Evaluation of the FTC Competition Advocacy Program: 2001-2006

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Competition Advocacy: Theory and History

• What is competition advocacy?
  – Use antitrust agency expertise to persuade governmental actors at all levels to pursue policies that promote competition.

• Why do we need it?
  – Economic Theory of Regulation: consumers’ interests in competition can give way to industry protectionist interests.
  – Resulting competitive restraints are often beyond the reach of enforcement, including in the U.S. due to antitrust immunities peculiar to the legal system: State Action; Noerr-Pennington.
Competition Advocacy: History and Process

- History of competition advocacy at FTC:
  - Modern competition advocacy began in late 1970s.
  - Since 1980, FTC has filed approximately 750 comments.

- Comments sent in response to a request from a decision-maker in the political process (i.e., legislator, regulator, governor), open comment period, or amicus opportunity.

- Typically prepared by FTC staff experts with input from consumer protection colleagues if matter involves those issues (e.g., advertising).

- Release approved by full Commission.
Competition Advocacy: Channels of Influence

• Direct
  – Advocacy makes convincing argument that changes minds.

• Indirect
  – Advocacy creates political pressure to support pro-competition position.
    • Press coverage likely to enhance the strength of this channel.
  – Advocacy provides political cover.
Evaluation of Advocacy Program

• **Method:**
  - Examine outcomes.
  - Survey recipients (including those requesting FTC input and others involved in decision-making process) of FTC comments submitted in 2001-2006.

• **Overview of Responses:**
  - 36/80 (45% response rate).
    - 53% of responses from those who solicited FTC comment.
    - 28% of responses from agency representatives.
    - 19% of responses from opponents of FTC position.
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• **Overview of Responses con’t:**
  - Most from 2003-2005 recipients
  - Issues:
    - Professional regulation (e.g., practice of law, optometry, real estate brokerage, morticians)
    - Wine and beer distribution restrictions
    - Pharmacy protection legislation
    - Physician collective bargaining
    - Food and drug labeling
    - Airline reservation systems
    - Electronic fund transfers
    - “Do-not email” list
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• **Quality**
  - “The FTC’s comment presented sound analysis and clear reasoning.”
    • 75% agree; 11% disagree; 15% no opinion.
  - “The FTC’s comment would be useful to decision-makers facing other relevant issues in the future.”
    • 73% agree; 12% disagree; 17% no opinion.
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• **Weight of FTC Opinion**
  - “The fact that the comment came from the FTC caused me to give it more consideration.”
    - 88% agree; 11% disagree; 8% no opinion.
  - “The FTC’s comment provided information or a perspective that was not previously considered.”
    - 55% agree; 22% disagree; 22% no opinion.
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• **Efficacy**
  - 61% agree that outcomes are consistent with FTC position:
  - Causation → consistent outcomes do not necessarily imply advocacy is effective:
    - 94% of respondents said FTC comment considered.
    - 54% (79% of those with who provided an opinion) said FTC comment influenced outcome.
    - When outcome is consistent with FTC position, 79% of respondents said FTC influenced outcome.
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• Role of Press Coverage:
  – 61% of matters received press coverage, and press coverage is associated with higher percentage of positive outcomes (58% vs. 38%).
  – But, role of press coverage of FTC involvement uncertain:
    • 67% disagree with proposition that FTC was effective due to press coverage.
    • Lower FTC success rate WITH press coverage of FTC involvement than without (55% vs. 71%)
Evaluation of Advocacy Program

– Future Work:

• Make ex-post evaluation part of all advocacy efforts.
  – Self-assessment necessary to improve institution.
    *(see FTC at 100)*

• Examine other variables: fora, industry, interest group involvement, political party, independent review of press coverage.

• Ex-post evaluation of market outcomes:
  – Case studies
  – Empirical analysis
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OECD Submission:
http://www.ftc.gov/bc/international/docs/evalauth.pdf

Advocacy Website:
http://www.ftc.gov/opp/advocacy_date.shtm

FTC at 100:
http://www.ftc.gov/ftc/workshops/ftc100/docs/ftc100rpt.pdf