

# The Economics of Consumer Protection, Antitrust, and Policy

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Michael R. Baye

Director of the Bureau of Economics, FTC

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Kelley School of Business, Indiana University

These are my views and do not necessarily represent those of the Federal Trade Commission or any of the Individual Commissioners

# The FTC

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- ÿ Our Goal: Enhance consumer welfare
  - ÿ Three missions work hand-in-hand to achieve this goal
    - > Competition (Antitrust)
    - > Consumer Protection
    - >
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FEDERAL TRADE COMMISSION  
BUREAU OF ECONOMICS

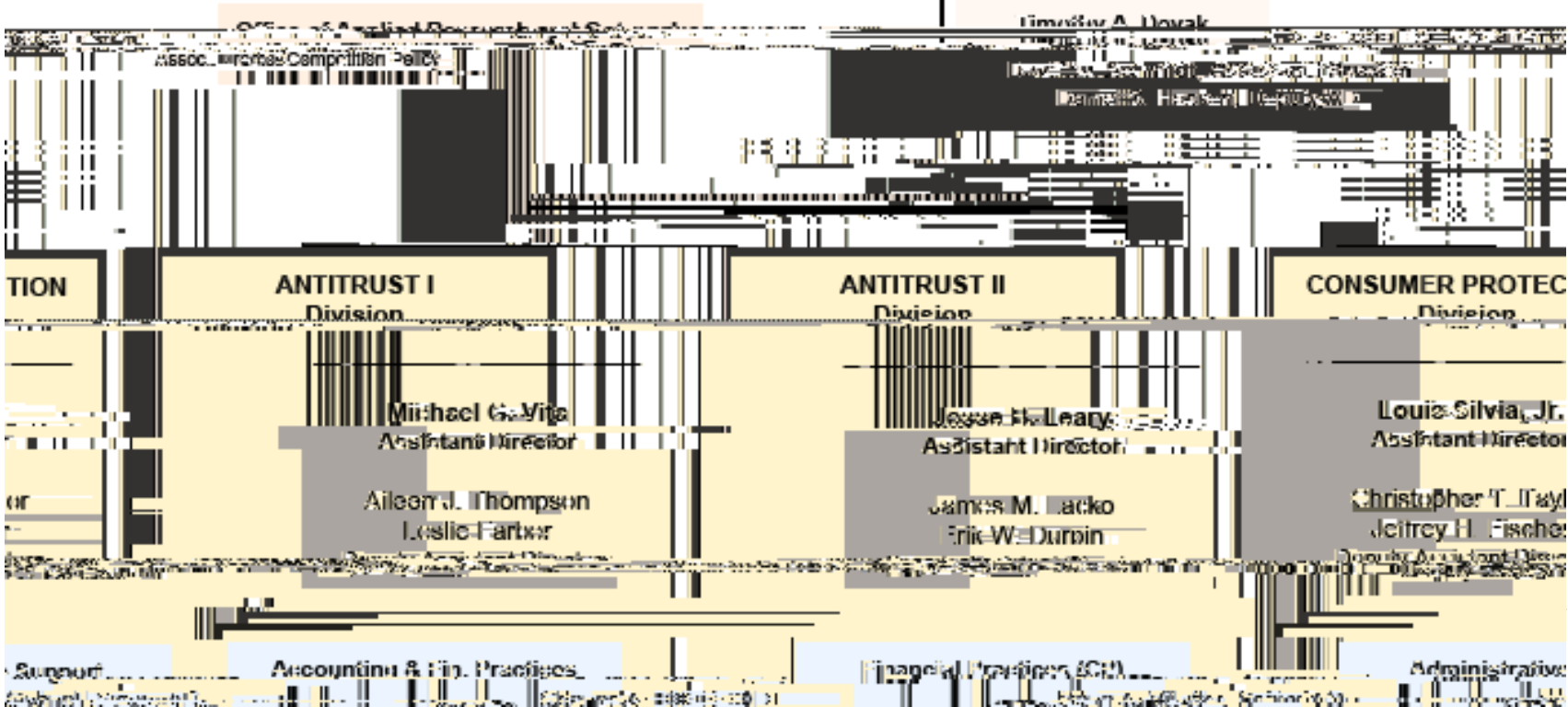
Michael R. Baye  
Director

J. Elizabeth Callison

Pauline M. Ippolito  
Deputy Director  
R&D and Operations

Hugh A. Pauler  
Deputy Director  
Consumer Protection

Mark W. Frankena  
Deputy Director  
Antitrust



# Competition

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- Y Competition: The ultimate “consumer protection”
  - Y Competition benefits consumers through
    - > Lower prices
    - > Improved quality
    - > Greater consumer choice
    - > Increased innovation
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# Competition policy in the US

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- Protects the competitive process from abuses
    - › Stops cartels
    - › Stops abuse of dominance
    - › Prevents mergers that would lead to price increases
  - Advocates for the consumer and the competitive process to other legal bodies, consumers, and businesses
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# Competition policy in the US (continued)

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- Y Focus is on consumer welfare
    - > Competition can, and frequently does, hurt individual competitors as lower prices means lower profits, holding costs constant
    - > The FTC does not seek to protect individual competitors
    - > The FTC protects the competitive process, thereby protecting the consumer
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# Mergers: How the process works . . .

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- ÿ Merging parties file with both agencies
    - › In FY 2006, 1,768 transactions were reported under the Hart-Scott-Rodino (HSR) Act
  - ÿ Initial review by staff of pre-merger notification office resolves 70-80% of cases quickly without any investigation.
  - ÿ Anything they can't handle goes to one of the merger divisions for further review. Quick inquiry resolves most of the rest
  - ÿ Only a handful need in-depth review
    - › In FY 2006, 45 second requests were issued (both DOJ and FTC) or 2.5% of mergers filed
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ÿ Most mergers don't present problems

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# What is reportable?

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Deals over \$252.3 million	Always reportable
Deals between \$63.1 and \$252.3 million	May be reportable if: One party bigger than \$126.2 million Other party bigger than \$12.6 million
Deals of less than \$63.1 million	NO LONGER reportable

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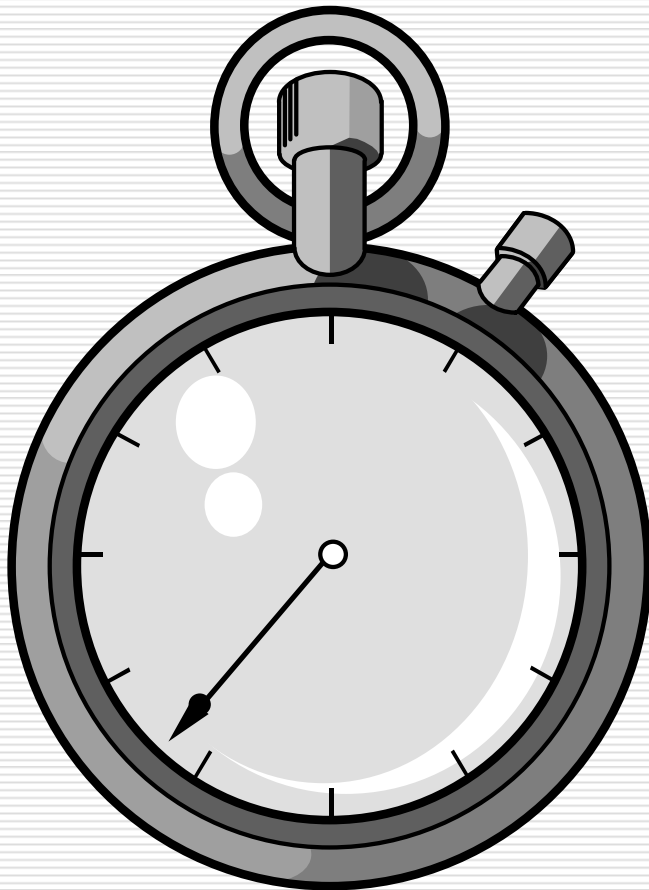
# How much does it cost

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- New scaled fees
- Deals over \$630.8 million: \$280,000
- \$126.2 and \$630.8 million: \$125,000
- Between \$63.1 and \$126.2 million: \$45,000
- Fees are indexed

# The review process

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- ÿ 30 day clock begins to run upon filing
  - ÿ Pre-merger staff conducts preliminary review
  - ÿ Many cases resolved at this stage
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# At the end of 30 days . . .

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- ÿ Two choices:
    - > Allow merger to go forward
    - > Issue detailed request for more information and documents ("second request")
  - ÿ Second request "stops the clock"
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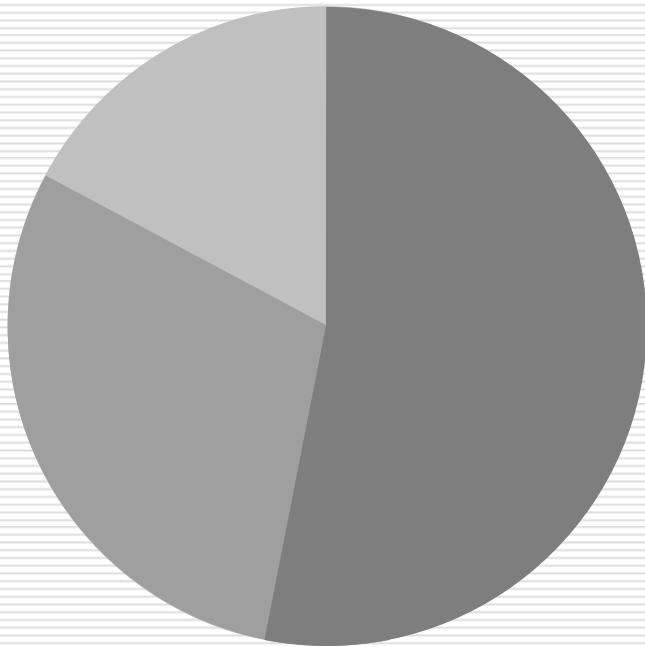
# After second request made

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- Parties have unlimited time to comply, but can't merge in the meantime
  - Formal investigation—with power to compel—proceeds
  - Parties and agency negotiate scope of production of documents; internal appeal available
  - Negotiations to resolve case continue
    - › Typically resolved through divestitures
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# After parties substantially comply with second request

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- New 30 day clock begins to run. At the end of 30 days, either:
    - > Agency goes to court to block merger, or
    - > Parties are free to merge
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# Litigation

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- ÿ Litigated cases (FTC and DOJ) typically resolved at preliminary injunction stage
    - › Parties usually abandon transaction if agency win in court
    - › Agency usually abandons challenge if parties win in court—but not always (Whole Foods/Wild Oats)
  - ÿ Court decisions granting or denying injunctions can be appealed to Court of Appeals (and ultimately to Supreme Court)
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# Role of economics in merger law

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- Economic theory and analysis provide the foundations and for evaluating the likely competitive effects of a merger
  - Economics provides an organized structure for the information gathered about a merger
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# Role of economics in merger analysis

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## Y Competitive effects analysis

- › Economic theory and quantitative analysis are tools to determine whether the merger is likely to create or enhance market power (e.g., raise prices or lower quality)

## Y Other economic considerations are also important, including

- › Entry
  - › Efficiencies
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# Role of economists in merger investigations

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- ÿ Provide rigorous economic logic and supporting evidentiary analysis that most accurately reflects the possible outcomes from a merger
  - ÿ Act as complement to the lawyers in conducting the investigation
  - ÿ Make independent recommendation to Commission
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# Recent antitrust work

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• Whole Foods/Wild Oats (on Appeal)

• Google/DoubleClick (Closed)

• Cephalon (in Litigation)

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# Antitrust work in oil and gas markets

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- Y Cases
  - Y Commission reports
  - Y Advocacy
  - Y Research
  - Y Gasoline price monitoring
    - > 20 wholesale regions and approximately 360 retail areas nationwide
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# Consumer protection

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- ÿ For competition to thrive consumers must receive accurate information about products and services
  - ÿ Authority under FTC Act to protect consumers against fraud, deception and other “unfair business practices”
    - › Truth-in-advertising laws (e.g., claims for food, over-the-counter drugs, dietary supplements, alcohol, and tobacco)
    - › Marketing practices (Internet, telecommunications, and direct-mail fraud; deceptive spam; fraudulent business, violations of the Do Not Call provisions of the Telemarketing Sales Rule)
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# Consumer protection (continued)

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- Y Consumer protection also involves
    - > Providing consumers with information in situations where the market is unlikely to provide the information that consumers need in order to make their choices
    - > Educating consumers so that they may better protect themselves
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# Role of FTC in consumer protection

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- ÿ Encourage provision of truthful information in a form that allows consumers to make their own buying decisions
  - ÿ Other government agencies focus on controlling product quality directly, as well as providing information:
    - > Food and Drug Administration
      - ÿ Food safety
      - ÿ Drug safety and effectiveness
    - > Department of Transportation
      - ÿ Automobile safety
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# Role of economists in consumer protection

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- Increased role due to relevance of the development of the “Economics of Information”
  - Case development
  - Evaluation
  - Research
  - Advocacy
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# Recent work by the Bureau of Economics: Consumer protection

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- ÿ Mortgage Disclosure Study
    - › *Truth-in-Lending Act*
    - › *Real Estate Settlement Procedures Act*
  - ÿ Online Behavioral Advertising
  - ÿ FACTA Scoring Study
    - › Do Credit Scores Predict Risk in Insurance Markets, or are they merely used as a “proxy” for race and ethnicity?
  - ÿ Identity Theft
  - ÿ Consumer Fraud
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# Identity theft

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- Y 1998 Congress directed the FTC to:
    - > Establish a repository for complaints
    - > Provide assistance to victims
    - > Conduct consumer education efforts
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# Prevalence of Identity Theft, 2005

*(figures in parentheses are 95 percent confidence intervals)*

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Victim of:	Individuals Who Discovered They Were Victims of Identity Theft in 2005	
	Percent of Population	Number of Persons (millions)
Any Type of Identity Theft	3.7%	

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# Costs of Identity Theft, Misuse Discovered Since 2001

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All Types of Identity Theft	Misuse of Existing Credit Card Only	Misuse of Existing Accounts Other Than Credit Card Accounts	New Accounts Opened or Other Frauds Committed
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Gross Value Stolen Using Victim's Personal Information

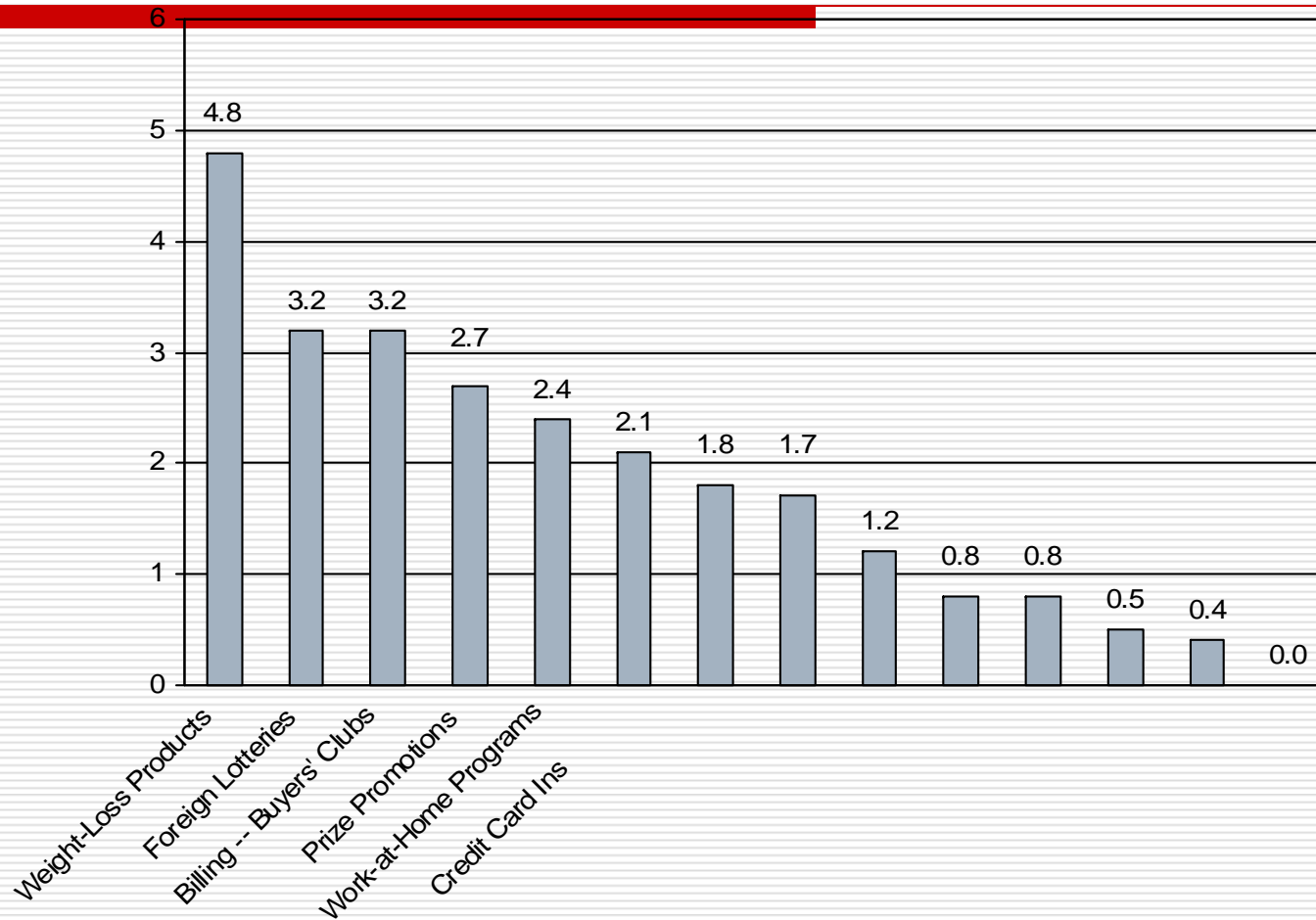
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# Consumer fraud

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- ÿ FTC's 2<sup>nd</sup> Survey of Consumer Fraud in 2005
  - ÿ An estimated 13.5% of U.S. adults, or 21 million people, experienced 1 or more of the 14 specific frauds covered in the survey
    - › Estimated total number of incidents: 48.7 million
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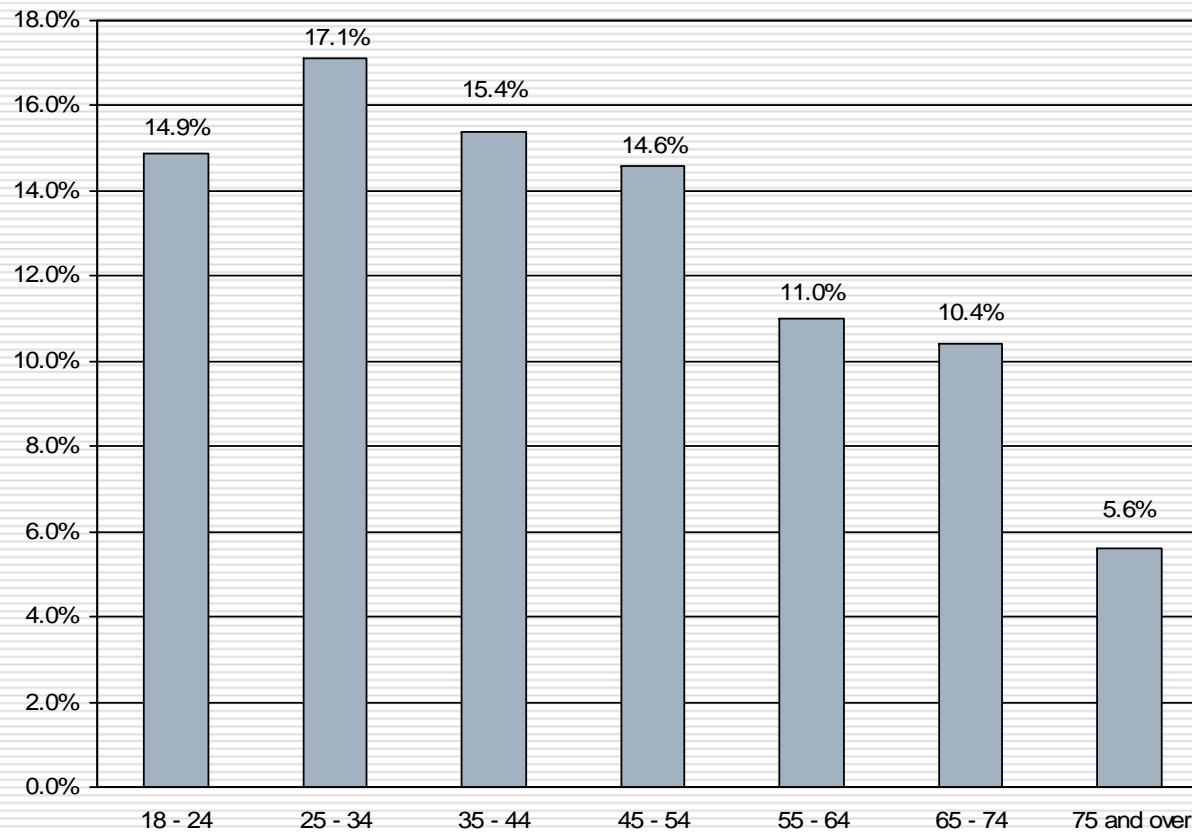
# Specific Frauds, by Number of Victims





# Likelihood of Being a Victim of Fraud, by Age

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# Concluding Remarks

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- ÿ FTC and Bureau of Economics work hard to promote interests of consumers
  - ÿ Bureau of Economics is but one of many checks and balances
  - ÿ Consumer protection starts with you, and education is key
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