetitive mergers, and assessment of efficiency claims in horizontal merger cases.
- **Office of the Director** (12 FTEs) – Composed of BE leadership, including the BE Director and Deputy Directors, and operational support staff.

Figure 3 provides the organizational structure of the BE. Figure 4 illustrates the divisional allocation of full-time BE employees.

**Figure 3: BE Organizational Chart**



**Figure 4: Allocation of BE FTEs\* across Divisions and Offices**



\*Numbers are based on the “BE Roster” document provided by BE.

Nearly 73% of BE employees (or 80 FTEs) are economists,<sup>1</sup> including 70 staff economists and an additional 10 economists in positions of management or leadership. Economists provide economic analysis and recommendations to support FTC investigations, rulemakings, and advocacy, as well as conduct research and develop reports in support of the FTC missions. All BE divisions and offices include Ph.D. economists except for the Accounting & Financial Analysis group, which is composed of an accountant (1 FTE) and financial analysts (3 FTEs). The remaining BE employees are economic research analysts (19 FTEs), who work on assignments under the supervision of a staff economist, and administrative and management staff (7 FTEs).

### III. FINDINGS

Based on the data gathering and analysis approach described in section I, the OIG identified the benefits of current organizational procedures, as well as gaps in process, that may impact the BE’s ability to operate as efficiently as possible. Findings are detailed below, grouped by evaluation area.

<sup>1</sup> All economists in the BE have completed their doctorate coursework, and more than 96% are Ph.D.s (i.e., they have defended their dissertations and received their degrees). Economists that are not Ph.D.s were hired before current hiring standards were implemented that require job candidates to defend their dissertations before starting at the FTC.

## A. Strategic Planning

Based on the consistency of stakeholder interview responses, BE employees possess a common understanding of the BE's purpose: to provide economic analysis to agency leadership to aid in decision-making and policy guidance. However, a strategic plan or other formal documentation of the BE's goals and objectives does not exist. Most interview participants cited the small size of the BE as a reason for the lack of a strategic plan tailored to the BE. The FTC does have an agency-wide strategic plan for FY2014 – FY2018; the working group and Executive Steering Committee supporting development of the plan included representation from the BE.

By developing its own strategic plan, the BE can codify its purpose within the FTC, support alignment of its goals to those of the FTC, and provide justification for its resource allocations. Furthermore, representatives from the Commissioners' Office and the other bureaus expressed the desire for greater awareness of the BE's planned research activities, which could be established and communicated through a research agenda included in a strategic plan.

## B. Measures and Reporting

The BE is responsible for one performance goal in the FTC Strategic Plan for FY2014 – FY2018: 1.2.4 Number of consumer protection reports the FTC released. This represents the first FTC performance goal for which the BE is responsible for tracking, and the BE reports on progress against this measure on a quarterly basis. While the work the BE performs in support of the other bureaus is integrated into the work that is being tracked by BC and BCP's measures, the BE is not responsible for tracking or reporting on these measures.

Accomplishments relating to the missions of promoting competition or protecting consumers are reported in the FTC Congressional Budget Justification, Agency Financial Report, and previously, the Performance and Accountability Report. The nature of the BE's role within the agency suggests that the BE contributed to these achievements by providing economic analysis, but specific accomplishments of the BE are seldom noted in these reports. The OIG identified no other routine performance reporting mechanisms for external reporting of BE-specific accomplishments.

Having performance measures in place for use in measuring and reporting progress would allow the BE to demonstrate achievement of its objectives, including its impact on consumers, identify opportunities for improvement, and justify resource requests. Moreover, such measurement and reporting would support more informed decision-making by FTC leadership.

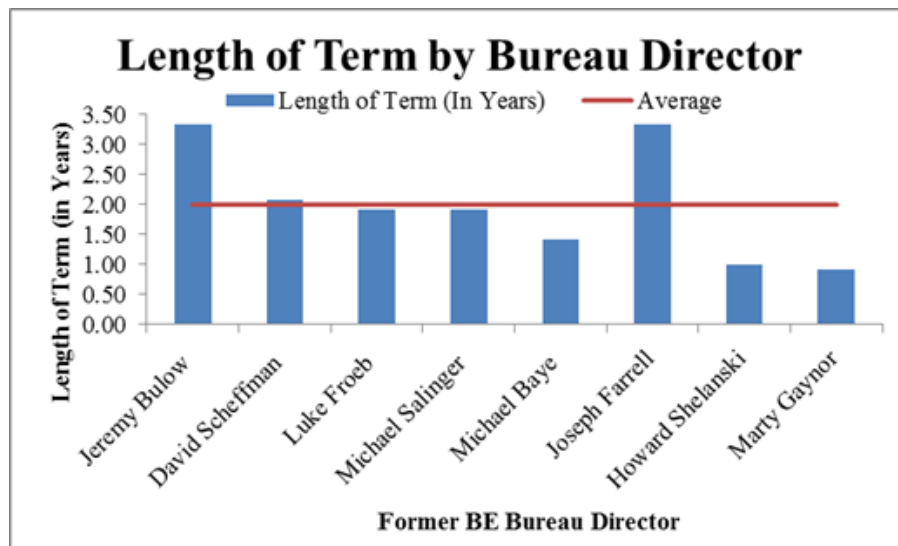
Currently, information regarding the BE’s status and activities is provided to agency leadership in an *ad hoc* manner during meetings or other discussions with leadership.

### C. Organizational Design

The OIG assessed the organizational structure of the BE to determine how it contributes to or impedes effective support of the BE’s mission.

The BE Director is appointed by the Chair of the Commission and serves at his or her pleasure. Historically, most directors have been academics on leave from their permanent academic positions. Since most academic institutions allow leaves of absence for 2 years or less, most BE Directors serve between 1 and 2 years. Between 1998 and 2014, 8 individuals held the position of BE Director, with the average tenure lasting just under 2 years. Figure 5 presents the length of each Director’s term during this period.

**Figure 5: BE Director Terms 1998 - 2014**



Interview participants cited multiple benefits of having temporary, appointed Directors with academic backgrounds, including the following:

- Attracting economists – BE Directors are well known and well respected in academia, and the opportunity to work with notable economics academics is a draw for Ph.D. economists.
- Networking – BE Directors maintain ties to academia that facilitate collaboration and awareness of new and emerging research and economic models.

- Confidence of leadership – Having been appointed by the Chair and voted in by the Commissioners, the Director begins his or her term with the support of leadership.

The degree to which the BE Director involves him or herself in management of the BE is left to their own discretion and varies from appointee to appointee, but at a minimum, he or she is responsible for managing the Deputy Directors and the Assistant Directors for Antitrust and Consumer Protection. Stakeholders indicated a common understanding that the Deputy Directors of the BE provide operational and management continuity for the BE, as the Director changes frequently. However, this “continuity” role of the Deputy Directors is not formally documented, so the accountability for management of the Bureau between Directors is uncertain.

Interviews and document reviews also revealed that there is perennial discussion regarding whether the BE should remain a separate bureau or be absorbed into the BC and BCP. Virtually all stakeholders interviewed recognized the importance of the BE’s purpose in providing unbiased and sound economic analysis to support decision-making – a function that is facilitated by its existence as a separate organization.

Concerns that were raised about the BE’s independence focused primarily on role clarity, communication, and lack of transparency. Although the role of the BE and its economists in supporting agency mission is documented in the FTC strategic plan and other published documents, stakeholders from the BC and BCP expressed uncertainty regarding the role of BE economists and the scope of their analysis in support of investigations. For example, although disagreement between BE and other Bureaus’ recommendations to agency leadership are rare (estimated at less than 10% of recommendations), several interview participants from the BC and BCP expressed concerns that BE independent economist recommendations to agency leadership sometimes include justifications or reasoning that, in their view, exceeds the scope of economic expertise. For example, stakeholders cited an instance in which the BE presented an argument based on Constitutional (e.g., First Amendment) grounds. However, BE stakeholders indicated that, due to the enforcement role of the agency, there are some legal considerations that are necessary and appropriately applied within the scope of their economic analysis. This finding suggests that ineffective communication across the bureaus may be creating a disconnect between the BE and attorney stakeholders’ perception of the scope of economic analysis.

#### D. Products and Services

Economic analysis establishes the foundation for all products and services the BE provides and has been integral to the design and operations of the FTC since its inception and before,

under the FTC's predecessor, the Bureau of Corporations. Founded in 1903, the Bureau of Corporations was an agency within the Department of Commerce and Labor whose main purpose was to study and report on industry. The research activities currently conducted by the BE are "the direct descendants of the work of the Bureau of Corporations."<sup>2</sup>

Today, the BE's primary functional responsibilities include:

- Providing the Commission with economic analyses and recommendations on the economic merits of proposed enforcement actions,
- Conducting economic studies,
- Collaborating with the BC on antitrust investigations and litigation, including serving as expert witnesses in cases, and supporting the work of outside economic experts,
- Collaborating with the BCP on consumer protection investigations and litigation, including serving as expert witnesses in cases, and supporting the work of outside economic experts,
- Analyzing existing and proposed competition and consumer protection rules for Federal, state, and international governments or regulatory organizations,
- Studying the economic impact of regulations,
- Hosting frequent seminars given by economic scholars or practitioners in fields related to the FTC missions, and
- Providing training sessions to FTC attorneys on economic and statistical issues relevant to the FTC's mission.

#### 1. Agency Objectives

Work performed by the BE is tracked based on the objective area it supports. Figure 6 provides the relative amount of time BE employees performed certain agency objective areas from FY2010 to FY2014 as reported in the Staff Time and Activity Reporting (STAR) system – the official, electronic record of FTC staff time worked.

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<sup>2</sup> "FTC Commemorates 100th Anniversary of Predecessor, Bureau of Corporations," Federal Trade Commission press release, February 14, 2003. <http://www.ftc.gov/news-events/press-releases/2003/02/ftc-commemorates-100th-anniversary-predecessor-bureau> (Accessed November 26, 2014).

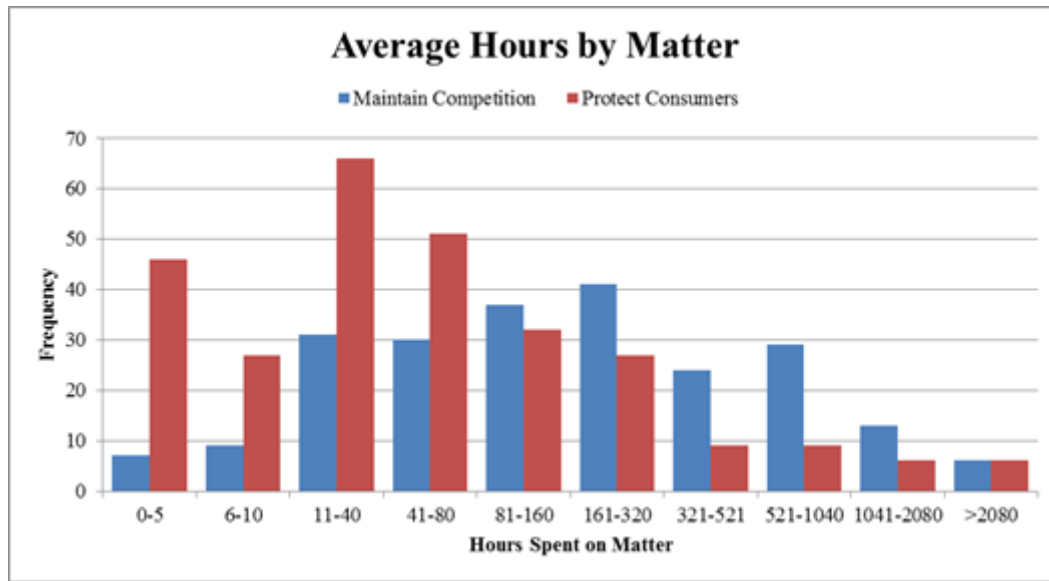
**Figure 6: Percentage of Time\* Spent by BE Staff on Agency Objectives, FY2010 – FY2014**

Objective Area	2010	2011	2012	2013	2014
Mergers and Joint Ventures Enforcement	35.87%	34.72%	38.54%	41.39%	36.94%
Non-merger Enforcement	19.32%	19.56%	18.45%	13.89%	16.11%
Economic and Consumer Policy	8.22%	7.02%	10.46%	8.23%	5.73%
Other Direct Mission	7.64%	8.78%	6.77%	6.93%	7.65%
Antitrust Policy Analysis	6.73%	7.91%	5.97%	6.31%	8.17%
Financial Practices	6.90%	7.20%	7.05%	5.44%	5.79%
Advertising Practices	3.47%	4.53%	4.30%	3.58%	5.51%
Privacy and Identity Protection	5.10%	2.98%	1.28%	3.26%	3.07%
Enforcement	1.98%	2.31%	2.12%	3.82%	2.51%
Marketing Practices	1.35%	1.70%	2.28%	4.07%	2.47%
Administration and Management Office	1.37%	1.20%	0.87%	0.98%	2.60%
Telemarketing Sales Rule	0.80%	1.67%	1.00%	1.43%	1.26%

\*Calculations do not include “spreadable” hours or objectives that took less than 1% of BE staff time. Spreadable hours include leave, holiday, and miscellaneous hours that do not represent time worked. Also, objective areas not directly in support of agency mission (e.g., Constitution Center Move).

A few key findings emerge from analysis of the STAR system data. First, in FY2014, approximately 70% of BE hours were allocated to objectives supporting the FTC mission of maintaining competition, while 29% of hours were applied to the consumer protection mission. This ratio of competition to consumer protection hours is consistent with the allocation of staff across the divisions supporting these missions. This ratio, however, does not capture work BE defers or does not address due to resource constraints. Second, as demonstrated in Figure 7, the BE supported more consumer protection matters than competition matters in FY2014 (278 versus 227, respectively), but the competition matters consistently took more staff hours to complete (peaking at 161-320 hours) than the consumer protection matters (peaking at 11-40 hours). The frequency with which staff transition between consumer protection matters increases the need for tracking staff utilization and availability carefully as work is being assigned.

**Figure 7: Average Hours Spent on Matters\* by Mission in FY2014**



\*Does not include non-mission aligned matters identified as “Other,” which includes activities such as training, workshops, and special projects (e.g., FTC @ 100).

## 2. Research Products

Interviews with stakeholders across the FTC identified economic research and studies to be an important part of the BE’s purpose. These include publications, working papers, economic reports, issue papers, and *Economics at the FTC* essays published in the Review of Industrial Organization (an academic journal). Economists select the topic of research for publications and working papers, but the topics and resulting products are reviewed by BE managers to ensure mission alignment and sound economic practice. Furthermore, many of these products are borne out of casework performed by economists in support of agency activities, thereby ensuring alignment of subject matter to agency mission. Economics reports, issue papers, and FTC essays are the result of requests by internal or external stakeholders. Figure 8 illustrates the number of various research products produced by the BE since 2008. Figure 9 provides the number of BE staff hours dedicated to research since FY2010 based on STAR data.

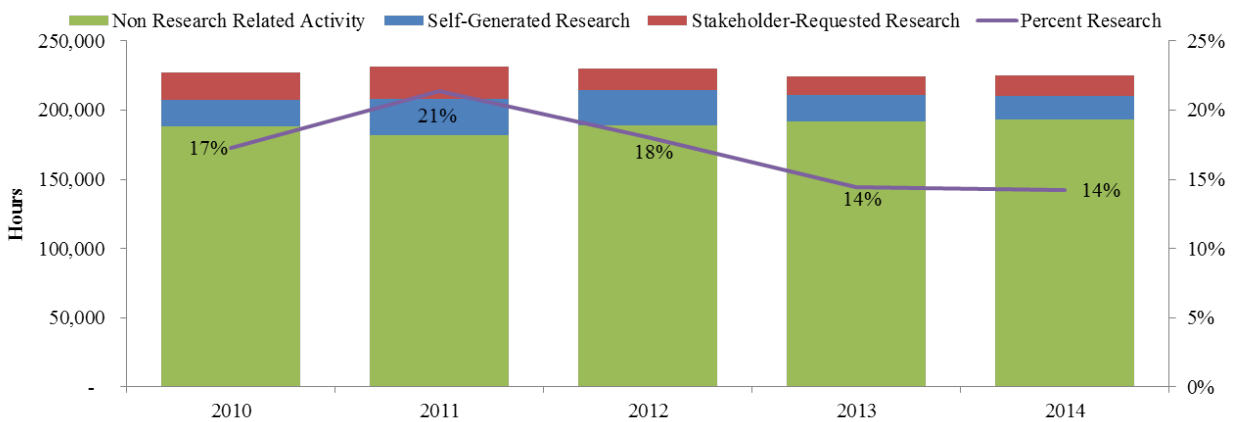


**Figure 8: Research Products\* Produced by BE Economists, 2008 – 2014**

Year	Publications	Working Papers	Economic Reports	Issue Papers	<i>Economics at the FTC</i> Essays
2008	20	2	1		1
2009	22	5		1	1
2010	21	9			1
2011	18	2			1
2012	19	4	1		1
2013	34	6	1		1
2014	24	5			1

\*Numbers of publications were compiled from a spreadsheet tracker provided by the BE. Numbers of working papers, economic reports, issue papers, and *Economics at the FTC* were tallied based on information provided by the BE and available on the FTC website.

**Figure 9: BE Staff Hours Dedicated to Research, FY2010 – FY2014**



Economic research is mandated as part of the FTC mission. Research products, reports, or studies that are requested or recommended by Congress, the Commissioners, or oversight organizations, such as the Government Accountability Office (GAO), take priority over research efforts that are initiated by economists in the BE or requested by other internal stakeholders. However, a comparison of the number of work products that are initiated by economists (publications and working papers) to those that are in response to requests by other stakeholders (economic reports, issue papers, *Economics at the FTC* essays), as provided in Figure 8, above, reveals that far more products are created based on individually initiated topics (“bottom-up” drivers). These topics are reviewed and approved by BE management to ensure relevance to agency mission; however, they are not part of a stakeholder-driven research agenda (“top-down” drivers).

While all BE economists may be asked to participate in research projects requested by stakeholders outside of the BE, only four BE staff members (three economists and one economic research analyst) have roles primarily dedicated to coordinating and fulfilling this function. As a result, when case demand is particularly high, individual research or internal stakeholder requests (e.g., from BC or BCP) for research efforts may be paused or delayed due to a lack of staff availability.

### E. Workload Management

Interviews revealed that each division manager within the BE uses a database or spreadsheet to track staff alignment to matters. While each of the two antitrust managers maintains a separate database, they have access to both databases and they regularly consult both databases for planning and allocation purposes.

Currently, the BE does not capture historical data to identify trends for use in planning resources and identifying efficiencies. The capability to capture this information exists in the STAR system; however, the STAR system is not currently used for managing workload, but rather is used primarily for purposes of budget planning, reporting, and oversight. Although the STAR system was not designed as a workload management system, it is already in place and captures critical workload data, such as cycle time and resource allocation. If the STAR system were connected to information about unaddressed activities or work deferred due to resource constraints, it may offer the BE a feasible workload management tool for performing trend analysis supporting demand forecasting and create a basis for performance management that does not currently exist.<sup>3</sup>

Interviews also revealed that prioritization of BE resources is based on time constraints for the work product (e.g., proximity of deadline), as well as the priorities of the FTC with regard to subject matter. For example, investigation and litigation support have built-in deadlines, and therefore, take priority when allocating resources. As noted above, research products, reports, or studies that are requested or recommended by FTC leadership or oversight organizations take priority over research efforts that are initiated by economists in the BE or requested by other internal stakeholders.

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<sup>3</sup> An effective workload management system can be used to efficiently allocate resources to match demand and track trends to plan for future resource needs. At a minimum, a workload management system should include the following data elements: number and nature of requests for economic support received by BE, duration of each project from request to close out of BE support, number of man hours required to support the request, projected labor cost associated with completing the request, current and forecast availability of economists, and backlog of projects or support requests that have not been addressed due to resource constraints.

## F. Program / Resource Management

The following process documents were provided to the OIG in response to a request for all processes, procedures, or other management documents:

- *Economics Best Practices* – Recommendations for matter-related data providers to facilitate BE data gathering.
- *BE Secure Investigation Lab (SIL) Procedures* – Formal procedures for secure handling of sensitive data in the SIL, a separate computing environment.
- *Instructions for Reviewing Working Papers* – Memo instructions provided to referees reviewing working papers for research quality and publication-readiness.
- *Paper Presentation Review Process Procedure* – Memo instructions for presenting research and ensuring disclaimers that views do not reflect those of the FTC.
- *Using the Division of Consumer Protection (DCP) Management Database* – Standard operating procedures for using the consumer protection workload management database.

These documents revealed that the BE has not fully documented institutional knowledge, nor standard program management processes, such as risk management, schedule management, or cost management specific to the bureau. BE stakeholders indicated that most processes have been communicated orally as staff transitions to new roles. The lack of documented processes may impact the BE's ability to efficiently onboard new staff and support succession planning as employees possessing undocumented institutional knowledge leave the organization.

In addition, while the BE recognizes the intrinsic value it adds to the organization in the form of economic analysis supporting agency decision making, in general, the BE only tracks the number of hours it devotes to assisting stakeholders on various engagements and does not measure or track the cost (in dollars) of providing services to internal or external stakeholders. One exception to this is the cost of using BE economists as expert witnesses in litigation, rather than outsourcing this role, which has been analyzed by the BE and resulted in the identification of potential cost savings. Attorney stakeholders at the FTC expressed interest in using BE economists more frequently for this role due to the significant cost savings but indicated that more training would be necessary to increase the quality and effectiveness of their testimony.

The BE bases its demand for economic resources on a number of factors. Justifications for FTEs are based on the resources that were used in the previous year(s), as captured by the STAR

system, as well as anticipated growth in BC and BCP, since growth is a determinant of the demand for economic analysis in support of law enforcement actions. Requests for other resources such as computer hardware and software are determined by actual and expected growth in the size of data sets submitted to BE in their law enforcement investigations as well as the complexity of required statistical and econometric analysis.

BE's current methods of measuring and projecting resources does not capture unaddressed work due to current resource constraints (e.g., research efforts with no deadline). Using metrics that do not account for the backlog of work, precludes the BE from adjusting its resources to ensure that mission-supportive research continues even in periods when demand for investigation support is high.

### G. Stakeholder Feedback

Most BE stakeholders identified the BE's primary customer as the Commissioners, for whom the BE provides memo recommendations regarding investigations, as well as studies and reports upon request. The BC and BCP also were identified as recipients of economic analysis and litigation support from the BE. The BE also supports the work of other FTC organizations, such as assisting the Office of Policy Planning with advocacy work as well as arranging and providing speakers for conferences; coordinating with the Office of International Affairs to send economists on missions to train foreign antitrust and consumer protection agencies; and assisting the Office of Congressional Relations in preparing and delivering Congressional briefings. Other Federal agencies and state, local, and foreign governments and regulatory organizations are recognized as customers, with the BE providing best practice recommendations and other policy guidance. A significant number of BE interviewees also identified the American consumer as a BE customer, since consumers are beneficiaries of the FTC mission.

The BE captures stakeholder feedback through regular meetings, as well as *ad hoc* discussions between managers and leadership across the bureaus. In the latter part of 2014, the Chairwoman encouraged BE and BCP to meet for the purpose of developing a strategy to improve communication and coordination between the bureaus. This session led to monthly meetings to discuss coordination of ongoing and upcoming matters. Establishing similar or more formal feedback mechanisms between BE and other stakeholders could enable the BE and its stakeholders to provide feedback, follow up with planned corrective actions, if any, and raise and address concerns. During interviews, some attorney stakeholders expressed concern regarding BC and BCP attorneys' lack of authority to direct the economists who are assigned to support their cases (e.g., to request that specific economic analyses be performed or prioritized).

## H. Coordination across Bureaus

The extent to which the other bureaus collaborate with economists in the BE varies across divisions and across matters. For the Antitrust divisions, collaboration between BC attorneys and BE economists is more common and occurs earlier in the process because virtually all competition matters will include some degree of economic analysis. For the BCP, collaboration across bureaus is less well defined due to the nature of the work.

The BE is not significantly involved in the planning processes for either the BC or BCP. However, BC stakeholders indicated interest in obtaining more economic research and analysis to specifically address areas of concern to the BC. The BCP stakeholders indicated the desire for additional accounting support from the BE to support its activities. BCP stakeholders also indicated considerable interest in more economic trend analysis to support BCP demand forecasting; however, due to the unpredictability of the consumer protection demand drivers (e.g., fraud), the extent to which the BE may be able to support such planning may be limited.

Some stakeholders also raised concerns about lack of transparency and infrequency of communication across bureaus at the leadership and manager levels. Stakeholders in the BC and BCP expressed concern about the level and frequency of communication occurring between staff economists and BE managers, indicating that cases have stalled unexpectedly and late in the collaborative process once the manager becomes involved. BE managers do not attribute late modifications to lack of awareness, but rather to the need to conduct internal quality reviews and incorporate leadership input. Further, BE stakeholders indicated that changes to recommendations may be the result of late changes to the case initiated by the BC and BCP.

## IV. RECOMMENDATIONS

Based on the OIG's findings, the following recommendations are offered to agency leadership to improve the BE's efficiency and align the organization with industry standards.

### Strategic Planning

1. The Deputy Directors of the BE should consider developing a strategic plan for the BE that codifies its commonly understood goals and objectives and aligns to agency-level goals and objectives. Documenting the goals and objectives of the BE will provide greater understanding of the BE's role within the FTC, and demonstrated progress against objectives will provide justification for BE resource requests.

2. The Executive Director of the FTC should consider developing guidance for the BE, BC, and BCP for use in developing bureau-level strategic plans to ensure consistent frameworks and best practices and to align bureau goals and objectives with agency-level goals.

### Measures and Reporting

3. The BE should consider developing and documenting bureau-level performance measures to track progress against its strategic objectives. Measuring and reporting progress will allow the BE to increase transparency, demonstrate achievement of its objectives, identify opportunities for improvement, and justify resource requests.

### Organizational Design

4. The Deputy Directors of the BE should consider developing a formal roles and responsibilities document that codifies the responsibility and accountability of the Deputy Directors in managing the BE and ensuring the continuity of operations during the frequent transition of BE Directors.
5. The BE should consider strengthening its bureau-wide executive efforts, including strategic planning, policy development, continuity of operations through BE director transitions, hiring and staff alignment, project planning and tracking, and budget requests and reporting. If the BE does not currently have the resources to implement and strengthen these processes, then the BE should consider requesting authorization from agency leadership for additional staff.

### Products and Services

6. The Deputy Directors of the BE should consider developing a portfolio-level view of all completed, current, and planned work products across the bureau. This would allow leadership to identify possible efficiencies or redundancies, note trends, and create consolidated documentation of work produced by the BE for reporting to FTC leadership or oversight organizations, as needed.
7. The Director of the BE and the Deputy Director of Research and Management should consider setting an annual research agenda that incorporates the BE Director's thought leadership and supports the agency missions and needs of FTC stakeholders. The BE should work with the Directors of the BC and BCP, as well as the Commissioners, to plan, coordinate, and communicate status of research that may impact investigations and

planning for the BC and BCP, as well as support the Commission in framing its strategies. This also will allow the BE to better forecast resource needs to support the research agenda.

8. In order to determine and quantify the impact of its research work, the BE should consider formulating a system for tracking how research by its economists is used and cited by internal and external stakeholders and customers.

#### Program / Resource Management

9. The BE should consider developing a knowledge management process to document standard BE processes and procedures (e.g., procedure for projecting staff needs, criteria to review research topics for mission alignment) and the supporting rationale (e.g., lessons learned). Documenting this knowledge will help to ensure continuity as staff transition in and out of functions and prevent knowledge flight when those with the experience and awareness of the BE's processes, procedures, and the decision history that supports them leave the organization.
10. The BC and BCP should consider providing staff economists identified by BE management with more training and exposure to the deposition process. This training will help the FTC build a larger cadre of staff who could serve as expert witnesses, enabling the FTC to capture additional cost savings through in sourcing of expert services.

#### Stakeholder Feedback

11. The BE should consider selecting and defining measures to capture the quality and effectiveness of its support to the Commission.
12. As a result of meetings held between BE and BCP in the late fall/early winter of 2014/2015, BE and BCP deputies agreed that beginning in 2015, they would meet monthly to discuss ongoing and upcoming matters that would involve joint cooperation between the bureaus. BE leadership and managers should implement terms of these discussions as outlined in the document entitled "Proposed Process for Monthly Management Meetings between BE and BCP Divisions," as well as implement regular, more formal feedback mechanisms to improve communication and coordination with BC.
13. The BE should consider communicating the methodology and the composition of economic analysis to its BC and BCP counterparts to inform attorney stakeholders regarding the scope of economic analysis.

Coordination across Bureaus

14. The BE should consider dedicating more research and analysis to support the BC and BCP in assessing the impact of FTC actions on consumers (e.g., conduct and publish more retrospectives), apart from litigation support.
15. The BE staff economists should consider briefing BE managers earlier and more frequently, as appropriate and feasible, during the process of performing economic analysis and developing recommendations on cases. The BE should also consider sharing its internal review process with attorney counterparts to manage expectations regarding the length and extent of internal management reviews.



## APPENDIX A. ACRONYMS AND ABBREVIATIONS

Term	Description
BC	Bureau of Competition
BCP	Bureau of Consumer Protection
BE	Bureau of Economics
CFPB	Consumer Financial Protection Bureau
CIGIE	Council of Inspectors General on Integrity and Efficiency
DERA	Division of Economic and Risk Analysis
DCP	Division of Consumer Protection
DOJ	Department of Justice
EAG	Economic Analysis Group
FTC	Federal Trade Commission
FTE	Full-Time Equivalent Employee
OIG	Office of Inspector General
SEC	Securities and Exchange Commission
SIL	Secure Investigation Lab
STAR	Staff Time and Activity Reporting


## APPENDIX B. MANAGEMENT'S RESPONSE TO THE REPORT



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

Office of the Director  
Bureau of Economics

**TO:** Roslyn A. Mazer  
Inspector General

**FROM:** Francine Lafontaine   
Director

**DATE:** June 29, 2015

**SUBJECT:** Management Response to OIG Evaluation of the Federal Trade  
Commission's Bureau of Economics, OIG Evaluation Report No. 15-  
03

This memorandum provides management's consolidated response to the OIG's recommendations resulting from its evaluation of Bureau of Economics resources.

**Recommendation 1:** The Deputy Directors of the BE should consider developing a strategic plan for the BE that codifies its commonly understood goals and objectives and aligns to agency-level goals and objectives. Documenting the goals and objectives of the BE will provide greater understanding of the BE's role within the FTC, and demonstrated progress against objectives will provide justification for BE resource requests.

**Responsible Official:** Michael Vita

**Action Plan:** BE agrees that a strategic plan might prove beneficial. BE will draft a strategic plan for FY 2016, utilizing the OED planning guidance completed in May, and update it every four years, focusing on ensuring that BE research remains mission-relevant.

It must be recognized, however, that the nature of BE's role -- specifically, its core responsibility of providing economic analyses of the law enforcement investigations initiated by the two legal Bureaus -- limits BE's discretionary control of its resources. This in turn limits the amount of planning that BE can productively undertake, especially compared with other organizations, (e.g., BCP) that have more resources at their disposal, and a much greater ability to selectively

establish and modify resource allocation priorities. As shown in Figure 6 of the OIG Report, in FY 2014 over 77 percent of BE staff time was expended on law enforcement activities. These resource expenditures are not discretionary - BE's principal organizational responsibility is to staff and advise the Commission on all investigations that require economic analysis.

Expected Completion Date: October 31, 2015

**Recommendation 2:** The Executive Director of the FTC should consider developing guidance for the BE, BC, and BCP for use in developing bureau-level strategic plans to ensure consistent frameworks and best practices and to align bureau goals and objectives with agency-level goals.

Responsible Official: David Robbins

Action Plan: The Office of the Executive Director (OED) agrees with this recommendation. OED's Financial Management Office (FMO) will draft and finalize guidance for BE, BC, and BCP for use in developing bureau-level strategic plans.

- April 2015: FMO circulates draft Strategic Planning guidance for Executive Director review.
- May 2015: FMO publishes final Strategic Planning guidance on the Performance Measure Reporting Official Resources intranet page.

Expected Completion Date: June 22, 2015.

**Recommendation 3:** The BE should consider developing and documenting bureau-level performance measures to track progress against its strategic objectives. Measuring and reporting progress will allow the BE to increase transparency, demonstrate achievement of its objectives, identify opportunities for improvement, and justify resource requests

Responsible Official: Francine Lafontaine

Action Plan: BE will produce a strategic plan utilizing guidance from the Office of the Executive Director. As the OIG Report notes (p. 10), BE's principal organizational responsibilities include providing economic analysis in support of the FTC's antitrust and consumer protection investigations, litigation, and

rulemakings; providing expert testimony and supporting the development of testimony by external experts; conducting studies and research to inform the FTC's missions; engaging in competition and consumer protection advocacy; participating in international training missions; providing economic advisers to Commissioner's offices; providing economic analysis in response to Congressional inquiries; monitoring the prices of gasoline and diesel fuel; providing economic analysis in support of the Commission's GPRA calculations; and engaging in outreach and "inreach" (e.g., speaking at conferences; conducting training for non-economist employees).

Because BE jointly works with BC and BCP staff on all law enforcement investigations initiated by these bureaus, and submits for each matter a recommendation memorandum to the Commission that documents and presents the relevant economic analysis, BE's contribution to this specific aspect of FTC operations already is captured in the corresponding Key Performance Goals (*see, e.g., Fiscal Year 2014 Summary of Performance & Financial Information*).

To better capture and document BE's output on other (non-investigation) specific aspects of its activities (e.g., studies and research; expert testimony; competition advocacy; inreach and outreach; training), BE will create an annual report that measures its activities in each of these categories, and which relates these activities to the FTC's strategic goals.

To better inform the Chairwoman, and other Commissioners, offices, and bureaus about these efforts, the BE Director proposes to update the Chairwoman and other Commissioners annually with a written summary of BE's contributions to both the "maintaining competition" and "consumer protection" missions

Last, we plan to further refine our consumer protection workload database to improve BE's ability to extract and quantify reporting data on the frequency and level of support (by BE) given to BCP matters. Consumer protection managers maintain an extensive and detailed database to track workloads. The database include items such as: a brief description of each open matter; the names of the economist(s) assigned to the matter; the role of the economist (e.g., staff economist, expert witness, financial analyst); the names of the research analyst(s) assigned to the matter; the name of the BE manager; weekly report updates; summaries of key interactions with BCP staff; and work products.

This database, in conjunction with a weekly report of active matters for economists and research analysts prepared by the Assistant Director for Consumer Protection, is used to monitor workload, plan the allocation of scarce resources, and provide a record of the work done by BE. In response to this

recommendation, BE will issue formal memos on all CP matters going to the Commission in order to improve transparency across Bureaus and to the Commission, as well as to better document the workload. These memos, and the workload information, will be captured by the BE database on CP matters.

Expected Completion Date: December 31, 2015

**Recommendation 4:** The Deputy Directors of the BE should consider developing a formal roles and responsibilities document that codifies the responsibility and accountability of the Deputy Directors in managing the BE and ensuring the continuity of operations during the frequent transition of BE Directors.

Responsible Official: Michael Vita

Action Plan: The Deputy Directors will create such a document.

Expected Completion Date: September 30, 2015

**Recommendation 5:** The BE should consider strengthening its bureau-wide executive efforts, including strategic planning, policy development, continuity of operations through BE director transitions, hiring and staff alignment, project planning and tracking, and budget requests and reporting. If the BE does not currently have the resources to implement and strengthen these processes, then the BE should consider requesting authorization from agency leadership for additional staff.

Responsible Official: Michael Vita

Action Plan: BE will produce a strategic plan, as well as a document that codifies the role of the BE Deputy Directors. Additionally, BE will adopt a policy whereby it will review and revise its strategic plan concurrently with the revision of the FTC's strategic plan. We will also continue to update our hiring procedures every year. Finally, we will update our other policies (e.g., travel, data acquisitions, SIL procedures) as needed to remain consistent with current FTC policies and procedures.

BE's bureau-wide executive efforts will be greatly facilitated by the recent (2015) conversion of three Assistant Director positions to SES status. The Performance Plans for Senior Executives compels specific performance results expected from each executive, focusing on measurable outcomes from the strategic plan or other

measurable outputs and outcomes clearly aligned to organizational goals and objectives.

As concerns hiring, staff alignment, and budget requests, the BE Director (in consultation with the Deputy Directors for Antitrust, Consumer Protection, and Research & Management), prepares annually a detailed budget request memorandum that identifies future human and nonhuman resource requirements.

BE's projected staffing requirements are based in substantial part on anticipated growth in the BC and BCP attorney staff; BE seeks (at minimum) to maintain historical ratios of attorneys to economists in order to accommodate increased demands for economic analysis in law enforcement investigations. BE believes that its current processes and procedures are adequate to execute this task satisfactorily.

Expected Completion Date: The strategic plan will be completed by October 31, 2015 (see Recommendation 1). Updates (if any) to our hiring procedures will be completed by November 30, 2015. Other procedures and policies will be updated as needed.

**Recommendation 6:** The Deputy Directors of the BE should consider developing a portfolio-level view of all completed, current, and planned work products across the bureau. This would allow leadership to identify possible efficiencies or redundancies, note trends, and create consolidated documentation of work produced by the BE for reporting to FTC leadership or oversight organizations, as needed.

Responsible Officials: Michael Vita, Andrew Stivers

Action Plan: Most of BE's output consists of analyses undertaken as part of FTC law enforcement investigations. The two Assistant Directors for Antitrust and the Assistant Director for Consumer Protection currently provide their respective Deputy Directors with weekly written updates on active matters, and also conduct weekly meetings with those Deputy Directors to discuss the status, timing, and resource requirements of all active matters.

To generate better records and more consistent treatment of consumer protection cases and other consumer protection matters, BE will modify its procedures for commenting on BCP matters going before the Commission. Currently, for matters on which it concurs with BCP without serious reservation, BE simply indicates its concurrence via email to BCP. While this concurrence is captured in email records, there is no easily extractable or quantifiable record of concurrence in BE records. BE will begin issuing a signed memo for each matter going to the

Commission. These memos will be indexed according to the type of recommendation and the amount of resources devoted to the matter. This change will help track BE treatment of all BCP cases. This record can be used for strategic planning purposes.

With respect to BE research products, the Assistant Director for Applied Research & Outreach (ARO) maintains a database of ongoing research projects. Every six months economists with ongoing research products must report the status of this research to the Assistant Director for ARO, as well as their managing Assistant Directors. BE will document and track the start and completion dates of research projects, and will identify projects whose completion has been delayed due to casework and other higher-priority workload demands.

The Assistant Director for ARO also maintains a continuously updated database of advocacy projects to which BE staff and management have contributed. In addition, the Deputy Assistant Director for ARO maintains a database of papers submitted for release through the BE Working Paper series. This database contains information such as: date of submission; date sent to reviewers; date reviews received and transmitted to authors; date revised paper received; date of release.

The Assistant Director for ARO and the Deputy Director for Research & Management maintain a database of papers submitted to BE for release authorization.

All of these databases will now be used to produce annual reports to the Chairwoman and other Commissioners. The first such report will be produced by the expected completion date below.

Expected Completion Date: December 30, 2015

**Recommendation 7:** The Director of the BE and the Deputy Director of Research and Management should consider setting an annual research agenda that incorporates the BE Director's thought leadership and supports the agency missions and needs of FTC stakeholders. The BE should work with the Directors of the BC and BCP, as well as the Commissioners, to plan, coordinate, and communicate status of research that may impact investigations and planning for the BC and BCP, as well as support the Commission in framing its strategies. This also will allow the BE to better forecast resource needs to support the research agenda.



Responsible Officials: Francine Lafontaine and Michael Vita

Action Plan: This recommendation has been considered. As noted in our response to OIG Recommendation 1, BE plans to produce a strategic plan that will focus in part on future research objectives.

Currently, the BE Director meets weekly with the BC Director; every other week with the BCP Director; every two weeks with the Director of the Office of Policy Planning; every two weeks with the Chairwoman; and monthly with the other four Commissioners, to discuss casework, competition advocacy, and ongoing, proposed, and potential future mission-related research projects. Additionally, BE managers and staff meet with Commissioners at the latter's request to discuss research topics and agendas of particular interest to these customers.

The information gathered during these regularly scheduled meetings with BE customers and stakeholders is an important input into the regularly scheduled monthly meeting of the Deputy Director for Research & Management; the Assistant Director and Deputy Assistant Director for Applied Research & Outreach; and the Bureau Director in which they discuss ongoing, proposed, and potential future research projects, including self-directed research.

With a few exceptions (e.g., the FACTA and PAE studies), the demands of the agency's law enforcement activities necessarily take precedence over mission-relevant research. External constraints on agency (and therefore BE) growth might therefore attenuate BE's ability to support its research agenda.

Expected Completion Date: Considered. No further action planned.

**Recommendation 8:** In order to determine and quantify the impact of its research work, the BE should consider formulating a system for tracking how research by its economists is used and cited by internal and external stakeholders and customers.

Responsible Officials: Michael Vita

Action Plan: BE will create an annual report using various sources of information on citations measures (e.g., Google Scholar; Lexis-Nexis) to track the extent to which BE research is cited in scholarly research, and in judicial and regulatory proceedings.

Expected Completion Date: November 1, 2015

**Recommendation 9:** The BE should consider developing a knowledge management process to document standard BE processes and procedures (e.g., procedure for projecting staff needs, criteria to review research topics for mission alignment) and the supporting rationale (e.g., lessons learned). Documenting this knowledge will help to ensure continuity as staff transition in and out of functions and prevent knowledge flight when those with the experience and awareness of the BE's processes, procedures, and the decision history that supports them leave the organization.

**Responsible Official:** Michael Vita

**Action Plan:** BE captures the decision history of investigations in the staff (and, on occasion, management) memoranda that are created as part of the normal course of business. These memos (e.g., the merger screening memos and recommendation memos that are produced on every merger investigation) document, in meticulous detail, the theories of competitive harm that were investigated; the empirical evidence that was gathered and developed over the course of the investigation; and the analytical process that led the staff economist to his or her enforcement recommendation to the Commission. In writing these memos, staff are instructed to write them not only with the goal of informing the Commissioners about the current investigation, but with the goal of creating a historical record that can guide other economists who might staff similar investigations in the future.

BE will create (or, when appropriate, update) documents that memorialize and describe, for each mission, typical timelines and milestones for work products that are generated in the course of typical investigations (e.g., when must an economist prepare a merger screening memo? When is it normally due? Who must review it? To whom is it distributed?). These documents will be reviewed annually and modified appropriately to reflect any changes in standard procedures.

For other aspects of BE operations – recruiting and research are notable examples – such knowledge bases already exist. For recruiting, each year the BE recruiting coordinators update and distribute a detailed timeline memorandum that describes in considerable detail the steps that are undertaken each year during BE's recruiting effort (e.g., when and where is the vacancy announced? When and where will the interviews be conducted? When will the members of the recruiting team be selected? When will the candidates be invited to headquarters for additional interviews? When will the first round of offers be produced?). After the recruiting effort is completed (usually in April) the recruiting

coordinators write a detailed memorandum summarizing the outcome of the recruiting effort; this memorandum always includes a “lessons learned” section to inform future recruiting efforts.

Similarly, BE has memoranda (accessible to all employees on the BE intranet site) that describe in detail policies and procedures for the creation and distribution of various BE research products (e.g., BE reports; BE working papers; academic papers submitted to journals; conference presentations; etc.). Again, these are updated as new processes or information becomes available.

Expected Completion Date: October 1, 2015

**Recommendation 10:** The BC and BCP should consider providing staff economists identified by BE management with more training and exposure to the deposition process. This training will help the FTC build a larger cadre of staff who could serve as expert witnesses, enabling the FTC to capture additional cost savings through in sourcing of expert services

Responsible Officials: Debbie Feinstein and Jessica Rich

Action Plan: BCP and BC agree that deposition training should be offered to staff economists serving as experts in cases. The most effective deposition and trial training for experts in both BCP and BC cases is “in-time” training that uses the facts and issues in a particular case (about which the economist is very familiar) to teach the key lessons of expert witness preparation. This type of preparation is more effective than generic training based on hypothetical situations often delivered long before an economist is actually going to testify. To maximize the effectiveness of its experts, the Bureaus are committed to ensuring that economists testifying in BCP and BC cases receive such training in advance of their testimony. While trial teams are primarily responsible for delivering this training to their experts, Litigation Counsel in both Bureaus also are available to supplement their efforts, including facilitating mock deposition questioning.

Expected Completion Date: The BC Training Council will review deposition training needs at least annually, and schedule appropriate training as needed. Likewise, at least annually, BCP will continue its regular review of deposition training needs and will schedule appropriate training as needed.

**Recommendation 11:** The BE should consider selecting and defining measures to capture the quality and effectiveness of its support to the Commission.

Responsible Official: Michael Vita

Action Plan: Considered. BE senior managers meet regularly with Commissioners to obtain feedback and suggestions. These meetings provide Commissioners with an opportunity to convey their views about BE's casework, research, inreach and outreach, competition advocacy, and other BE activities. We have found these meetings to be a highly effective and informative mechanism for obtaining information about the perceived value of BE support for the agency's twin missions.

BE does not believe that it is possible to construct meaningful quantitative measures of "the quality and effectiveness of its support for the Commission." One possible exception, as we noted in our response to OIG Recommendation 8, is that we plan to measure systematically the extent to which BE research is cited in the academic literature, as well as in regulatory proceedings and judicial decisions. We also plan to better capture advocacy activity. As noted in our response to Recommendation 3, BE will create an annual report that measures its contribution to competition and consumer protection advocacy, and which relates these contributions to the FTC's strategic goals.

Expected Completion Date: December 31, 2015

**Recommendation 12:** As a result of meetings held between BE and BCP in the late fall/early winter of 2014/2015, BE and BCP deputies agreed that beginning in 2015, they would meet monthly to discuss ongoing and upcoming matters that would involve joint cooperation between the bureaus. BE leadership and managers should implement terms of these discussions as outlined in the document entitled "Proposed Process for Monthly Management Meetings between BE and BCP Divisions," as well as implement regular, more formal feedback mechanisms to improve communication and coordination with BC.

Responsible Official: Francine Lafontaine

Action Plan: The recommendations arising from the BE/BCP meetings are already being implemented. BCP and BE leadership agreed that the monthly Division meetings would include a status update on all current cases. The agendas are largely developed from the list of new cases, and the list of cases close to being forwarded to the BCP front office for review. The focus of these meetings is ensuring coverage and timely communication on casework. In addition, for cases involving substantial disagreement, BCP and BE agreed to convene

additional meetings to discuss and clarify points of disagreement. This policy also has been implemented, starting in Autumn 2014 and continuing in early 2015.

Further, the BE currently has in place regular, formal channels for receiving feedback from the attorney staff. At the highest management level, the BE Deputy Directors for Antitrust and Consumer Protection, and the BE Director, meet regularly with their counterparts from BCP and BC. The Bureau Director meetings take place weekly in the case of BC, and every other week in the case of BCP. In both sets of meetings, the agenda focuses on current active cases and the associated scheduling needs. A primary goal of these meetings is to allow senior bureau managers to exchange views on both substantive and procedural issues (including existing, proposed, and potential future research projects), and to give and receive feedback.

BE's consumer protection Assistant and Deputy Assistant Directors have regularly scheduled monthly meetings with their counterparts in BCP. At the staff level, BE staff frequently (often daily) communicate with their attorney counterparts. BE and BC staff work as equal members of a team, with a "lead economist" and "lead attorney" regularly exchanging information. BE staff and management take inquiries and suggestions from the attorney staff very seriously, and we make best efforts to ensure that our analyses speak to the key issues of each investigation.

The BE Front Office prepares a weekly report that is circulated to all Commissioners and senior managers in the agency. This report discusses progress and recent actions on active investigations; Commission- and Congressionally-mandated research; self-directed mission-relevant research; expert witnessing; international activities; recruiting; and "inreach" and outreach.

Expected Completion Date: Ongoing. BE and BCP already have begun to regularly implement the terms (e.g., action items) arising from the BE/BCP senior management meetings held in late 2014 and early 2015. BE and BC senior managers continue to hold regularly scheduled meetings to facilitate inter-bureau communication and coordination.

**Recommendation 13:** The BE should consider communicating the methodology and the composition of economic analysis to its BC and BCP counterparts to inform attorney stakeholders regarding the scope of economic analysis.

Responsible Official: Michael Vita

Action Plan: Communicating the methodology and composition of economic analysis to the BC and BCP staffs is something BE economists and managers do

every day; this is a core aspect of our professional responsibilities. Additionally, the Bureau of Economics regularly presents training seminars for BC and BCP attorneys. The purpose of these seminars is to provide the legal staff with a basic introduction to the theoretical and empirical tools used by BE economists in their everyday work. In recent years, BE economists have presented training courses and educational seminars to the legal staff on a variety of mission-relevant subjects, including:

Antitrust:

- Economic Analysis & the Merger Guidelines
- Economics and the Use of Consumer Testimony in Merger Investigations
- Unilateral Anticompetitive Effects in Merger Cases
- Estimating Grocery Demand Using Sales Data
- Hospital Merger Econometric Analysis
- Economics of the Gross Upward Pricing Index
- The Economics of Monopsony
- Economics of Vertical Mergers
- Statistics for Antitrust Attorneys

Consumer Protection:

- Economic Analysis of Consumer Injury and Optimal Penalties
- Economics of Information Disclosures
- Statistics for Consumer Protection Attorneys

BE, BC, and BCP staff and management have found these training sessions to be highly effective in communicating fundamental aspects of economic analysis to the legal staff. BE considers the presentation of these seminars and courses to be an important aspect of BE's contribution to the attainment of the agency's strategic goals; accordingly, BE expects to continue to offer this training to interested attorneys on a regular basis. BE also will identify in these ongoing efforts opportunities to articulate the economists' role in evaluating the economic impact of competition and consumer protection cases

Expected Completion Date: BE will at least annually identify training seminars or other opportunities to educate agency personnel on the components of economic analysis and the economist's role in evaluating the impact of transactions examined in both competition and consumer protection cases.

**Recommendation 14:** The BE should consider dedicating more research and analysis to support the BC and BCP in assessing the impact of FTC actions on consumers (e.g., conduct and publish more retrospectives), apart from litigation support.

**Responsible Official:** Michael Vita

**Action Plan:** In the past BE allocated a much greater proportion of its FTE's to research. External constraints on agency growth, combined with rapid and constantly growing internal demands for BE resources to directly support the agency's enforcement missions, have compelled BE over time to reduce the number of FTE's committed to research. Ultimately, decisions about the quantity of FTE's available for research are made by the Commission, not the Bureau.

These facts notwithstanding, BE's mission-relevant research output remains high. Ongoing high priority research projects, such as the FACTA Studies, the Patent Assertion Entity study, the merger remedies study, and various petroleum industry studies, always are fully staffed, irrespective of the demands of litigation and investigations. In addition, BE will work with its economists to ensure that self-directed research done as part of an economist's agency work as recorded in the STAR system provides direct and substantial benefit to the agency's strategic goals.

BE's human resources (economists and research analysts) are stretched thin at the moment because of recent attrition. BE currently is focused on filling these positions as quickly as possible.

**Expected Completion Date:** Considered. No further action planned.

**Recommendation 15:** The BE staff economists should consider briefing BE managers earlier and more frequently, as appropriate and feasible, during the process of performing economic analysis and developing recommendations on cases. The BE should also consider sharing its internal review process with attorney counterparts to manage expectations regarding the length and extent of internal management reviews.

**Responsible Officials:** Francine Lafontaine, Andrew Stivers

**Action Plan:** The BE Deputy Directors for Antitrust and Consumer Protection meet weekly with their subordinate Assistant Directors and Deputy Assistant Directors to discuss in detail workload developments. The discussions at these meetings are centered on continuously-updated workload reports that describe

the status of existing investigations and litigation (including approaching deadlines for Commission actions and litigation actions; and the opening of new investigations and the associated resource demands (e.g., based in part on the size of the legal team that has been assigned to the matter). The BE Director attends some of these meetings when time permits.

Based on the information that is conveyed in these meetings, the relevant Deputy Director will, when appropriate, schedule a more detailed briefing from BE staff on those matters that are approaching a critical decision point, a briefing that typically also will involve the BE Director.

BE management and staff at every level meet regularly with their counterparts from BC and BCP. A principal purpose of these frequent interactions is to convey information about the evolving views of both staff and management about the substantive merits of potential enforcement actions.

Going forward, BE management, in their regular meetings with BCP Division management, will specifically request a list of matters that will soon be forwarded to either the Commission or the BCP Director's office, or that raise difficult or novel policy issues. This information will allow BE management to prioritize more effectively matters on which action soon will be taken, and/or are particularly important. While BE management currently works to prioritize appropriately, we cannot control the timing of cases or the management of workflow from BCP. The BE DCP AD and DADs will prioritize meeting with their staff on the flagged cases to evaluate BE positions, and communicate those positions to both the BE front office and BCP management in a timely manner.

Expected Completion Date: September 1, 2015