



The First Decade: Challenges Facing New Competition Agencies

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Today's Theme

- Paths to Building Successful Institutions
- Benchmarks of Progress
- Physics vs. Engineering
- Quality of Institutional Design Shapes Substantive Outcomes



Overview

- Western Balkans: The Global Context
- Major Challenges for Most New Agencies
- Solutions Based on Global Experience
- Personal Views: *See Kovacic, The Digital Broadband Migration and the Federal Trade Commission: Building the Competition and Consumer Protection Agency of the Future, 8 Journal of Telecommunications and High Technology Law 1 (2010)*



Modern Development of Competition Law

- Competition Laws Circa 1950
 - Fewer than 10 jurisdictions
 - One that mattered: US
- Jurisdictions with Competition Systems
 - Today: 110+
 - New Systems since 1980: 80+



Current Developments

- New Systems Less than 5 Years Old
 - Examples: China, Egypt, Serbia
- Major Retooling of Existing Systems
 - Examples: Brazil, India, Mexico
- Opportunity for Comparative Study
 - General lessons about institution building



Challenges in the First Decade: Summary

- Establish Credibility and a “Presence”
- Obtain/Sustain Good Leaders & Staff
- Control Expectations and Demands
- Attain Autonomy in Prosecution
- Persuade the Courts
- Build Links to Other Institutions
- Create Business and Social Awareness



Establish an Institutional Credibility and Presence

- Simple Test: Does the Agency “Matter”?
- Means
 - Enforcement of the law: the anchor tenant
 - Advocacy: studies, reports, presentations
 - Publicity
 - Good process: disclosure and predictability
 - Activity vs. accomplishment



Obtain and Sustain Good Leaders and Staff

- Top Leadership: Critical to Old and New Agencies – Especially to Newer Bodies
 - Aim: A norm of excellence from the start
 - Handoff from 1st generation to the second
- Decisive Role of Staff: “Who’s Playing?”
 - The burden of staff turnover



Control Expectations and External Demands

- Multiple Impulses Inspire New Law
 - Efficiency, equity, employment, others
- Unrealistic Expectations for Agency
 - Example: Ability to constrain prices
- Intense Demands for Action
 - Example: Legislative demands for action
- Severe Budgetary Pressures



Attain Autonomy

- Independence from Interference in Certain Agency Decisions
 - Prosecution/decision of cases
 - Rulemaking
- Not Isolation from the Political Process
 - Example: Advocacy role



Persuade the Courts

- Little Familiarity with Competition Law
 - Intense focus on administrative process
- Inevitable Attacks on:
 - Scope of substantive remit
 - Powers to collect information
 - Imposition of sanctions
 - Adequacy of administrative process



Build Links to Other Public and Non-Government Institutions

- Public Institutions: Especially Bodies with Shared Policymaking Duties
 - Example: Sectoral regulators
- Non-Government Institutions
 - Universities
 - Consumer organizations
 - Business associations
 - Media



Create Business and Social Awareness of Competition Law

- Novelty of Competition Law
- Unrealistic Expectations
- Communication and Publicity



Suggested Solutions: Summary

- Clear Statement of Goals
- Process to Set Priorities and Strategy
- Early Emphasis on Quality Control
- Investments in Building Capability
- External Communications/Consultation
- Networks with Other Institutions



Definition of Agency Goals

- Discipline for Resource Allocation
- Means to Set Expectations Correctly
- Ask: What Brand Do We Want to Create for the Agency?
 - Technical proficiency
 - High standards of public administration
 - Success in problem solving



Process to Set Priorities and Strategy

- Regular, Routine Exercise
- Portfolio Approach that Accounts for Risks and Rewards
 - Doctrine, likely economic effect, politics, resource intensity
- Match Commitments to Capabilities



Emphasis on Quality Control

- Performance Measurement: Focus on Outcomes, Not Only Outputs
 - Takeoffs vs. Landings
- Anticipate Judicial Review that Focuses on Administrative Process
- High Standards for Administration
- Identify What Needs to Be Changed



Investments in Building Capacity

- Recruiting Personnel
- Training Programs that Account for Turnover
- Adding to Agency's Base of Knowledge
 - Own research and partnerships
- Outlays for Strong IT System



External Communication and Consultation

- Media Relations
- Public Consultations on Policy Issues
 - Value of regular dialogue
- Links with Collateral Public Bodies
 - Formal agreements
 - Personal ties at all levels of agency



International Networks

- Multinational, Regional, Bilateral
- Discussions/Benchmarking
 - With older agencies: Tell them how to help
 - With newer agencies
 - Who went through this recently?
 - Who is facing the same tasks now?



Concluding Thoughts

- Long Distance Relay: Not a Sprint
 - Good institutions emerge from gradual, incremental, steady improvement
- Starting Point Is Important, But Not Determinative
 - Every successful agencies require and obtain upgrades over time