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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



HUMAN RESOURCES
DIVISION



JUNE 13, 1979

B-103987

The Honorable Michael Pertschuk
Chairman, Federal Trade Commission

AGC 00059

Dear Mr. Pertschuk:

We have reviewed the Federal Trade Commission's processing of consent orders--legally binding promises by businesses to stop or correct certain acts or practices. We believe the Commission should improve its performance in this area. The Commission spent over 320 days, on the average, reviewing and approving the orders issued between October 1976 and January 31, 1979. We believe that the Commission should be more timely in issuing consent orders.

This report discusses the adverse effects of lengthy review and approval time frames and the areas where we think the Commission can do better. Our specific recommendations are on page 5.

SCOPE

We reviewed the Commission's files and determined the review and approval time frames for 116 of the consent orders which became final between October 1, 1976, and January 31, 1979. We could not analyze all consent orders processed during the period because some case files did not contain complete information on processing times.

We also interviewed attorneys who worked on some of the cases to discuss causes for some of the lengthy time frames.

PROCESSING TIME FRAMES FOR
CONSENT ORDERS SHOULD BE REDUCED

[Lengthy review and approval time frames can have several adverse effects. First, the business does not have to obey a consent order until the Commission finalizes it.] Therefore, until the order becomes final the business can continue doing what it has promised to stop, or can delay changing

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what it has promised to change. Second, ²if the business agrees to give redress to consumers, inflation during lengthy delays can reduce the value of any refunds; Third, ³the Commission's alternatives to accepting the agreement may be compromised because evidence may become stale or the Commission may be reluctant to spend more resources on the case.

The consent order review and approval process begins when the Commission staff and a business sign an agreement to settle an alleged violation of a law which the Commission enforces. The agreement then goes through various levels of review within the Commission. The appropriate Commission bureau reviews and approves the agreement before it is submitted to the Commissioners for provisional (subject to final approval) and final acceptance. The agreement must also go through a public comment period before final approval.

As shown in the following table, the average processing time for the 116 orders we reviewed was about 323 days.

Summary of Review and Approval Time Frames

<u>Processing step</u>	Bureau of Consumer Protection (<u>note a</u>)	Bureau of Competition (<u>note b</u>)	Commission- wide <u>wide</u>
	(Average number of calendar days)		
Signing to forward- ing to bureau	48	31	45
Bureau action	82	76	81
Commission action	54	56	55
Public comment	98	86	96
Final action	<u>45</u>	<u>58</u>	<u>47</u>
 Total time frame	 <u>327</u>	 <u>307</u>	 <u>323</u>

a/The Bureau of Consumer Protection is charged with eliminating unfair or deceptive practices which unfairly influence, inhibit, or restrict consumer purchasing decisions.
(Total cases = 97.)

b/The Bureau of Competition is responsible for enforcing the antitrust laws. (Total cases = 19.)

Long time frames have adversely affected the Commission's negotiating position. When the Commission receives a signed agreement, it can (1) accept it and put it out for public comment, (2) reject it and instruct the staff to negotiate a new agreement, or (3) reject it and instruct the staff to prepare a formal complaint against the business. 1/ If the review process is lengthy, the Commission's options may be more limited. For example, in a case involving a major retailer's anticompetitive behavior, almost a year had elapsed before the consent order was submitted to the Commissioners for approval. Although the reviewing bureau recommended that the agreement be rejected on the grounds that it would allow the retailer to continue to engage in certain anticompetitive behavior, the Commissioners accepted the agreement. The Commission Chairman doubted whether the agreement could be improved through more negotiations at such a "late date."

In another case, the Commission was considering accepting six consent agreements dealing with unavailability of advertised specials. By the time they got to the Commission in February 1977, the agreements were from 5 to 17 months old. The average time frame of these six agreements, one of which was renegotiated, resigned, and reprocessed, was over 465 days. One Commissioner remarked:

"I think the Commission's ability to do anything other than accept an order as written or close the case is seriously eroded when we allow periods of these magnitudes to elapse before considering a consent agreement. The evidence in most of these cases seems more likely to interest a historian than a judge, and respondents will no doubt bear that in mind if we dare inflict on any of our staff the embarrassment of going back in search of significant modifications."

1/The Commission issues a formal complaint when it has reason to believe that a business is engaging in an unfair or deceptive act or practice and the business will not agree to stop or correct it. The complaint leads to a hearing and a decision by one of the Commission's administrative law judges. The business can appeal the decision to the Commission and then, if desired, to a Federal court.

We discussed these time frames with the Assistant to the Executive Director who indicated that the Bureau of Consumer Protection had shortened the time it took to process the orders which became final after January 31, 1979. These orders were not included in our review. He also indicated that the Bureau of Competition calculated a lower average for the time the Bureau took to process consent orders by eliminating three cases which involved special considerations while being processed. While eliminating the cases with special considerations in each processing step would lower the average, justifying long time frames on the basis of varying special considerations requires a subjective judgment which we did not attempt to make.

THE COMMISSION SHOULD SET
AND ENFORCE TIME STANDARDS
FOR EACH PROCESSING STEP

The Commission has not set time standards or goals for each processing step in the consent order review and approval process. Such standards could help the Commission process orders more quickly. In July 1977 the Senate Governmental Affairs Committee reported that a principal cause of excessive delay at regulatory agencies was agencies' failure to set and enforce deadlines for various stages of proceedings.

The Commission has set time standards for portions of two processing steps. One standard requires the bureaus to act on regional office requests for document review and approval within 30 working days. The other requires that, when no public comments were received, proposed consent orders be submitted to the Commissioners for final action within 5 days after the end of the public comment period. If the public does comment, the order must be submitted for final Commission action within 30 days from the end of the comment period.

The Commission, however, has not enforced these standards. Except for the 5-day limit for the submission of orders where there are no public comments, the standards generally have not been met. For example, the bureaus spent an average of about 95 days on regional office cases and exceeded the 30-day standard in about 8 out of 10 regional office cases.

Realistic time standards that are effectively enforced could be helpful in reducing consent order processing time.

Therefore, we believe that (1) the Commission staff should make a greater effort to comply with established time standards, (2) the Commission should establish time standards for the processing steps that do not have standards, and (3) the Commissioners should require justification from the staff when time standards are not met. Although our data show that the average time frame for each step is lengthy, the processing times for many consent orders were relatively quick, which indicates that time standards substantially less than the average time frames experienced in some steps may be feasible. For example, the average time frame for the staff to forward a signed agreement to the bureau was 45 days, but more than 50 percent of the orders were processed within 30 days. Similarly, the average time frame for bureau action was about 81 days, but the bureaus acted on over 40 percent of the cases in less than 45 days. (See enc. I for more detailed information.)

The Commission should review and establish realistic time standards for each processing step that would serve as goals for the staff to strive for in processing consent orders. We recognize that cases vary in complexity, and that some cases may require more time than the standard would allow. In these cases the Commission should require written justification when time standards are not met to assure optimum impact of the standards in reducing consent order processing time frames.

RECOMMENDATIONS

To expedite the processing and issuance of consent orders, we recommend that (1) the Commissioners direct the staff to make a greater effort to comply with established time standards, (2) the Commission establish time standards for the processing steps that do not have standards, and (3) the Commissioners require justification from the staff when time standards are not met.

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As you know, section 236 of the Legislative Reorganization Act of 1970 requires you to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of this report and to the House and Senate Committees on Appropriations with the Commission's first request for appropriations made more than 60 days after the date of this report.

We are sending copies of this report to the Chairmen of the above committees; the House Committee on Interstate and Foreign Commerce; the Senate Committee on Commerce, Science, and Transportation; and the House and Senate Judiciary Committees. We are also sending copies to the Commission's Executive Director, and the Directors of the Bureaus of Competition and Consumer Protection.

Sincerely yours,


Gregory J. Ahart
Director

Enclosure

FREQUENCY ANALYSIS BY PROCESSING STEP

<u>Step</u>	<u>Range of days</u>	<u>Cases</u>		
		<u>Number</u>	<u>Percent (note a)</u>	
Signing to forwarding	0-9	30	26	
	10-19	16	14	
	20-29	15	13	
	Average	30-39	9	8
	time frame--45 days	40-49	8	7
		50-74	9	8
		75-99	15	13
100 and over		14	12	
Forwarding to Bureau action	0-14	23	20	
	15-29	13	11	
	30-44	11	10	
	Average	45-59	9	8
	time frame--81 days	60-89	20	17
		90-119	15	13
		120-199	14	12
200 and over		11	10	
Bureau to Commission action	0-9	9	8	
	10-19	20	17	
	20-29	14	12	
	30-39	6	5	
	Average	40-49	12	10
	time frame--55 days	50-59	20	17
		60-69	10	9
		70-89	9	8
		90-119	7	6
120 and over		9	8	

<u>Step</u>	<u>Range of days</u>	<u>Cases</u>	
		<u>Number</u>	<u>Percent (note a)</u>
Commission action to end of the public comment period	0-69	6	5
	70-79	24	21
	80-89	35	30
	90-99	26	22
	100 and over	25	22
Average time frame--96 days			
End of public com- ment period to final action	0-9	39	34
	10-19	32	28
	20-99	24	21
	100 and over	21	18
Average time frame--47 days			

a/Do not all total 100 percent due to rounding.