

RESPONSE OF THE UNITED STATES TO ICN QUESTIONNAIRE ON COMPETITION ADVOCACY

Institution Department of Justice and Federal Trade Commission

Contact for further information

DOJ

FTC

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I. THE COMPETITION AUTHORITY

1) When was the competition authority established in your country?

The Sherman Act was passed in 1890. The Department of Justice (“DOJ”) established an office dedicated to antitrust enforcement in 1903 and in 1933 its Antitrust Division was established. The Federal Trade Commission (“FTC” of “Commission”), which generally shares jurisdiction with the Antitrust Division for civil enforcement of the federal antitrust laws, was established in 1914.

2) Which characteristic best describes the institutional status of your competition authority? (You may choose more than one)

Independent-administrative authority - Federal Trade Commission
Within a Ministry or Department -Antitrust Division, Department of Justice
A Ministry of its own
Investigatory body
Directorate within a Ministry
Judicial authority
Quasi-judicial authority -Federal Trade Commission
Within Congress or Parliament
Other (Describe)

Please feel free to elaborate on your answer.

The FTC is an independent agency with law enforcement authority, including quasi-judicial power to issue cease and desist orders as well as prosecutorial authority to seek certain relief in court.

The Antitrust Division is a component of the United States DOJ. The Justice Department is part of the Executive Branch of the United States Government.

3) Members (Commissioners, Chairman, Director) of the competition authority are appointed by:

- a) President or Prime Minister
- b) **President or Prime Minister with consent of Congress or Parliament** (See #4 below).
- c) Minister
- d) Congress or Parliament
- e) Representatives of entrepreneurial associations, academics and consumer associations
- f) The judicial system
- i) Other (Describe)

Please feel free to elaborate on your answer.

4) How many members (Commissioners, Chairman, Director) does your Authority have?

The Antitrust Division is under the direction of an Assistant Attorney General ("AAG"), who has five Deputies. The AAG is appointed by the President and confirmed by the Senate.

The Federal Trade Commission has five Commissioners. The Commissioners are appointed by the President and confirmed by the Senate. The President designates one of the Commissioners to serve as Chairman.

5) What was their background before appointment? (Academia, politics, business, professions, consumer groups, public administration, etc.)

See attached biographies.

6) Do appointments of the members (Commissioners, Chairman, Director) of the competition authority last for a specified period?

The AAG serves at the pleasure of the President.

7) How long is the period? Is the mandate renewable?

FTC Commissioners serve 7 year terms. The Chairman serves in that capacity at the pleasure of the President. Their mandate is renewable.

8) How is the budget for the competition authority assigned (as part the budget of a Secretary or Minister, directly by the congress or parliament, etc.)?

The budget for the Antitrust Division is a designated part of the appropriation from Congress for the Department of Justice. The budget for the FTC is appropriated by Congress, with separate amounts specified for the competition function and the consumer protection function.

9) Does the mechanism for the appointment of the members (Commissioners, Chairman, Director), and the allocation of the budget contribute to or detract from the autonomy of the competition authority?

Congressional oversight over the Antitrust Division is no different than its oversight over any Executive Branch agency and over the FTC is no different than its oversight over other independent agencies.

10) Does the degree of autonomy of the competition authority contribute to or detract from its advocacy activities? Why?

The high degree of autonomy enjoyed by the Antitrust Division and the FTC give their competition advocacy activity a high degree of credibility.

11) Are the advocacy efforts of your competition authority supervised, or otherwise subject to modification or review, by another authority or the courts? Please explain.

Generally, no; DOJ statements of views on proposed federal legislation must be cleared by the Office of Management and Budget ("OMB").

12) Has the political environment restricted the competition authority's advocacy efforts? (Reversal of decisions, firing of competition officials of authority, etc.)

Generally, the efforts of the antitrust agencies are free from political influence. In every industry, there are groups that do not want their efforts exposed to the forces of competition, and in some cases governmental bodies share the view of the regulated industry. Any affected industry can be expected to seek to persuade the legislature to maintain regulatory policies that limit the exposure of their industry to competition. Competition advocacy consists of using intellectual and consumer forces to persuade decision makers of the greater benefits of the competitive approach.

Objections to advocacy submissions about state laws regulating competition in gasoline retailing may have led to the inquiries, and implicit criticism, from Congress in 1987 and 1988 about the amount of Commission resources being expended on advocacy. But the advocacy program was defended by the two previous Chairmen, one a liberal Democrat and the other a conservative Republican. One response to the Congressional criticism was to establish at the FTC a separate office to manage the program and ensure compliance with procedural protocols.

GENERAL ADVOCACY

13) What is the level of awareness of the benefits of competitive markets and competition policy in your country? In your opinion, does your country have a competition culture?

The level of awareness of the benefits of competitive markets and competition policy is very high in the United States. The country does have a competition culture.

14) Are government entities and courts familiar with the competitive market mechanism and its benefits?

Government entities and courts in the United States are familiar with the competitive market mechanism and its benefits. In addition to cases filed by the FTC and Antitrust Division, private plaintiffs bring antitrust cases in court, and state attorneys general bring court cases on behalf of injured consumers in their state(s). As a result, there is a vast body of antitrust case law in the U.S. Many, though not all, government agencies' mandates include consideration of competition and consumer welfare.

15) What activities has the competition authority undertaken to raise awareness in the society of the benefits of competitive markets? Which activities do you consider more successful in terms of their positive effect on the competition process?

Law enforcement activities and related publicity are perhaps the most effective means of promoting awareness of competition values. In addition, DOJ and Commission officials engage in informal competition advocacy by giving speeches before industry and consumer groups and participating on numerous panel discussions of competition and regulatory issues. On occasion, the Antitrust Division and Commission staff have been seconded to other government offices to assist them in dealing with competition advocacy issues. Staff economists and lawyers of the agencies have been detailed to the Council of Economic Advisers and to energy (FERC), foreign trade (ITC), communications (FCC), and transportation (FMC) agencies to assist in deregulation efforts directly.

The staffs of the agencies also have issued and published dozens of reports and articles. We believe that all of these activities are successful in having a positive effect on the competition process.

16) The most common attitude towards the advocacy role of the competition authority:

| Group | Ally | Dissenter |
|--|-------------------|-----------|
| Academics | X | |
| Congressmen | varies with issue | |
| Consumer Associations | X | |
| Entrepreneurial associations | varies with issue | |
| Labor unions | varies with issue | |
| Local governments | varies with issue | |
| Non-governmental organizations | varies with issue | |
| Political parties | varies with issue | |
| Media | X | |
| Professional associations (lawyers, economists, or others) | X | |
| Others | X | |

Please feel free to elaborate on your answer.

Groups with varying interests in different issues may support or oppose any particular enforcement or regulatory action.

17) What is the interaction between the enforcement and advocacy programs of the competition authority?

Both competition advocacy and competition law enforcement are important in terms of reducing barriers to competition in any country. Some governmentally imposed or sustained restraints on competition can be of great economic significance while some private restraints may have relatively minor significance. The converse can also be true; therefore, there is no consistently correct generalization to be made. Governmental restraints on competition tend to be more enduring, but they are susceptible to correction through the political process. Clandestine private restraints can not be remedied in that manner. Competition advocacy may be more important in countries where private competitive markets have been slow to develop, but in countries in which free markets are the rule, both competition advocacy and competition law enforcement are important components of the effort to maintain and expand competition.

Although the law does not permit the Antitrust Division to subpoena information for use in regulatory proceedings, the law does permit information subpoenaed during law enforcement investigations to be later used in regulatory proceedings.

18) Does the competition authority advocate the elimination or restriction of exemptions to the enforcement of the competition law?

The Antitrust Division and the FTC consistently advocate elimination or limitation of exemptions from the antitrust laws.

III. ADVOCACY IN THE REGULATORY AND LEGAL FRAMEWORKS

19) Does the competition authority participate in any council of Ministers, Cabinet or a similar high-level official group? If the answer is affirmative, what role does it have? Please explain.

The Antitrust Division is represented in the President's cabinet by the Attorney General. The Antitrust Division frequently represents itself on sub-cabinet policy or working groups within the Executive Branch when market competition is at issue.

As an independent regulatory agency, the Commission is not part of the Cabinet or of any other executive bodies, but it participates on an ad hoc basis in some sub-cabinet level bodies.

20) Does the competition authority advise policymakers about the competitive impact of public policies? Are these recommendations effective in modifying public policies?

The formal competition advocacy efforts of DOJ and the Commission have taken several forms. We have provided the U.S. Congress with written and oral testimony on competition issues raised by proposed legislation. In most regulatory agency proceedings, our participation takes the form of written comments. In a limited number of regulatory proceedings, our written comments are supplemented by expert testimony provided by the Department or Commission.

Advocacy actions from the Commission may take two levels of formality: actions by the Commission itself, and actions by the staff (invariably with the knowledge and authorization of the Commission). Statements to Congressional committees about these subjects are usually issued in the name of the Commission, although live testimony is usually presented by a senior staff member rather than a Commissioner. Formal on-the-record comments to other federal agencies are usually issued in the name of the staff bureau chiefly responsible, although a few advocacy comments or "interventions" have been issued by the Commission

itself. To state legislatures and state and local agencies, comments typically, but not always, take the form of a letter from a senior staff member, who may be a bureau or regional office director or the head of the advocacy office. On occasion, the staff member will testify in open hearings before these bodies.

The informal competition advocacy efforts of DOJ and the Commission also take various forms. DOJ participates as a member of a number of Executive Branch task forces or committees charged with formulating the Administration's policy on a substantial number of economic issues. The Department also informally advises legislators on Congressional matters. Finally, to the extent permitted by applicable law, DOJ and the Commission informally advise regulatory agencies about the competition implications of courses of conduct being considered by the regulatory agency.

See also the response to #28.

21) Is the competition authority informed by the executive or by the legislative body about reform proposals? How is this done? At what stage of the procedure? Please explain.

Both competition authorities routinely monitor legislative proposals. The agencies are informed of competition-related proposals being considered within the Administration.

22) Does the law enable the competition authority to influence the design of the regulatory framework in the legislative process? If the answer is affirmative, explain briefly at what stage and through which mechanisms the authority can participate?

Yes, the competition agencies can and do provide formal testimony at legislative hearings, and are routinely consulted by legislative staff at various times during the legislative process.

23) Is the general public informed about the advocacy reports or opinions issued by the competition authority? Through which means?

The agencies typically issue press releases when they file formal comments at regulatory agencies. Speeches and congressional testimony are routinely made public, and all advocacy submissions are published on the agencies' websites.

24) Are the recommendations or opinions issued by the competition authority available for public review? Please explain.

All regulatory filings are available for public viewing at the Antitrust Division and FTC, and the more recent ones are available on their websites.

25) If the advocacy reports have been published, or if they are unpublished but not statutorily protected, would the competition authority of your country be willing to share them for inclusion in an ICN electronic database?

Yes.

26) Choose from the following list the most frequent ways in which your competition authority becomes involved in advocacy:

a. Competition law empowers competition authority to analyze and offer opinion about the competitive impact of

sector regulation, privatization process or franchising.

- b. Sector specific law establishes intervention of the competition authority in the regulation, privatization or franchising
- c. Competition authority was invited by the sector regulator to provide its opinion
- d. Competition authority participated in regulation, privatization or franchising at the request of Congress or Parliament
- e. Other (Please explain.)

Which are the most successful? Why?

There are a number of sources of authority for DOJ and Commission competition advocacy activities before other parts of government. U.S. competition legislation authorizes DOJ and the Commission to participate in specified industry-specific regulatory proceedings in which the regulatory agency is investigating conduct that might violate certain provisions of U.S. competition law. Various regulatory statutes also authorize or require the DOJ and the Commission to provide competition advice to the regulatory agencies on activities that require approval by the regulator. Even where regulatory statutes do not specifically authorize DOJ and Commission participation, the regulatory agencies' procedures are usually permissive enough to allow the agencies to intervene for the purpose of offering their views on competition issues. Upon request, DOJ and the FTC also offer the legislature their views on competition issues raised by proposed legislation. With respect to DOJ, this competition advocacy in legislative matters stems from Congress' practice of soliciting the views of the Executive Branch and its components on matters related to their experience and expertise.

General statutory authority for Commission advocacy efforts is found in Section 6 of the Federal Trade Commission Act, 15 U.S.C. §46, which empowers the Commission to gather information and issue reports. In its early years, the Commission often issued reports on conditions in particular industries. Some of the studies, such as ones about broadcasting and electric power in the 1920's, included recommendations about the creation of regulatory structures for those industries. In the last several decades, the Commission has not issued similar industry reports. As the Commission's law enforcement role became clearer over the years, its reports concentrated more on general law enforcement issues and less on industry-specific conditions. For example, its report on mergers in the 1940's was an important basis for the Celler-Kefauver amendments to Section 7 of the Clayton Act in 1950. And for the last several decades, studies about regulatory issues by the staff of the Commission have applied the staff's expertise about the operation of competitive markets to examine the economic consequences of regulation.

We believe that the competition advocacy efforts of both agencies are generally successful because of the agencies' good reputations for high quality work and impartiality.

IV. SECTOR SPECIFIC ADVOCACY

27) Indicate in which sectors the competition authority has been recently engaged in competition advocacy. [Describe the most outstanding activities.]

The following chart covers the years 1996 - 2001. Note that there is some double-counting in this listing; that is, comments that fit more than one category are counted in each. Competition advocacy has been defined for the purposes of this chart and the next one to include regulatory filings, interagency task forces, and meetings with foreign governments. Attorneys and economists in the Antitrust Division and the FTC regularly give public speeches which are too numerous to include; some speeches are from prepared text that can be accessed on the DOJ and FTC Internet websites.

| Sectors | No | Yes | FTC | DOJ |
|------------------------------------|----|-----|-----|-----------------|
| 1.Telecommunications | | X | 9 | |
| 2. Broadcast TV | | X | | |
| 3. Cable TV | | X | 1 | |
| 4. Satellites | | X | 1 | Total 1-4: 47 |
| 5. Postal Service | | X | | |
| 6. Passenger Air Transport | | X | | |
| 7. Air Freight Transport | | X | | Total 6-7: 31 |
| 8. Road Freight Transport | | X | | |
| 9. Intercity bus | | X | | |
| 10.Railroad - passenger | | X | | |
| 11.Railroad - freight | | X | | Total 8-11: 3 |
| 12.Maritime Transport | | X | | 3 |
| 13.Local taxi | | X | | |
| 14.Local bus | X | | | |
| 15.Retail distribution | | X | 4 | |
| 16.Pharmacies | | X | 4 | |
| 17.Newspaper distribution | X | | | |
| 18.Electricity | | X | 33 | |
| 19.Gas | | X | | |
| 20.Oil | | X | | Total 18-20: 50 |
| 21.Professional services generally | | X | 5 | |
| 22.Lawyers services | | X | | |
| 23.Doctors services | | X | 2 | |
| 24.Accountants services | | X | 1 | |
| 25.Dentists services | | X | | |
| 26.Architects services | | X | | |
| 27.Engineers services | | X | | |
| 28.Opticians services | | X | | |
| 29.Agriculture | X | | | 5 |
| 30.Financial services | | X | 6 | |
| 31.Insurance | X | | | |
| 32.Product standards | | X | | |
| 33.Construction | X | | | |
| 34.Environment | | X | 3 | |
| 35. Other: International Trade | | X | 1 | |

The following chart covers the years 1975 - 1995. Note that there is some double-counting in this listing; that is, comments that fit more than one category are counted in each.

| Sectors | No | Yes | FTC | DOJ |
|------------------------------------|----|-----|-----|------------------|
| 1.Telecommunications | | X | 13 | |
| 2. Broadcast TV | | X | 15 | |
| 3. Cable TV | | X | 7 | |
| 4. Satellites | | X | 5 | Total 1-4: 140 |
| 5. Postal Service | | X | 13 | 15 |
| 6. Passenger Air Transport | | X | 15 | |
| 7. Air Freight Transport | | X | | Total 6-7: 190 |
| 8. Road Freight Transport | | X | 44 | |
| 9. Intercity bus | | X | 4 | |
| 10.Railroad - passenger | | X | 1 | |
| 11.Railroad - freight | | X | 17 | Total 8-11: 261 |
| 12.Maritime Transport | | X | 7 | 111 |
| 13.Local taxi | | X | 19 | |
| 14.Local bus | X | | | |
| 15.Retail distribution | | X | 89 | |
| 16.Pharmacies | | X | 15 | |
| 17.Newspaper distribution | X | | | |
| 18.Electricity | | X | 8 | |
| 19.Gas | | X | 40 | |
| 20.Oil | | X | 30 | Total 18-20: 176 |
| 21.Professional services generally | | X | 126 | |
| 22.Lawyers services | | X | 32 | |
| 23.Doctors services | | X | 105 | |
| 24.Accountants services | | X | 4 | |
| 25.Dentists services | | X | 22 | |
| 26.Architects services | | X | 4 | |
| 27.Engineers services | | X | 1 | |
| 28.Opticians services | | X | 11 | |
| 29.Agriculture | X | | | |
| 30.Financial services | | X | 17 | 86 |
| 31.Insurance | X | | | |
| 32.Product standards | | X | 36 | |
| 33.Construction | X | | | |
| 34.Environment | | X | 15 | 6 |
| 35. Other: International Trade | | X | 64 | 41+ |

During the 1975 - 1995 fiscal years, DOJ participated in 1,136 regulatory proceedings, other than those involving specific mergers between or acquisitions of financial institutions. During the 1975 - 1995 fiscal years, DOJ wrote 7,473 letters to banking regulatory agencies discussing the competitive implications, if any, of specific financial institution mergers of acquisitions.

During the period 1/1/1996 - 12/31/2001, DOJ sent 5,281 reports under the Bank Merger Act and 2,561 reports under Section 3 of the Bank Holding Company Act.

28) For each sector, what have been the three most successful participations by the competition authority, and why?

DOJ and Commission advocacy efforts have been instrumental in promoting competition in the telecommunications, surface and air transportation, electric power and securities trade markets. Through law suits, competition advocacy before the regulatory agency and participation in the legislative process, DOJ, for the last thirty years, has played a major role in transforming long distance telecommunications from a regulated monopoly undertaking to a market open to competition. More recent efforts have focused on promoting competition in local telephone markets, which still retain regulated monopoly status.

Over the last twenty years, DOJ and the Commission have, through participation in regulatory proceedings and the legislative process, played a significant role in transforming the surface and air transportation markets from highly regulated industries to competitive markets in which pricing and entry decisions reflect market forces rather than governmental decisions.

Some twenty years ago, DOJ and the Commission, through antitrust litigation and competition advocacy before the regulatory agency and Congress, played a major role in a campaign that led to legislation that freed the setting of commission rates on securities transactions from both governmental regulation and private restraints. These actions have saved investors billions of dollars over the past twenty years and thereby contributed to the liquidity of our security markets.

Over the past fifteen to twenty years, the agencies, through regulatory filings and participation in the legislative process, have contributed to the process in which electric power generation and transmission have been opened up to competitive forces. The effects of these changes in electric power markets will become more evident over the next five to ten years as individual states continue to adopt and implement the competitive policies that we have championed at the federal government level.

In September 1996, the Department of Justice and the FTC jointly submitted a letter opposing a proposed state bar opinion that would have declared real estate closings to be the practice of law, thereby prohibiting lay real estate closings. We observed that Virginia consumers had long benefitted from the competition between lawyers and non-lawyers for real estate closings. Before final resolution, however, Virginia adopted legislation permitting non-lawyers to close real estate deals but imposing licensure and other requirements to protect consumers. The agencies' letter was cited repeatedly and relied upon in the legislature, and observers credit the letter as being one of the primary reasons the legislature adopted the legislation and permitted lay closings.

One important trend, facilitated if not caused by the Commission's advocacy efforts, has been the deregulation of commercial practices in the professions, stimulating price and quality competition for such services as eyeglasses, funerals, and medical care. Note that much of this was done with law enforcement as well as advocacy. The Department similarly has brought enforcement actions relating to the engineering, accounting and legal professions.

In addition, Commission staff economists have provided other agencies with empirical studies for consideration in their agency deliberations. Examples are The Impact of State Price and Entry Regulation on Intra-State Long Distance Telephone Rates, a study on the effects of price-cap regulation of telephone rates, and Airport Access Problems: Lessons from Slot Regulation by the FAA, a study on the effects of "slot markets" (for takeoff and landing rights) in air transportation.

29) Which of the following reasons, if any, best account for failures to have the advocacy position of the competition authorities endorsed in specific sectors. Provide your answers filling in the following table.

| Limitations | Sector(s) |
|---|--------------------|
| A court prevented or restricted the participation of the competition authority. | DOJ: No FTC: No |
| A ministry or regulatory agency prevented or restricted competition authority participation. | DOJ: No FTC: No |
| Competition authority lacked expertise. | DOJ: No FTC: No |
| Congress or Parliament prevented or restricted participation of competition authority. | DOJ: No FTC: No |
| Environmental concerns were an obstacle to introduce or preserve competition. | DOJ: No FTC: No |
| “National champion” considerations prevented the introduction of a more competitive environment. | DOJ: No FTC: No |
| Universal service or general interest considerations prevented the introduction of competition. | DOJ: No FTC: No |
| Not enough time to analyze the sector. | DOJ: No FTC: No |
| Possibility of layoffs and/or bankruptcy in this sector hindered the introduction or preservation of competition. | DOJ: No FTC: No |
| Scarce financial resources. | DOJ: No FTC: No |
| Other (specify) | DOJ: No FTC: No |

Please feel free to elaborate on the restrictions faced by the competition authority in its advocacy role.

When the advocacy positions of the agencies are not adopted, or only partially adopted, it is often because the decision making agency places a greater value on the commercial views of the industry members it regulates than on the competition views advocated by the agencies, or that legislative bodies sometimes value other interests more highly than competition.

30) Does the competition authority perform advocacy activities in certain sectors even though immunities, exemptions or waivers deprive it of jurisdiction to enforce the competition law in those sectors? Please explain.

Most immunities from the United States antitrust laws are limited rather than blanket, and may depend upon regulatory approval. The Antitrust Division, for example, has often advised regulatory agencies such as the Department of Transportation (airlines), the Surface Transportation Board (rail and truck), the Federal

Communications Commission (telecom), and the Federal Maritime Commission (ocean shipping) on issues involving regulatory grants of immunity. The Commission similarly has advised the Federal Communications Commission and the Federal Energy Regulatory Commission, among others, on issues that are within their jurisdiction. In many cases, advocacy efforts before state legislatures or other bodies involve state regulation that is immune from the federal antitrust laws because of the state action doctrine.

V. COMPETITION ADVOCACY IN THE PRIVATIZATION PROCESS, DEREGULATION, FRANCHISING, CONCESSIONS, RATE REGULATION, LICENSES AND PERMITS

31) What types of advocacy have been performed recently by the competition authority in privatization processes? Please explain.

Not applicable.

32) Are privatization operations subject to merger control or other competition law review?

Not applicable.

33) What have been the three most successful participations of the competition authority regarding privatization processes, franchising, concessions, rate regulation, licenses and permits?

Not applicable.

34) What obstacles restricted the advocacy efforts undertaken by the competition authority regarding privatization processes, franchising, concessions, licenses and permits?

Not applicable.

VI. INTERNATIONAL DIMENSION OF ADVOCACY

35) Does any international organization support the advocacy role of the competition authority in your country? How important is this support? Please explain.

No. The FTC and Antitrust Division participate on panel discussions at conferences and give speeches in foreign countries explaining US positions and providing general views on competition issues; and, upon request, have provided views on local competition issues. For example, the AAG testified before a Diet committee in Japan on strengthening the local competition agency. The FTC and Antitrust Division also have submitted comments to the European Commission on competition issues in, for example, legislative proposals and on issues related to telecommunications, and to the Japan Fair Trade Commission on guidelines, including intellectual property, telecommunications and electricity.

36) Are there any advocacy provisions in bilateral or multilateral agreements, treaties or fora in which your country participates?

Some of our bilateral agreements (e.g., the 1991 US-EU cooperation agreement, the US-Mexico cooperation

agreement, and the US-Canada cooperation agreement), provide for notification whenever a competition agency makes a filing before one its regulatory agencies that might affect the interests of the other party.

VII. ADVOCACY TEAM WITHIN THE COMPETITION AUTHORITY

37) Which units, branches or departments of the competition authority are engaged in advocacy activities? (You may choose more than one)

- a) Advisor
- b) Economics division**
- c) Enforcement division**
- d) Press Office**
- e) International Affairs
- f) Public relations
- g) Joint attorney/economist with expertise in the economic sector in issue**
- h) Other (Specify)

38) How many people work in advocacy activities?

| Unities, branches or departments | People | Hours per year |
|----------------------------------|----------------------------------|----------------|
| Advisor | | |
| Economics division | | |
| Enforcement division | DOJ: 11 attorneys and economists | DOJ: 22,957 |
| Press Office | | |
| International Affairs | | |
| Public relations | | |
| Other (Specify) | DOJ: 10 support | DOJ: 20,870 |
| Total | | |

39) Percentage of staff engaged in competition advocacy activities:

| Unities, branches or departments | People | Hours per year |
|----------------------------------|----------------------------------|----------------|
| Advisor | | |
| Economics division | | |
| Enforcement division | DOJ: 3% attorneys and economists | DOJ: 3% |
| Press Office | | |
| International Affairs | | |
| Public relations | | |
| Other (Specify) | DOJ: 3% support | DOJ: 2% |
| Total | | |

40) What percentage of the annual budget of the competition authority is devoted to advocacy activities?

DOJ: 3%.

At the Commission, lawyers and economists from the Bureau of Competition, the Bureau of Economics, the Office of General Counsel and on occasion the Commissioners and their advisors participate in activities that fall under the general heading of competition advocacy. The numbers vary from year to year, as do the time and money spent. Records at the Commission are not maintained in a fashion that makes it feasible to provide meaningful numeric responses to these questions.

IX. IMPROVING THE ADVOCACY ROLE OF THE COMPETITION AUTHORITY

41) How do you evaluate the advocacy role of the competition authority in your country?

Excellent

Good

Regular

Unsatisfactory in some degree

Very unsatisfactory

Why?

See answers to questions 27 and 28.

42) How could the advocacy role of the competition authority be improved?

We are satisfied with the quality of our program and the impact we are having. Like any competition agency, DOJ and the Commission always have to determine how best to spend the limited resources allotted to them by the legislature. From time to time, competition priorities have changed; in some periods, more funds are allotted to deterring private restraints on competition, at others, the focus has been on reducing governmental restraints.

A competition advocacy agency also will always face the problem of maintaining expertise in complicated regulated markets subject to rapid technological change. This challenge can be met by hiring attorneys, economists, engineers, etc., with the necessary backgrounds (sometimes from the regulatory agencies or relevant congressional committees). It is also important to maintain a good working relationship with the staff at the various regulatory agencies. Such relationships broaden the perspectives of all parties and enable the competition advocate to keep abreast of technological and policy developments that might affect the regulator's outlook on critical issues.

43) What future plans do you have for your competition advocacy program?

See above.

44) How can the International Competition Network support the authority of your country in advocating an enhanced role for competition?

The competition advocacy role of the U.S. antitrust agencies has a long tradition and is well-established. We welcome efforts by the International Competition Network to publicize the benefits of such advocacy and to encourage competition agencies of other member countries to be active in this area.

The proposed database of the competition advocacy products from other ICN members would be a valuable resource for sharing analytical approaches to common issues.

Response to Question 5: Biographical Information of Antitrust officials.

DOJ Biographies

Charles James
Assistant Attorney General for the Antitrust Division

Charles A. James was confirmed by the Senate on June 14, 2001 to be the Assistant Attorney General in charge of the Antitrust Division at the Department of Justice. Prior to arriving at the Antitrust Division, Mr. James practiced law at Jones, Day, Reavis & Pogue's Washington, D.C. office, where he chaired the firm's Antitrust and Trade Regulation Practice. His practice concentrated on the antitrust aspects of mergers, acquisitions and joint ventures, particularly in the telecommunications, health, information technology, and financial services industries.

After graduating from law school, Mr. James joined the Federal Trade Commission, where from 1979-1985 he served in several positions, including Assistant to the Director of the FTC's Bureau of Competition (1983-1985). In 1985, he joined Jones Day, where he practiced until 1989, when he left to join the first Bush administration at the Antitrust Division, serving as a Deputy Assistant Attorney General. He then served as Acting Assistant Attorney General for several months in 1992. Mr. James returned to Jones Day in 1992, where he practiced law until his confirmation as Assistant Attorney General. Mr. James was recognized for his efforts in public service in receiving the Federal Trade Commission Chairman's Award (1985) and the U.S. Department of Justice Edmund Randolph Award (1992).

In addition to practicing law, Mr. James has participated in a variety of public service and bar association activities. He is a member of the American Bar Association's Section of Antitrust Law, for which he served a term as the Vice Chairman of the Section 1 Committee, as well as a member of the ABA's Section of Business Law, where he was Chairman of the Antitrust Committee. Mr. James also served as Chairman of the Antitrust Committee of the Federal Bar Association and on the Antitrust Council of the U.S. Chamber of Commerce. Through June 2001, he was a member of the Board of Advisors of the Barbara Jordan Congressional Fellows Program.

Mr. James earned his law degree from the National Law Center at George Washington University in 1979 and received his bachelor's degree from Wesleyan University in 1976.

FRIDAY, OCTOBER 12, 2001

ANTITRUST DIVISION NAMES NEW DEPUTY ASSISTANT ATTORNEY GENERAL
FOR INTERNATIONAL ENFORCEMENT

WASHINGTON, D.C.--Charles A. James, Assistant Attorney General for Antitrust today announced that William J. Kolasky has been appointed to serve as the Deputy Assistant Attorney General in charge of international antitrust and policy enforcement for the Antitrust Division.

"Bill's extensive experience in antitrust law will be a valuable tool to the Antitrust Division's efforts to promote greater cooperation and convergence among competition authorities worldwide. His knowledge of antitrust law is impressive and I look forward to working with him," James said.

Kolasky has been a partner with the law firm, Wilmer, Cutler & Pickering, in Washington D.C. for the past 22 years, where he was co-chair of the firm's antitrust and competition practice. His experience spans a variety of areas, including mergers and acquisitions, criminal antitrust investigations and joint ventures. He has represented parties in several major multinational mergers before the United States and European Union competition authorities.

Additionally, Kolasky served as an Assistant to the General Counsel of the Department of the Army for three years. His experience also includes serving as a clerk for Chief Judge Bailey Aldrich of the U.S. Court of Appeals for the First Circuit. Kolasky graduated magna cum laude from Dartmouth College in 1968 and magna cum laude from Harvard Law School in 1971 where he served as Note Editor on Harvard's Law Review. He has taught antitrust law at American University Washington College of Law and has written and spoken extensively on antitrust topics.

James M. Griffin

James M. Griffin was named Deputy Assistant Attorney General, Antitrust Division, United States Department of Justice on January 31, 2000. Prior to that he served as the Division's Director of Criminal Enforcement (November 1998-January 2000), Chief of the Division's Chicago Field Office (November 1994-November 1998) and Assistant Chief of the Division's Atlanta Field Office (1987-November 1994). Mr. Griffin has prosecuted criminal antitrust cases, involving price fixing, bid rigging, customer allocation, and market allocation conspiracies in numerous markets, including the highway construction, waste disposal, electrical contracting, dredging, soft drink bottling, dairy products, and food and feed additives industries.

While Chief of the Chicago Office, Mr. Griffin served as co-lead counsel in the price-fixing and sales volume-allocation conspiracy prosecutions in the international lysine market. Those prosecutions included the imposition of a fine of \$100 million against the Archer Daniels Midland Company (ADM), the then-largest criminal fine ever imposed in an antitrust prosecution, and the trial and conviction of three former ADM executives, including Michael D. Andreas, former executive vice-president of the company and the son of the ADM's Board Chairman, Dwayne Andreas. The three former ADM executives were sentenced to serve substantial jail terms and to pay substantial fines.

Mr. Griffin frequently serves as a faculty member at trial advocacy programs, including the Emory University School of Law Trial Techniques Program, the Atlanta College of Trial Advocacy, and the Georgia Institute of Trial Advocacy. During 1993 and 1994, Mr. Griffin served as a special United States Department of Justice advisor to the antimonopoly offices in Budapest, Hungary and Sofia, Bulgaria.

THURSDAY, JULY 19, 2001

ANTITRUST DIVISION NAMES NEW DEPUTY
ASSISTANT ATTORNEY GENERAL FOR ECONOMIC ANALYSIS

WASHINGTON, D.C. -- Charles A. James, Assistant Attorney General for Antitrust, today announced that Michael L. Katz will serve as the Deputy Assistant Attorney General for Economic Analysis in the Antitrust Division.

"Michael Katz is a leading scholar with extensive experience in issues important to the Antitrust Division," James said. "His keen insight will be of great advantage to the Department as we work to protect competition in today's global economy. We are privileged to have him join us."

As Deputy Assistant Attorney General, Katz will supervise all economic analysis within the Antitrust Division and direct the Division's Economic Analysis Group.

Since 1987, he has served as a professor at the University of California at Berkeley. He currently holds a joint appointment as a professor of both economics and business administration. In addition to his research on competitive strategy in systems markets, vertical integration, cooperative research and development and antitrust in high-tech industries, he also directs the school's Center for Telecommunications and Digital Convergence. In both 1989 and 1993, he was awarded the Earl F. Cheit Outstanding Teaching Award.

From 1994 to 1996, Katz served as Chief Economist at the Federal Communications Commission, where he was responsible for integrating economic analysis into all aspects of Commission policy making. He formulated and implemented regulatory policies for all industries under the FCC's jurisdiction, including cable and broadcast television and local, long distance and wireless telephony. In 1996 he was recognized with the Chairman's Special Achievement Award for his excellence in service at the Commission.

From 1981-1987 he worked as an assistant professor of economics at Princeton University, devoting his research to sophisticated pricing, standards development, cooperative R&D and intellectual property licensing, and teaching courses in microeconomics, industrial organization and antitrust issues.

He graduated summa cum laude from Harvard University in 1978, where he was awarded a prize for the top graduate in economics. He received his PhD from Oxford University in 1982. A frequent lecturer and author of numerous articles on antitrust and consumer issues, Katz is also co-editor of the California Management Review and the Journal of Economics and Management Strategy.

THURSDAY, JULY 19, 2001

ANTITRUST DIVISION NAMES NEW DEPUTY ASSISTANT ATTORNEY GENERAL
FOR CIVIL ENFORCEMENT

Deborah Platt Herman to Serve as Deputy Assistant Attorney General for Civil Enforcement

WASHINGTON, D.C. -- Charles A. James, Assistant Attorney General for Antitrust, today announced that Deborah Platt Herman has been appointed to serve as the Deputy Assistant Attorney General in charge of civil enforcement for the Antitrust Division.

"Debbie's substantial knowledge in antitrust matters, coupled with her international experience and significant background in emerging markets and technology, make her a strong addition to the Antitrust Division's enforcement team," James said. "The Department is extremely fortunate to have someone with her talents on board, and I look forward to the opportunity to work with her."

Since 1991, Herman has practiced at the international law firm of Jones, Day, Reavis and Pogue, where she became a partner in 1999 and recently served as co-chair of the firm's Antitrust Litigation Team. Her antitrust experience spans a variety of areas, including international enforcement, energy issues, medical equipment, pharmaceuticals, telecommunications and high technology issues. She has also worked extensively in both civil and criminal litigation, including mergers and acquisitions, monopolization, and price-fixing issues.

Additionally, Herman is experienced in technology issues and general business litigation, having provided both general counseling and extensive audits to help clients prepare for potential Year 2000-related legal problems.

Herman graduated summa cum laude and first in her class from Westminster College in 1985 and received her law degree in 1989 from the University of Virginia, where she was Articles Editor for the Law Review and a member of Order of the Coif. Following her graduation from law school she clerked for Judge Stanley S. Harris, U.S. District Court for the District of Columbia (1989-1991). She is a member of the Illinois, Ohio and Washington, D.C. Bars.

She is also a member of the American Bar Association's Antitrust Section, where she previously served as associate editor of Antitrust magazine and currently serves as co-chair of the Section 2 Committee.

THURSDAY, JULY 19, 2001

ANTITRUST DIVISION NAMES NEW DEPUTY ASSISTANT ATTORNEY GENERAL
FOR REGULATORY MATTERS

R. Hewitt Pate to Serve as Deputy Assistant Attorney General for Regulatory Matters

WASHINGTON, D.C. -- Charles A. James, Assistant Attorney General for Antitrust, today announced that R. Hewitt Pate has been appointed to serve as the Deputy Assistant Attorney General in charge of regulatory matters. Pate will oversee airline, transportation, energy and other regulatory matters for the Division.

"Hew brings substantial and well grounded experience to the Antitrust Division across the board," James said. "His experience with airline and intellectual property matters underline his importance to the Division as it addresses key issues in these areas. He will be an asset to the Department of Justice."

From 1990 until assuming his post at the Department, Pate practiced with Hunton & Williams, where he was a partner on the firm's Antitrust team. There, he gained significant experience litigating cases involving regulation of the competitive process, including antitrust, patent, trademark, trade secrets, false advertising and other business torts.

Additionally, Pate is a frequent lecturer and author of articles related to antitrust and other legal matters. In 1999, he served as the Ewald Distinguished Visiting Professor of Law at the University of Virginia, teaching Intellectual Property/Unfair Competition and Law of the Political Process.

He received his BA with honors from the University of North Carolina in 1984 and received his JD from the University of Virginia in 1987, where he graduated first in his class and was a member of Order of the Coif. In addition to being recognized for having the best written work in his class, he was the Executive Editor of the Law Review.

Following law school, Pate clerked for Supreme Court Justice Anthony Kennedy (1989-1990), former Supreme Court Justice Lewis F. Powell, Jr. (1988-1989), and Judge Harvie Wilkinson III, U.S. Court of Appeals for the Fourth Circuit (1987-1988).

He is a member of the Virginia Bar and immediate past chair of its Antitrust Section. He is also a member of the American, Virginia and Richmond Bar Associations, as well as the Fourth Circuit Judicial Conference.

FTC Biographies

Timothy J. Muris, Chairman

Timothy J. Muris was sworn in June 4, 2001 as Chairman of the Federal Trade Commission. President George W. Bush named Muris, a Republican, on April 26, 2001 and he was confirmed by the Senate on May 25, 2001. Muris, 51, is the Commission's 55th Chairman.

Muris has held three previous positions at the Commission: Assistant Director of the Planning Office (1974-1976), Director of the Bureau of Consumer Protection (1981-1983), and Director of the Bureau of Competition (1983-1985).

After leaving the FTC in 1985, Muris served with the Executive Office of the President, Office of Management and Budget for three years, and afterward as Of Counsel with the law firm of Collier, Shannon, Rill & Scott (1992-2000) and Howrey, Simon, Arnold & White (2000-2001). Muris joined George Mason University School of Law as a Foundation Professor in 1988 and was interim dean of the law school from 1996 to 1997.

Muris graduated with high honors from San Diego State University in 1971 and received his J.D. from UCLA in 1974. He was awarded Order of the Coif and was associate editor of the UCLA Law Review. A member of the American Bar Association's Antitrust Section, Muris has written widely on antitrust, consumer protection, regulatory, and budget issues. In 1981, he served as the Deputy Counsel to the Presidential Task Force on Regulatory Relief.

Sheila F. Anthony, Commissioner

Sheila F. Anthony was sworn in as a member of the Federal Trade Commission on September 30, 1997. President Clinton named Anthony, a Democrat, to a term that expires on September 25, 2002.

Anthony had served as Assistant Attorney General for the Office of Legislative Affairs at the Department of Justice from 1993 to 1995. As Assistant Attorney General, Anthony was the liaison between the Department and Congress, and the liaison to the White House Legislative Affairs Office. In addition she was responsible for implementing the strategy to carry out the Department's legislative initiatives. Prior to government service, she practiced law at Dow, Lohnes & Albertson in Washington, D.C. where she specialized in intellectual property law, including trademark, copyright, unfair competition, litigation, licensing, and technology transfer.

A native of Hope, Arkansas, Anthony attended Randolph-Macon Woman's College and received her B.A. degree in American Government from the University of Arkansas in 1962. She is a graduate of Washington College of Law, American University and is a member of the Bars of the District of Columbia and the Supreme Court of Arkansas.

Mozelle W. Thompson

Mozelle W. Thompson was sworn in as a Commissioner on the Federal Trade Commission December 17, 1997.

Mr. Thompson previously held the position of Principal Deputy Assistant Secretary at the Department of the Treasury where he was responsible for overseeing domestic spending and credit policies, including the operations of the Federal Financing Bank and the Office of Government Financing. Mr. Thompson was also responsible for creating the Office of Privatization, which among its activities provides guidance on the privatization of federal assets and operations, and for developing the financial assistance plan for the District of Columbia. Mr. Thompson was initially appointed Deputy Assistant Secretary in August 1993, and served as Principal Deputy Assistant Secretary from April 1996 until his appointment to the Commission.

Prior to joining the Treasury Department, Mr. Thompson served as Acting Executive Director and General Counsel to the New York State Finance Agency and its four sister corporations. Mr. Thompson also was an attorney with the New York firm of Skadden, Arps, Slate, Meagher and Flom.

Mr. Thompson is a graduate of Columbia College and Columbia Law School. He also holds an M.P.A. from Princeton University's Woodrow Wilson School of Public and International Affairs. After graduating law school, Mr. Thompson served as law clerk to U.S. District Court Judge William M. Hoeverler in Miami, Florida. He has been on the faculties of the Woodrow Wilson School and Fordham Law School, and has been an Irvine Foundation Visiting Scholar at Stanford Law School.

Mr. Thompson currently serves as Chairman of the Organization for Economic Cooperation and Development (OECD) Consumer Policy Committee where he also leads the United States delegation. Mr. Thompson was past president of the International Marketing Supervision Network (IMSN), an association of international consumer protection enforcement agencies.

Mr. Thompson has been active in a number of professional and civic organizations, including the Association of Black Princeton Alumni and the Executive Board of Practicing Attorneys for Law Students, a mentoring organization assisting African-American and Latino law students. He is presently Vice President of the Columbia College Alumni Association, and is a member of the bar in New York State and the District of Columbia.

Orson Swindle

Orson Swindle was sworn in as a Republican Commissioner on the Federal Trade Commission December 18, 1997. Commissioner Swindle was appointed in December, 2001 as head of the United States Delegation to the Organization for Economic Cooperation and Development (OECD) Experts Group to review the 1992 OECD Guidelines for the Security of Information Systems.

Mr. Swindle has had a distinguished military career and served in the Reagan Administration from 1981 to 1989 directing financial assistance programs to economically distressed rural and municipal areas of the country. As Assistant Secretary of Commerce for Development he managed the Department of Commerce's national economic development efforts directing seven offices across the country. Mr. Swindle was State Director of the Farmers Home Administration for the U.S. Department of Agriculture financing rural housing, community infrastructure, businesses, and farming.

In 1992, Mr. Swindle became the first national leader of United We Stand America and in 1993 worked

with Jack Kemp, Vin Weber, William Bennett and Ambassador Jeane Kirkpatrick to form Empower America. In 1994 and in 1996 he was a Republican candidate for Congress in Hawaii's 1st Congressional District.

As a Marine aviator serving in South Vietnam on November 11, 1966, Mr. Swindle was shot down from the skies over North Vietnam while flying his 205th and last combat mission.

He was captured by the North Vietnamese and held Prisoner of War in Hanoi for the next six years and four months. On March 4, 1973, Mr. Swindle was released from captivity.

Mr. Swindle retired from the U.S. Marine Corps in 1979 with the rank of Lieutenant Colonel. His 20 military decorations for valor in combat include two Silver Stars, two Bronze Stars, and two Purple Hearts.

Mr. Swindle earned a Bachelor of Science degree in Industrial Management from Georgia Tech in 1959 and a Master of Business Administration from Florida State University in 1975.

Thomas B. Leary

Thomas B. Leary was sworn in as a Commissioner at the Federal Trade Commission on November 17, 1999. His term on the five-member Commission expires in 2005.

Before his service on the Federal Trade Commission, Mr. Leary was a partner at Hogan & Hartson, in Washington, D.C., since 1983. His practice was principally in the area of antitrust and trade regulation.

Before becoming a partner at Hogan & Hartson, Mr. Leary was the Assistant General Counsel of General Motors, with overall responsibility for antitrust, consumer protection and commercial law matters.

Before joining General Motors, he was a partner at White & Case in New York. Mr. Leary received his undergraduate degree in economics from Princeton University and a law degree from Harvard Law School, where he was an editor and an officer of the *Harvard Law Review*.

He served as an Air Intelligence Officer on active duty in the United States Navy from 1952-1955.