Economics Supporting the Twin Missions of the FTC

by

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These opinions are those of the author and do not necessarily reflect the view of the Federal Trade Commission or any of the individual Commissioners.

One of the great things about the Bureau of Consumer Protection is the tremendous job it does in communicating its message to the public. This is of course completely necessary for the Bureau to fulfill its mission. Often, the most cost-effective way to protect consumers is to make consumers themselves aware of the threats they face. I know Jeff shares my admiration for how BCP can get the message out. One of his initiatives has been to generate similarly engaging materials about competition.

With all of this marketing going on, it occurred to me that the Bureau of Economics had better get into the marketing game. Toward that end, I thought it would be a good idea to come up with a logo that captures the role the Bureau of Economics plays at the Commission. [SLIDE 1] Here is my modest proposal: "Heavy Lifter - Supporting the Twin Missions of the FTC." You will notice that its style conforms nicely to the style of the sculptures outside the FTC building. But, of course, economics is supposed to be about substance, not style; and there are two substantive messages this logo is intended to convey. First, we provide support to the legal bureaus in completing their missions; and, second, the effectiveness of the FTC hinges on whether it pursues economically sound policies.

Much of the work of the Bureau of Economics is in case support. As Lydia and Jeff have already commented on specific cases, I thought I would take a somewhat different tack in explaining how BE supports the twin missions of the FTC. I'll use an example drawn from our support of the competition mission, but I will argue that it illustrates the contribution economics makes to the consumer protection mission as well.

While I have been at the Commission, nothing has occupied more of my time than gasoline. The FTC's direct role in the petroleum industry is through its enforcement of the antitrust laws. Most of that is merger review, although it also includes actions challenging anticompetitive conduct, such as the Commission's case against Unocal for its abuse of the process for setting standards for CARB gasoline. Our work goes beyond that, however, as the Commission and its staff are active in broader policy debates about energy policy. Just last week, we hosted a 3-day conference on energy policy.[1] Yes, we discussed competition policy in the industry; but, drawing on the expertise of an extraordinary group of participants with deep knowledge of energy markets and policy, we sought to place energy competition policy in the context of a broad set of energy policy issues.

It is crucial that we do so, because we need to recognize that not every increase in energy prices represents a failure of competition. One of the specific issues we have been dealing with since I arrived at the Commission is price gouging legislation. Many states have it. There are proposals for a Federal statute. Some state attorneys general have argued that we need such a statute. Some of them came to Washington last summer to meet with Chairman Majoras and Attorney General Gonzalez to discuss measures to prevent allegedly excessive pricing of gasoline. Then, last fall, with the help and leadership of Commissioner Harbour, we held a workshop jointly sponsored by the

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[1] Information about the conference is available at http://www.ftc.gov/bcp/workshops/energymarkets/index.shtml.

National Association of Attorneys General (NAAG) to discuss policy toward the gasoline industry, including the enforcement of price gouging laws.

It was, in my view, a very constructive day filled with thoughtful, serious discussion. During the workshop, an exchange surrounding one event crystallized in my mind how valuable it is to have economists involved in enforcing laws that relate to economic policy, including of course competition and consumer protection.

Mark Frankena, the Deputy Director for Antitrust in the Bureau of Economics, brought to my attention an article about a price gouging case in Florida.[2] After hurricane Wilma, a man in Miami with a flatbed truck drove it to North Carolina – several hundred miles away – and purchased a set of portable generators, paying roughly $300 for some and $500 for others. He drove the truck back to Miami and sold the generators for approximately double what he had paid for them. The state sued him for price gouging.

As a matter of economics, this suit was seriously misguided policy. The initiative shown by this truck owner helped alleviate the shortage of electricity. We do not need to give him an award for his initiative. The market did that, or at least it would have if he had not had to pay a fine to the state. But we certainly should not be penalizing him. The next time a disaster strikes Miami, perhaps the truck owner will try to think of ways to help ease a shortage and simply decline to profit from it. Perhaps. But that's not where I would put my money. More likely, he will just stay put; and those people who would have voluntarily purchased whatever supplies he chose to provide will simply go without.

I am confident that professional economists would agree with my assessment of this case. But not everyone in the workshop did. As the discussion of the episode unfolded, it was clear that there was a divide in the room between the people who work on antitrust for the states and those who work on consumer protection. The consumer protection people in the room generally approved of the case and of price gouging laws more generally. It was that discussion that made me realize how valuable economics is to the consumer protection mission of the FTC. I cannot imagine people from our Bureau of Consumer Protection arguing for such a case; and I cannot help thinking that it is the result of the ongoing dialog between lawyers and economists at the Commission about what sorts of consumer protection cases make economic sense that the cases we bring do make economic sense.

Both Christine and Jeff suggested to me that many in this audience would like to get some insight from me about dealing with the Bureau of Economics in antitrust cases. As an economist, I try my best to supply when there is demand, so let me just make a few remarks. When I interviewed for my current position, Chairman Majoras asked me about my ideas about what makes economic analysis useful in antitrust cases. Part of my reply was that economic analysis is better when it is based on data than when it is based on theory alone; and, when it is based on data, the analysis is generally more convincing if it

[2] See "Miami Beach Man Sued in Generator Gouging," *North Country Gazette*, November 7, 2005, available at http://www.northcountrygazette.org/articles/110705GeneratorGouging.html, last accessed May 3, 2007.

is simple than if it is complicated. This is not to suggest that you can do without theory or that statistical analysis does not sometimes have to be complicated. Still, I think economists are most valuable to the process when they are able to organize and present large amounts of data in a way that is understandable and that sheds light on the key antitrust issues.

One of the things we have done in BE is to offer statistics courses for the attorneys. At the beginning of one of the sessions, we give the participants a page of raw data and say, "What would you do with this to try to understand it?" We do so to make the point that you generally cannot learn anything from raw large amounts of raw data just by looking at it. The role of statistical analysis is to organize and synthesize the data into something that you can understand. If it is not simple enough to understand, it does not do any good.

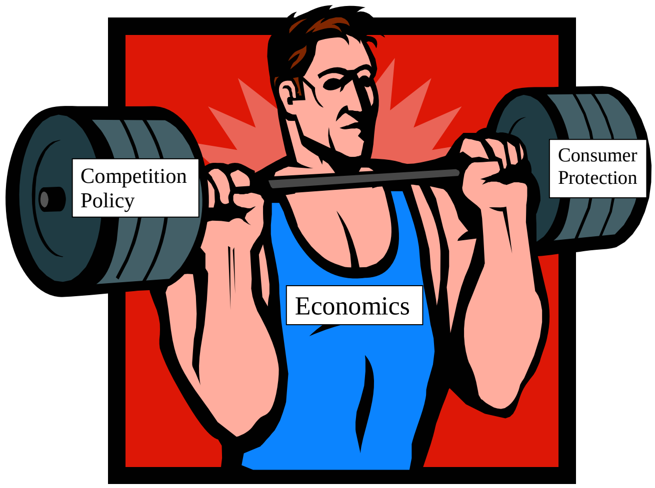
If you can make large amounts of data understandable, then it can be extremely useful in helping the Commission decide what it should do. Typically, we have three types of evidence in antitrust cases – depositions, documents, and data. The first two are clearly essential and in some cases we might have to rely on them alone. But there are often issues of whether testimony and documents reflect facts or mere opinion; and even when they plainly do contain facts, there can be issues of how representative the facts are. Good statistical analysis can demonstrate systematic effects in ways that documents often cannot. I would make the same point about the role of economic analysis in consumer protection. The most important work we do in consumer protection is to organize and make understandable large amounts of data. So again, I come back to my theme of economics supporting the twin missions of the FTC.

Let me assure you that I am not seriously proposing to have a logo for the Bureau of Economics, but I am completely serious about the message "Heavy Lifter" is intended to convey. It is precisely because I think the Bureau of Economics provides essential support for the twin missions of the FTC that I enjoy this job so much. That said, the job is not without its frustrations. One in particular is that I always end up speaking after Lydia, and she is an awfully tough act to follow. Last year, as if the rest of her presentation at "Breakfast with the Bureau Directors" was not good enough, she concluded with this showing of support from our boss. [SLIDE 2] And so, to show you that it is not just my opinion that economics is a tower of strength in supporting the twin missions of the FTC, I will leave you with this. [SLIDE 3]

Thank you.

SLIDE 1

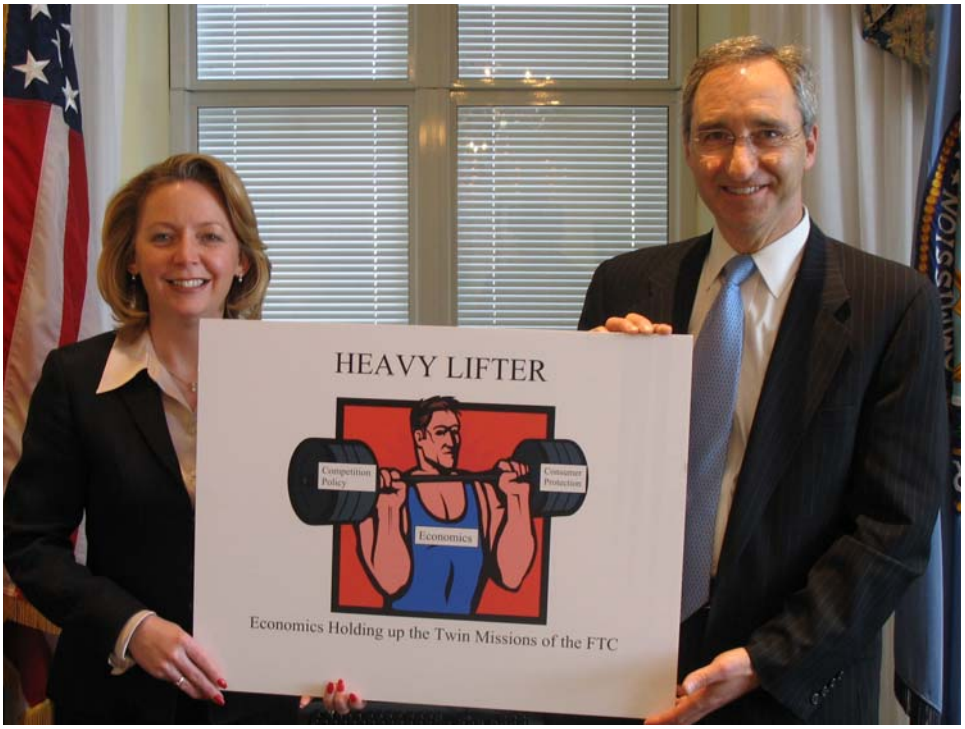
HEAVY LIFTER



Economics Holding up the Twin Missions of the FTC

SLIDE 2

SLIDE 3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