



December 1997

CONSUMER PROTECTION PROGRAMS

From 1970 to 1996, responsibility for enforcing laws designed to protect consumers against unlawful business practices such as pressure sales techniques, deceptive advertising, and fraud was divided between the Department of Justice (DOJ) and the Department of Agriculture, Trade and Consumer Protection (DATCP). However, effective July 1, 1996, the Legislature consolidated responsibility for most consumer protection activities, including operating a consumer protection telephone hotline, in DATCP. DOJ continues to share responsibility with DATCP for investigating deceptive advertising and telecommunication services cases, and it litigates cases referred by DATCP and other agencies.

In fiscal year (FY) 1996-97, DATCP expenditures for consumer protection totaled an estimated \$3.9 million, which supported 72.8 positions, and DOJ expenditures for consumer protection totaled \$742,000, which supported 9.3 positions.

The Two Agencies Have Different Consumer Protection Approaches

Differences in the agencies' approaches to resolving consumer protection complaints reflect fundamental differences in their underlying philosophies. DATCP officials emphasize education and preventive measures, such as providing recorded educational messages on the telephone hotline and preparing public information broadcasts and presentations. In addition, when telephone complaints are received, DATCP first provides information that consumers can use to resolve their disputes independently. If the dispute involves an apparent violation of law, DATCP encourages the consumer to submit a written complaint, helps to mediate, and then uses progressively stronger methods, including warning the business to comply with laws or negotiating a consent judgment, if other methods are ineffective. However, court actions are initiated only if these efforts prove ineffective.

Before consolidation DOJ also used mediation and other techniques to resolve complaints, but DOJ officials believe that halting illegal activities and recovering financial losses for all consumers requires investigators to focus on gathering the evidence needed for civil litigation or criminal prosecution. They fear DATCP may not develop needed evidence if its emphasis is on mediation of disputes rather than halting illegal activities.

To determine what effect the two strategies have had on complaint handling, we reviewed the receipt and disposition of written complaints for a three-year period. Although the number of written complaints declined from 13,119 in FY 1994-95 to 12,364 in FY 1996-97, by January 1997 the number of written complaints received by DATCP had returned to pre-transfer levels. In addition, despite the difference in agency philosophies, we found few differences in written complaint handling. For example, both agencies most frequently closed complaints by serving as a mediator between the business and consumer during settlement negotiations. In FY 1996-97, DATCP closed 76.6 percent of its written complaints through mediation; in FY 1994-95, DOJ closed 76.5 percent of its cases in this manner. However, in FY 1996-97, DATCP closed only 0.7 percent of its written complaints through court action. In FY 1994-95, DOJ closed 4.7 percent of its written complaints through court action.

DATCP's Investigative Priorities Have Been Questioned

Since consolidation of consumer protection responsibilities in DATCP, DOJ has criticized DATCP for initiating too few investigations and for failing to adjust its investigative priorities to give adequate attention to its new responsibilities and emerging problems, such as telemarketing scams and Internet fraud. We reviewed the number and types of investigations initiated by DATCP in FY 1996-97 and found that of the 113 investigations initiated, none were initiated

in areas such as health services fraud or contests and sweepstakes. In addition, few investigations involved telemarketing, which has been identified by the Federal Trade Commission as a technique that is increasingly used to adversely affect large numbers of consumers. In FY 1996-97, nearly 68 percent of the investigations initiated by DATCP related to six types of business that have always been DATCP's responsibility and make up 50 percent of the complaints DATCP receives.

DATCP Refers Few Cases to DOJ for Prosecution

DATCP refers criminal cases to local district attorneys. Civil cases or criminal activities affecting consumers in multiple counties are to be referred to DOJ; however, from FY 1994-95 through FY 1996-97, only 12 cases were referred to DOJ. In contrast, 112 cases were referred to local district attorneys during that period. DATCP defends its referral practices, in part because it believes it successfully closes cases by means other than litigation. However, DOJ believes that fewer court actions have limited the amount of financial compensation recovered for consumers. Between FY 1991-92 and FY 1995-96, DOJ obtained an average of \$3.0 million annually in court-ordered fines, forfeitures, and restitution, which included multistate settlements. In comparison, a total of \$1.9 million was obtained in FY 1996-97, consisting of \$849,057 in fines and restitution and \$1.1 million in multistate settlements. DOJ officials attribute this decline to DATCP's policy of pursuing legal action only when other efforts have failed. DATCP contends that its recoveries through the mediation process offset any decline, but this cannot be proven because recoveries were not documented before 1996. We also found that the two agencies have had difficulty in coordinating their prosecutorial efforts, and there have been numerous instances of miscommunication and disagreement about the quality of case referrals.

Consumer Satisfaction with Both Agencies Appears Equal

While consumer satisfaction with consumer protection programs is only one measure of program effectiveness, we attempted to measure the level of consumer satisfaction by surveying 1,000 randomly selected consumers who submitted complaints to DATCP and DOJ between October 1, 1995, and September 30, 1996. We found that one-half of the 493 consumers who responded to our survey were satisfied with the services, but there was no significant difference in the level of satisfaction between those individuals filing complaints with DATCP and those filing with DOJ.

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