

The Bureau of Economics at the US Federal Trade Commission

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The Bureau of Economics (BE) at the US Federal Trade Commission (FTC) has a proud tradition of providing scientifically sound, data-driven economic analysis that informs antitrust, consumer protection, and business regulation policy in the United States. With 70 PhD applied microeconomists, it plays an essential role in virtually all aspects of the FTC's mission while striving to maintain a quality of economic analysis that rivals major university departments of economics.

To understand BE and its role at the FTC, some background on the FTC is required. The FTC has two central missions – antitrust and consumer protection. It is an independent commission with five voting Commissioners, no more than three of whom can be from one political party. The FTC has approximately 1000 employees, about half of whom are attorneys.

One legal bureau is devoted to each mission, with approximately 200 attorneys devoted to the Competition mission and 250 pursuing the Consumer Protection mission. The Bureau of Economics provides economic support for both missions. A substantial part of the theoretical and empirical work in economics straddles both the competition and consumer protection work. For example, work in the sub-fields of industrial organisation, occupational regulation, regulation, information economics, law and economics, and cost-benefit analysis can be applied to either mission. The Bureau of Economics interacts with the FTC's General Counsel's office (the Commission's attorneys) and the Office of Policy Planning (which concentrates the Commission's advocacies on behalf of consumers in both state and federal regulatory proceedings).

When the Commission considers major matters for a vote, the members typically receive separate recommendations from the relevant legal bureau and from the Bureau of Economics. Thus, the Bureau plays a dual role in cases. It provides attorneys with economic support work and it provides Commissioners with a separate assessment of the strengths and weaknesses of a case.

In addition to the 70 PhD economists, BE houses 15 to 20 research analysts (normally newly minted bachelor's degree students), five accountants/financial analysts, and several administrative and support personnel all located in Washington, DC. Occasionally, organisations in the FTC other than the Bureau of Economics hire economists. For example, currently, the planning divisions of the competition legal bureau, and the Office of Policy Planning each have one PhD economist. For the past 40 years, the budget of the Bureau of Economics has accounted for between seven and 11 per cent of the FTC budget, being closer to 7 per cent in the past decade. About 45 economists and direct economist managers work in two similarly sized groups devoted to competition matters. The two antitrust groups undertake similar types of competition analyses, but they are somewhat specialised by industry to take advantage of institutional memory and expertise in industries that are a repeated focus of Commission concerns (eg petroleum, health care services, pharmaceuticals, and supermarkets). Fifteen economists are engaged in a separate division focused on consumer protection issues, such as credit availability, privacy and ID Theft, and deceptive practices in the marketing of food, drugs, and nutrition supplements.

The head of BE is the bureau director, who is appointed by the chairman (subject to a Commission vote) and serves at her pleasure. Recent bureau directors have been academic economists on leave from university professorships. The remainder of the BE front office team is comprised of three or more senior career economists who oversee the antitrust and consumer protection groups and handle various special projects. The direct staff managers assign economists to various cases and tasks, and manage the work on most economic projects or analyses. Subject to review by the chairman, BE controls its own hiring of staff, performance evaluations, and promotions subject to FTC budgets and government hiring regulations.

Economists undertake several different tasks including case support (ie, investigation and litigation) and case evaluation, policy R&D, competition advocacy, international outreach, and program evaluation, with casework comprising the vast bulk of the work. The relative sizes of the activities depend on events and the priorities of the Commission. The research and reporting function (which was the sole function of the Bureau back at the beginning of the agency in 1915) is the residual claimant for time, expanding in years when casework is relatively slow and contracting drastically during the merger booms. Maintaining a core level of policy R&D presence during the merger booms has always been a challenge, but it is fostered in part through the existence of several traditionally academic institutions in the Bureau, such as the working papers series, seminar series, brown bag programs, and occasional visiting scholars.

Staff economists work closely with the attorney staff in designing investigations, formulating candidate economic theories, and searching for confirming or denying evidence in documents, from customers, or industry sources. BE takes the lead role in data gathering and econometric analysis regarding various issues connected with a case. For antitrust cases, such analysis might relate to demand estimation or price comparisons across markets with differing structures. Data analysis in consumer protection cases might involve analysis of consumer survey data or the collection and analysis of loan information across customers. Interaction between BE and the parties' economists is now more common than it once was during investigations, due, in part, to the increased use of econometric work by the enforcement agencies and outside parties in merger investigations.

The organisational structure of the Commission staff helps ensure that economic analysis is a core component of the Commission's cases. The economists are housed in their own Bureau because this structure reflects the importance of the discipline to the Agency's missions, improves efficiency, encourages skill development, and ensures clear communication up and down the chain of command. On the antitrust side of the agency, the separate organisation helps ensure an emphasis on a guiding principle in the evolution of antitrust doctrine in the United States over the past quarter century – economically sound antitrust enforcement protects consumers, not competitors. On the consumer protection side of the Agency, a separate organisational structure for economists provides the Commission with advice that is rooted in cost-benefit analysis. (While the distinction between an independent agency and an executive branch department necessarily leads to some organisational differences, the economic analysis group in the antitrust division of the Department of Justice is also an organisationally distinct group for similar reasons.)

Policy R&D (research)

Aside from case analysis, economists have roles in several other agency functions: policy-related research, competition advocacy, and international outreach. Policy R&D is essential to the FTC's mission. As antitrust and consumer protection policy evolve, decision makers need reliable economic assessments of past actions, as well as analytic techniques that are both sound and practical for case analysis. There is no single research group as there was in the 1970s and 1980s.

Rather, the policy R&D function is spread across all the divisions of the Bureau and increasingly involves working with attorneys in interdisciplinary teams of analysts and writers on Congressionally requested research projects. The list of competition and consumer protection research topics is listed on the economic resources portion of our website. One area of interest since the early 1980s has been retrospective analyses of mergers to measure the effects of close call mergers where data can be brought to bear. Finding suitable candidate markets is a challenge, but we have examined mergers in several industries including microfilm, titanium dioxide, paperboard, cement, soft drinks, and hospitals. (Many of these studies are discussed in Pautler, Evidence on Mergers and Acquisitions, Antitrust Bulletin, 48(1), Spring 2003, 119-221 esp pp 165, 176, 179-182; and Froeb et al. Economics Research at the FTC: Information, Retrospectives, and Retailing, Review of Industrial Organization, 25, 2004, 357-374.) Most recently we have examined the aftermath of two different oil mergers in mid-American markets in Louisville, KY and Michigan. We found no adverse effects related to those transactions.

Competition and consumer advocacy

The interests of consumers are sometimes not wellrepresented in legislative and regulatory forums.

Consumers are not always able to effectively oppose anticompetitive actions in such venues because they individually lose relatively little from most regulations (even if the aggregate loss is large) and they have high costs of organising compared to the various groups who have a direct and substantial stake in the outcome.

Consequently, laws or regulations are sometimes proposed that harm consumers. Upon request, the FTC staff informs relevant governmental and self-regulatory bodies about the potential effects on consumers of proposed legislation, rules, industry codes, etc. Even if the regulators themselves have insufficient incentive to incorporate the FTC's arguments and evidence, they may be induced to avoid actions that harm consumers by a public analysis of the costs imposed. Cooper, Pautler, and Zywicki (The Theory and Practice of Competition Advocacy at the FTC, *Antitrust Law Journal*, 72(3), 2005, 1091-1112) provide a historical review of advocacy activity at the FTC and our chairman, Deborah P Majoras, recently provided a rough-and-ready cost-benefit analysis of several recent advocacy activities (<http://www.ftc.gov/speeches/majoras/050208currebtopics.pdf>). We continue to evaluate that function, as we do with all agency functions (through the Government Performance and Results Act reviews), to ensure that they meet our goals and serve US consumers and taxpayers.

For certain recent advocacy filings, economists provided the FTC's Office of Policy Planning and the General Counsel's office with empirical evidence on: (1) whether pharmacy benefit management firms provide good value to their customers; (2) the effects of state level restrictions on the interstate marketing of wine (via the Internet), by-passing the traditional multi-tiered, state-regulated, supply chain for alcoholic beverages; and (3) the appropriate way for the US federal authorities to regulate health claims for food products where the scientific basis of the claims vary in strength and certainty. In concert with the Department of Justice, we have also filed comments with several states regarding the characteristics of the real estate market and efforts by various parties to set minimum service requirements for agents or to require that attorneys be present for real estate closings. In addition, we continue to participate in debates over the appropriate form of regulations and information provision for the marketing of prescription drugs to consumers (rather than simply to health care professionals.)

International outreach

The FTC's international program promotes cooperation with competition and consumer protection authorities around the world, and convergence in competition and consumer protection policy. BE economists routinely travel to the capitals of Europe to consult with their counterparts at the European Commission, the OECD, and individual competition authorities. Economists from various competition agencies also visit the US to exchange ideas on competition and consumer protection issues with their counterparts. In addition, FTC economists contribute to US submissions to the OECD and other international organisations on a wide range of competition, consumer protection, and regulatory issues. On occasion, economists participate in discussions with foreign enforcers on individual cases and enforcement programs. These meetings and exchanges of ideas can help foster convergence in antitrust regimes throughout the world.

BE also provides technical assistance to competition and consumer protection authorities across the globe. BE became involved in the program in the early 1990s, when economies making a transition from regulationbased systems to market-based systems requested help in devising competition and consumer protection policies that would facilitate the transition and serve as a basis for future liberalisation. A few years later, growing concerns about a lack of consistency across antitrust regimes led BE to play a role in the FTC's international coordination efforts. More recently, that work has expanded from competition issues to include discussions of consumer protection policies.

Much of the economist's work on international activities is coordinated through the legal bureaus. The international shops of each legal bureau (along with the FTC's General Counsel's office) are the Agency's main points of contact with all of the many public and private organisations interested in enhancing competition and consumer protection around the globe.

The Bureau has participated in dozens of visits to foreign lands and hosted numerous visitors to the US in the recent past. The reach of this activity is truly global, encompassing short-term missions to countries from Croatia to Vietnam and visits from delegations hailing from five continents. Programmes included training sessions on abuse of dominance, electricity sector competition, the economics of consumer protection, conglomerate merger effects, merger investigation techniques, and merger retrospective studies. One of the more common requests for training is to explain how we incorporate empirical analysis into antitrust investigations. In response, we share our experience with econometric methods of demand estimation and quantitative techniques for measuring merger effects.

Conclusion

Sound antitrust and consumer protection policy requires sound economic analysis. The organisational design of enforcement agencies can affect whether agency leaders receive the analysis they need. The number and quality of economists employed at the FTC and their organisation within a distinct Bureau of Economics have been crucial factors in giving economics a central role in US antitrust and consumer protection policy.