

FEDERAL  
TRADE  
COMMISSION

PERFORMANCE REPORT  
FISCAL YEAR 1999



# EXECUTIVE SUMMARY

The Federal Trade Commission (FTC) is an independent law enforcement agency and the only federal agency with both consumer protection and competition jurisdiction over broad sectors of the economy. We strive to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive.

The FTC protects American consumers in both domestic and world marketplaces. Our national experience demonstrates that competition among producers and accurate information in the hands of consumers yields products at the lowest prices, spurs innovation, and strengthens the economy.

Our Strategic Plan defines the FTC's Vision and Mission in two Goals:

- GOAL 1 Prevent fraud, deception, and unfair business practices in the marketplace.
- GOAL 2 Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

These Goals, with their corresponding Objectives and Performance Measures, help us assess our Performance.

## FTC'S STRATEGIC PLAN

**VISION:** *A U.S. economy characterized by vigorous competition among producers and consumer access to accurate information, yielding high quality products at low prices and encouraging efficiency, innovation, and consumer choice.*

**MISSION:** *To prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish these missions without unduly burdening legitimate business activity.*

GOAL 1 Prevent fraud, deception, and unfair business practices in the marketplace.

GOAL 2 Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

**OBJECTIVE 1.1** Identify fraud, deception, and unfair practices that cause the greatest consumer injury.

**OBJECTIVE 2.1** Identify anticompetitive mergers and practices that cause the greatest consumer injury.

**OBJECTIVE 1.2** Stop fraud, deception, and unfair practices through law enforcement.

**OBJECTIVE 2.2** Stop anticompetitive mergers and practices through law enforcement.

**OBJECTIVE 1.3** Prevent consumer injury through education.

**OBJECTIVE 2.3** Prevent consumer injury through education.

## FY 1999 Performance Measures and Targets

### GOAL 1

T met or exceeded target
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#### **OBJECTIVE 1.1**

Measure 1.1.1: Cumulative number of consumer complaints and inquiries entered in database.

Target: 200,000  
Actual: 398,558 T

#### **OBJECTIVE 1.2**

Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud.

Target: \$200 million  
Actual: \$454.1 million T

Measure 1.2.2: Percentage of targeted industry brought into compliance through law enforcement and self regulation.

Target: 50-75%  
Actual: 78% T

#### **OBJECTIVE 1.3**

Measure 1.3.1: Number of education publications distributed to or accessed electronically by consumers.

Target: 7.25 million  
Actual: 8.589 million T

### GOAL 2

#### **OBJECTIVE 2.1**

Measure 2.1.1: Average number of days for review of HSR-reported transactions.

Target: 20  
Actual: 19 T

Measure 2.1.2: Number of nonmerger investigations opened per year.

Target: 45-70  
Actual: 45 T

#### **OBJECTIVE 2.2**

Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.

Target: 80%  
Actual: 80% T

Measure 2.2.2: Dollar savings for consumers resulting from FTC actions.

Target: \$200 million  
Actual: \$1.2 billion T

Measure 2.2.3: Average time, in months, from proposed consent orders to divestitures.

Target: 9  
Actual: 4 T

#### **OBJECTIVE 2.3**

Measure 2.3.1: Identify and survey FTC "customers" in the marketplace.

Target: design survey  
Actual: design survey T

## ***FY 1999 Assessment***

The results of our FY 1999 activities reached, and in most cases exceeded, each of our Performance Measure Targets. Highlights of our Performance and its effect on consumers and businesses are:

- Saving consumers an estimated \$1.7 billion in 1999 from law enforcement

actions to stop fraud and prevent anticompetitive mergers, achieving an estimated consumer savings of \$14 for every \$1 spent on agency operations.

anticompetitive mergers that would

- business

from anticompetitive mergers which raise prices and harm consumer confidence by reviewing an unprecedented number and size of proposed mergers and acquisitions.

- Bringing 61 Internet-related fraud enforcement actions in 1999, over 100 since 1994. These actions have targeted more than 300 corporate and individual defendants on behalf of millions of online consumers and small businesses. Further, these actions have stopped some of the newest, as well as the traditional, types of fraud used on the Internet to con consumers.
- Receiving and processing nearly 400,000 consumer complaints and inquiries into our Consumer Information System database since 1997, and sharing fraud complaints with over 220 law enforcement agencies via Consumer Sentinel, a secure Web site. Many complaints are now received through the Internet and a new, toll-free consumer helpline, 1-877-FTC-HELP, implemented in July 1999. This helpline allows individuals throughout the United States to call with questions or complaints and speak to trained counselors.
- Educating consumers and businesses about their rights and responsibilities, and alerting them to potential frauds, by distributing 8.6 million educational publications in print and online and expanding our media outreach programs.
- Advancing the public understanding of the merger reporting process and its importance to consumer confidence and the economy by responding to nearly 41,000 telephone inquiries and issuing draft

“Guidelines for Collaboration Among Competitors.”

## **Challenges**

Two developments have greatly increased the demands on the FTC – the continuous growth of the Internet and the dramatic increase in the number and size of corporate mergers.

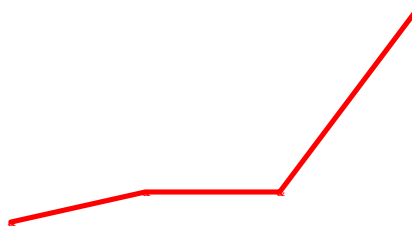
Use of the Internet has grown exponentially since commercial Web browsers first became available in 1994 – 123 million Americans now use the Internet. Internet purchasing also is booming and is forecasted to skyrocket from \$20 billion in 1999 to \$184 billion in 2004. The FTC is working to protect consumers and businesses against new high-tech frauds that use the Internet to defraud consumers. Halting cyberfraud and reviewing Internet-related issues to ensure continued growth of the new e-commerce medium during the early years of the Internet's existence already is challenging us and taxing our resources.

Similarly, the corporate merger wave continues into its tenth straight year with the number of reported mergers rising from 1,529 in 1991 to 4,642 in 1999. While this restructuring may be necessary for companies to compete in the new global, high-tech marketplace, antitrust review is necessary to identify and stop those combinations that could diminish competition in specific markets as this restructuring proceeds.

While the number of mergers has tripled in the past decade the dollar value of commerce affected by these mergers is on an even steeper trajectory, increasing eleven-fold in total value during this period, from \$169 billion to



**Internet Cases and Percentage of  
Consumer Protection FTE**



law enforcement and education.

OBJECTIVE 1.1

IDENTIFY PRACTICES THAT  
CAUSE CONSUMER INJURY



## **Performance Assessment and Future Trends**

In our effort to identify fraud, deception, and unfair business practices, we focus law enforcement and education efforts on the most serious consumer protection problems. We search our database for information that enables us to detect illegal practices and respond quickly to prevent consumer injury. By collecting data from, and sharing it with, our partners, we are able to enhance the effectiveness of our own efforts and those of law enforcement agencies across the country and in Canada. To make the database even more valuable, we plan to increase our collection of information from consumer agencies in other countries. Building on our experience with Canadian members of Consumer Sentinel, we will work toward data-sharing agreements, for example, with the members of the International Marketing Supervision Network (IMSN), an organization consisting of consumer protection agencies from more than two dozen countries. The IMSN's mission is to share information about cross-border commercial activities that could affect consumer interests and to encourage international cooperation among law enforcement agencies.

We are designing a compatible

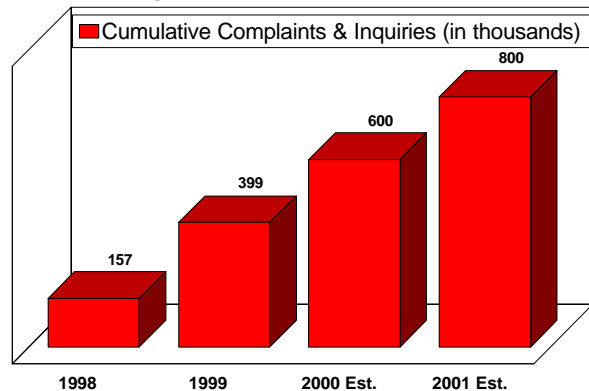
database dedicated to identity theft in response to the new responsibilities we have been given under the Identity Theft and Assumption Deterrence Act of 1998. The Commission will receive and record complaints by victims of identity theft, refer the complaints to the appropriate national consumer reporting and law enforcement agencies, analyze the

complaint data to identify trends, and undertake consumer education about the identity theft problem.

Assessing our performance using the number of entries in our consumer complaint database has proven to be a reasonable indicator of our ability to identify

consumer problems. Using the data to identify trends and patterns, new scams, and individual companies engaged in illegal activities has quickly become the bedrock of our ability to effectively target our law enforcement and education efforts. Also, working with our partners across the country and in Canada to collect data in one central location increases the value of each cluster of data by establishing patterns and giving us a broad view of what consumers are facing in the expanding, global marketplace. The more data we have, the better able we are to see trends and coordinate activities with other law enforcers. The database allows us and our law enforcement partners to identify and develop cases against fraudulent operators more quickly and coordinate our efforts to achieve greater impact on practices that cause consumer injury. For consumers, having one centralized, toll-free number to call gives them the opportunity to share their experiences

**Cumulative Number of Consumer Complaints and Inquiries Entered Into Database**



and contribute to law enforcement efforts to stop wrongdoers.

When we revise our five-year strategic plan, we will revisit this performance measure to consider moving to an annual count of database entries versus a cumulative one. The use of a cumulative count for 1999 is valid since the database has been in existence for approximately two years. However, as the data age, earlier entries will be less

useful in identifying bad practices; the data gleaned from recent entries will determine the targets of current law enforcement and education efforts. We will also examine the potential for duplication of complaints; for example, an individual may send the same complaint to us and several of our partners. At this time, we do not believe this is to be a significant problem.

## OBJECTIVE 1.2

## STOP PRACTICES THAT CAUSE CONSUMER INJURY

Once we identify fraud, deception, and unfair business practices in the marketplace, we focus our law enforcement efforts on areas where we can have the greatest impact for consumers.

### ***Strategies***

To combat fraud, we focus on the areas identified through our Consumer Information System database and our monitoring of the traditional and electronic marketplaces. Attacking telemarketing fraud continues to be a priority, as does protecting consumers from more traditional scams that have found new life on the Internet, including health-related fraud. The FTC also is moving to protect consumers and business

stopping these frauds, we stop further consumer losses to these defendants.

In the nonfraud area, our goal was to increase compliance with the laws against deceptive and unfair practices, and thereby ensure that consumers have more accurate and complete information for their purchasing decisions. We target industries where misleading or unfair practices are widespread, and work to significantly improve the level of compliance through law enforcement or self-regulatory programs over a two-year period. In 1999, we planned to bring 50% to 75% of the noncomplying members in targeted industries into compliance

## OBJECTIVE 1.3 PREVENT CONSUMER INJURY THROUGH EDUCATION

Consumer and business education is the first line of defense against fraud and deception and a top priority of the FTC.

### ***Strategies***

Our database helps us focus our education efforts on areas where fraud, deception, unfair practices, and information gaps are causing the greatest injury. Each major law enforcement initiative is supported by a comprehensive and creative self-help education program. Consumers are given the tools they need to spot potentially fraudulent and other illegal promotions, and businesses are advised about how to comply with the law. As with our law enforcement, more of our education efforts now involve the Internet. We not only address consumer issues involving the Internet, such as shopping online, but we also use the Internet as a tool to reach consumers, for example, through our Web sites, online banner public service announcements, and online distribution of “news” consumers can use.

We coordinate with hundreds of private and public partners to provide information about specific promotions, products, and services. In 1999, the FTC took the lead in organizing the first National Consumer Protection Week, an initiative sponsored by a broad coalition of public and private consumer protection advocates. In addition to the FTC’s own Web site ([www.ftc.gov](http://www.ftc.gov)),

against fraud and deception in the marketplace.

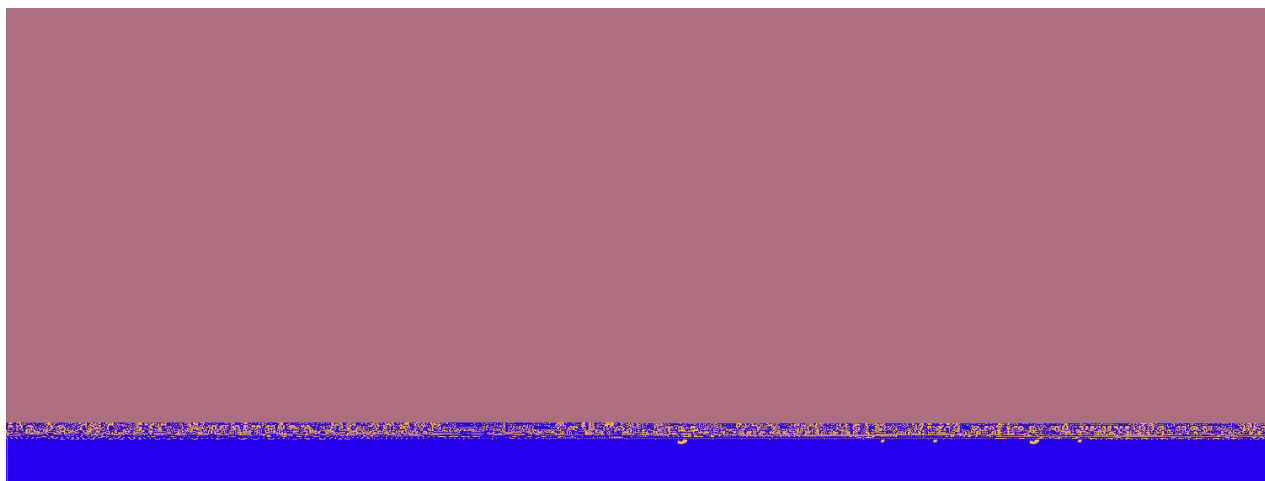
## ***Performance Assessment and Future Trends***

The FTC seeks to alert as many consumers as possible to the telltale signs of fraud, deception, and unfair business practices, and other critical consumer protection issues. Use of the Internet to disseminate information about fraud and technology-related matters is integral to the FTC's education, deterrence, and enforcement efforts and has allowed the agency to reach vast numbers of consumers and businesses quickly, simply, and at low cost. The FTC has been at the forefront of using the Internet to educate and empower consumers. This trend will accelerate in the future.

Our measure of the number of publications distributed is an accurate indicator of our impact in educating consumers, although it does not fully capture the millions of FTC publications

distributed by our customers and partners, and downloaded from the Internet. In the future, we expect the number of print publications we distribute to decline and the number of publications accessed through the Internet to increase as more consumers and businesses go online. The growth in the number of publications viewed online in 1996 and 1999 (140,000 versus 2.5 million) tells the story of the Internet's coming of age as a mainstream medium and certainly its importance to any large-scale dissemination effort. Capitalizing on this trend, we will increase our use of the FTC's Web site, [www.ftc.gov](http://www.ftc.gov), and the multi-agency Web site, [www.consumer.gov](http://www.consumer.gov), to efficiently and effectively reach consumers, businesses, law enforcement officials, and the media.

Increasing the visibility of the FTC as the nation's consumer protection champion not only helps consumers better protect themselves, but also encourages consumers to provide the FTC with more and better complaint data. That, in turn, will make our law enforcement and education efforts more effective.

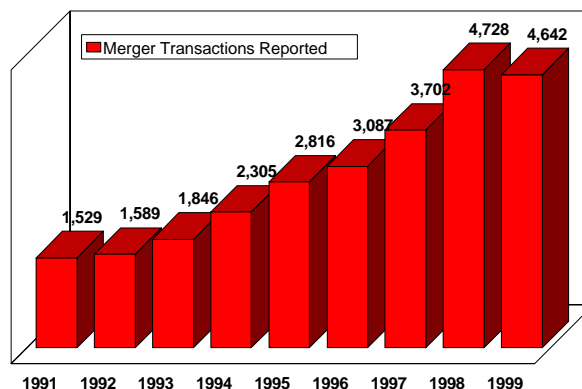


## GOAL 2 PREVENT ANTICOMPETITIVE MERGERS AND OTHER ANTICOMPETITIVE BUSINESS PRACTICES IN THE MARKETPLACE

Competition among sellers in an open marketplace results in lower prices for consumers, leads to high quality products and services, maximizes consumer choice, and spurs the discovery and development of beneficial new products and services.

Anticompetitive mergers, and other practices that diminish competition, deny consumers these benefits. Thus, it is our goal to protect consumers from such threaproduct such Tw (practices t.) Tj T

### Merger Transactions







review of HSR reported actions in an average of 19 days.

In 1999, we received notification of 4,642 proposed transactions in accordance with the HSR notification and filing requirements. This volume of transactions reflects the ongoing wave of merger activity that has been taking place over the past several years. The number of reported transactions in 1999 represents a decrease of approximately 2% from the 4,728 transactions reported in 1998, but remains at a level more than three times the number of reported merger transactions in 1991.

Mergers reported under the HSR Act vary tremendously in their complexity and potential anticompetitive effect. We continue to review and prepare an analytical summary of each reported transaction. In most cases, the agency can make a reasonable judgment about whether a merger has the potential to be anticompetitive or not within a few days of filing, simply by reviewing these analyses, based on materials filed with the HSR notification. The agency's Merger Screening Committee, comprised of senior officials of the Bureau of Competition and Economics, reviews those transactions that raise more difficult questions. If the Committee determines that more information is needed in a matter, it calls for a more extensive investigation, often including the issuance of a request for additional information from the parties.

In 1999, we allowed 3,148 of the reported transactions, approximately 70%, to proceed before the end of the statutory 30-day waiting period. From all of the transactions, we opened 278 preliminary investigations and issued requests for additional information in 45 proposed transactions to obtain information to assist the attorneys and economists in conducting their

investigations.

We also measure our success in identifying anticompetitive practices that cause consumer injury by counting the number of nonmerger investigations opened during the year. This measure directly reflects our enforcement activity. While we do not take enforcement action in every matter we investigate, because we often conclude that the practice in question is not anticompetitive, it is axiomatic that a thorough investigation always precedes any order to a business that it must "cease and desist" a particular anticompetitive activity.

We established a goal of opening 45 to 70 nonmerger investigations over the course of the year. In 1999, we opened 45 such investigations, a number within the range of our goal, albeit at the lower end.

## ***Performance Assessment and Future Trends***

We were able to exceed one performance goal – reducing the average review time for HSR reported transactions – and to meet the other performance goal – initiation of investigations into potentially anticompetitive activity other than mergers – despite the continuation of the record-setting pace of corporate mergers and acquisitions. In the future, continuing to assess each reported transaction through our structured review process, and to do so as quickly and efficiently as possible, will continue to be among our highest priorities.

We remain cognizant of the continuing potential for anticompetitive activity not involving mergers and of the importance of our efforts to identify such activity. Although we met our goal on this performance measure, two factors

limited our ability to exceed the minimum level. First, the continuing high level of merger activity, described above, demanded an extremely large share of the resources devoted to our maintaining competition mission. Second, of the resources remaining for nonmerger investigation and enforcement, a substantial proportion were properly devoted to preparations for administrative litigation in the *Intel Corp.* case, which was among the most important nonmerger matters addressed by the agency in some time. In the future, we expect, at a minimum, to maintain the historic level of nonmerger investigations, even if the current level of merger activity continues, and to increase our activity when merger-related resource demands subside.

In addition to achieving these specific performance goals, we continue our work to accomplish this objective through economic research designed to improve our understanding of those market situations where antitrust activity would result in a more competitive market. We concluded a study of the pharmaceutical industry to help us understand the rapid changes taking place in this industry and what these changes might mean for antitrust policy; as well as studies of the effects of franchise transfers and mergers in the carbonated soft drink bottling industry. Studies of how the entry of branded generic drugs has influenced the pricing and sales of branded drugs, and the aftermath of hospital mergers that were not challenged are ongoing.

## OBJECTIVE 2.2 STOP ANTICOMPETITIVE MERGERS AND PRACTICES THROUGH LAW ENFORCEMENT

Law enforcement represents the most direct method by which the Commission pursues its goal of preventing anticompetitive mergers and other anticompetitive business practices.

### ***Strategies***

To stop suspect mergers and practices through law enforcement, our preferred strategy – that is, the most effective and cost-efficient strategy – is to prevent such mergers before they occur.

We implement this strategy primarily through our authority to seek injunctive relief under the Commission Act. Often we rely on the Commission's power to seek injunctive relief to prevent a merger that could not be prevented otherwise.

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## **Dollar Value of Merger Transactions**



# OBJECTIVE 2.3 PREVENT CONSUMER INJURY THROUGH EDUCATION

In addition to its law enforcement activity, the FTC seeks to enhance understanding of the operation of the marketplace by educating the business community about the antitrust laws.

## Strategies

We pursue this objective through guidance to the business community; outreach efforts to Federal, state and local agencies, business groups and consumers; development and publication of antitrust guidelines and policy statements; and speeches and publications. Through these mechanisms, we publicize the antitrust law and our enforcement intentions, with the likely result of deterring future anticompetitive behavior.

Our enforcement program is made more effective by public awareness of what factors are likely to be challenged as law violations. Through public releases of Commission decisions in various media such as press releases, Web page publications, and speeches, the public facts underlying Commission actions provide bases for companies to evaluate the likelihood that other transactions would likely face challenge.

As a complement to our enforcement activity, we also advise other state and federal government officials about the possible effect that various regulatory proposals may have on competition in the relevant marketplace.

## Performance Measures and Results

Our success in educating the business community about the antitrust laws is also determined in part by the timeliness with which we provided needed advice. Accordingly, one measure in accomplishing this objective is the length of time required to provide advisory opinions related to issues in the health care industry. We set a goal of providing such advisory opinions within 90 days of our receipt of a request, and we exceeded that goal by providing advisory opinions in an average of 63 days.

<b>Performance Measure 2.3.1</b> Identify and survey FTC "customers" in the marketplace.	
FY 1999 Target:	<b>design survey</b>
FY 1999 Actual:	<b>design survey</b>
Met or Exceeded:	<b>T</b>
<b>Performance Measure 2.3.2</b> Average number of days to issue advisory opinions in health care area.	
FY 1999 Target:	<b>90 days</b>
FY 1999 Actual:	<b>63 days</b>
Met or Exceeded:	<b>T</b>

## Performance Assessment and Future Trends

We were able to meet one performance goal – designing a customer survey – and to exceed the other performance goal – providing advisory opinions relating to health care within 90 days of receipt of a request. Upon further consideration of the use of a general survey, we are exploring whether our education efforts would be better evaluated by measuring the number of contacts we have with our primary stakeholders.

In addition to achieving these specific performance goals, we worked to accomplish this objective in a number of

other ways, including the following:

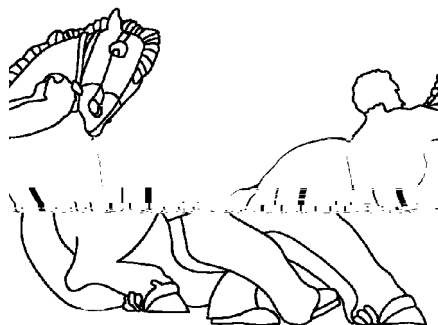
- With the Department of Justice Antitrust Division, we issued draft “Antitrust Guidelines for Collaborations Among Competitors.”
- We assisted understanding of and compliance with the HSR Act through written guidance, such as Premerger Rules, formal interpretations, the Premerger Notification Source Book, and three Premerger Guides.
- Our Premerger Staff handled nearly 41,000 telephone inquiries from the public.
- We now post on the FTC’s website HSR-related information, including a list of early terminations.
- The FTC and the Department of Justice promoted federal and state cooperation by issuance of a joint protocol for our coordinated investigations.
- We routinely communicated with the public through press releases describing specific events.
- We maintained effective international outreach and coordination efforts

with foreign competition authorities.

- The Bureau of Economics circulated economic papers on competition issues.

We strongly believe in the importance of these “outreach” activities and will continue to place emphasis in this area in future years.

Finally, because the Commission and its staff have a great deal of expertise about competition and about the competitive effect of proposed laws, rules or regulations of other governmental bodies, they are often invited to comment on such proposals. For instance, we provided advice to state utility commissions and to the Federal Energy Regulatory Commission about alternative ways they could structure the rules that will guide the deregulation of electricity transmission and generation to allow competition in wholesale and retail sales of electric power. Other recent examples of competition advocacy comments include those filed before the North Carolina Legislature regarding restrictions on distribution choices of motor vehicle manufacturers, and comments to the Illinois and North Carolina legislatures regarding the competitive effects of mandating exclusive distributorships for alcoholic beverages.







<b>Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.</b>			
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Measure 2.3.2: Average number of days to issue advisory			
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