

# The Washington Times

## The Federal Trade Commission's unwelcome birthday

*Americans have paid dearly for 100 years of anticompetitive regulation*

By Daniel Oliver  
November 6, 2014

Happy Birthday, Federal Trade Commission — I guess. This Friday the FTC is holding a jamboree in Washington, D.C., to celebrate 100 years of nonstatutory lawmaking, commonly referred to as regulating.

The FTC was midwifed into this world on Sept. 26, 1914, by President Woodrow Wilson — not an auspicious beginning. Wilson thought separation of powers belonged in the dustbin of history. The FTC is now the oldest surviving so-called "independent regulatory agency," the Interstate Commerce Commission having departed this life in 1995.

Since its beginning, the FTC's record has been checkered at best. It's not difficult to find an economist who thinks the FTC's net effect has been negative.

The Federal Trade Commission Act bans "unfair methods of competition." Exactly what is unfair is left to the FTC commissioners' discretion, as modified from time to time by courts. That kind of power was Wilson's sweet dream.

The trouble is, the most unfair method of competition, and the most demonstrably harmful to consumers, is getting government to rig the market in your favor. Many anticompetitive practices are not just sanctioned, but are required, at both the federal and state level, making the FTC really only a fig leaf of anticompetitive respectability.

The financial damage of government-mandated anticompetitive behavior is difficult to estimate. This is very complex stuff. But then so are any benefits from FTC actions difficult to estimate.

In a document titled "Performance Plan," listing "objectives and measures," the FTC estimates that in fiscal 2012 it produced consumer benefits of somewhere around \$1 billion. That may sound like a lot, but it's mouse droppings compared with the consumer loss from anticompetitive restrictions at the federal and state levels.

Wayne Crews at the Competitive Enterprise Institute estimates that the U.S. sugar program costs consumers \$4 billion a year. Chris Edwards at the Cato Institute estimated in 2009 that the U.S.

dairy program costs consumers between zero to \$2.5 billion a year, depending on the market price of milk. Let's assume it's 50 percent each year, or \$1.25 billion.

Adam Summers of the Reason Foundation estimated in 2007 that state licensing laws cost consumers between \$35 billion and \$42 billion a year. Occupational licensing laws require workers who want to enter certain fields to meet specific requirements — usually a minimum amount of course work, exams and other prerequisites. The rationale is that the requirements guarantee quality of service and protect the public health. The requirements may make sense in some highly specialized fields (medicine), but their benefits are speculative at best for hair braiders or interior designers.

Just those three kinds of regulations add up to about \$40 billion a year, compared with the FTC's own estimate of its benefit to consumers of only \$1 billion.

It is true that the FTC has opposed some state-level anticompetitive behavior. It currently has a case before the Supreme Court challenging the practice of the North Carolina Dental Board of Examiners for restricting competition.

That's not as good as it looks, though. The Supreme Court has held that if such restrictions are truly imposed by a state government, rather than just by the members of a profession, they are immune from attack (under the "State Action doctrine"). For example, if a particular profession has been able to persuade the state government to rig the market in its favor, the FTC will be powerless to act to benefit consumers.

What should FTC commissioners do? Take to the road and explain to the American people that government is the primary cause of anticompetitive activity. In almost any media market other than the top 10 — and sometimes there, too — a speech by an FTC commissioner will be carried by the evening news. Yes, the result of such activity is speculative, but then, as numerous economists agree, so is the benefit of most antitrust cases.

Five FTC commissioners — crusaders for competition — crisscrossing the country telling the truth about governments' anticompetitive practices would be news in itself.

State and federal government officials undoubtedly would howl that the FTC commissioners were out of bounds. Perhaps. Out of bounds is where the work needs to be done, though.

Teaching the American people the true facts about competition policy might take a hundred years. Which means they should begin at once.