



Transparency in Antitrust Health Care Enforcement



Federal Trade Commission
Antitrust Division, Department of
Justice





Transparency: Disclosure of Information About Enforcement



- ★ Disclosure: Speeches, Guidelines, Advisory Opinions, Testimony
- ★ Advisory opinions and business review letters are a critical part of this effort



Benefits of Disclosure



- ★ Improving Pre-Decisional Process and Results
- ★ Fostering Agency Accountability After Decision is Reached
- ★ Enhancing Knowledge of and Compliance With the Law
- ★ Fostering Fairness of and Public Confidence in Government





Disclosure in Antitrust Context



★ Agencies Do Well in Speeches & Guidelines

★ Agencies Don't Do Well in Antitrust Enforcement Decisions



★ Agencies Disclose Little or Nothing when investigation dropped.

★ Agency Disclosure Inadequate in Settled Cases



★ Accessibility of advisory opinions could be improved



Arguments Against Transparency



★ Interference With Decision-making

★ Past Decisions as a Constraint on the Agency



★ Burden of Preparing Disclosure

★ Risk of Disclosing Confidential Information



★ Politicizing Agency Decision-Making



European Union



★ Web Site Very User Friendly

★ Decisions indexed in multiple ways, e.g.,
by date, by name, and by subject





Other Federal Agencies



★ FERC, FCC, and the Federal Reserve all have very friendly user websites



★ These agencies typically disclose an antitrust or merger investigation



★ These agencies would typically explain a decision at close of investigation, even if the investigation is dropped



Issues: Advisory Opinions and Business Review Letters



- ★ Quantity – Are enough opinions issued?
- ★ Quality – Do the letters provide sufficient clarity for accurate counseling?
- ★ Accessibility – Can a web site user find needed information



Accessibility Inadequate



- ★ FTC site is superior to that of DoJ
- ★ Both FTC and DoJ could substantially improve accessibility
- ★ The European Union's competition law web site provides a good model: indexing by date, name of decision, and subject matter.