

Competition Law Reform: A U.S. FTC Perspective

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Introduction

- I am honored to speak at this important conference. I thank the organizers for the gracious invitation to the U.S. FTC.
- I am particularly delighted to appear before such a distinguished audience, which will be influential in shaping policy.
- The views expressed here today are attributable solely to me, not to the FTC.

Overview of Presentation

- I will highlight today key aspects of a successful competition policy.
- A successful competition policy should focus on sound institutional design, which promotes sound policy development.
- Useful lessons can be learned from the experiences, good and bad, of older agencies, and from multilateral institutions.

Institutional Design

- FTC Commissioner Kovacic undertook an agency self-assessment during his stint as Chairman (2008-09).
- The resulting “FTC at 100” Report drew on “best practices” of other major agencies.
- Without delving into details, the report, available on the FTC’s web site, highlights the importance of focusing on appropriate design and resources to fulfill a well-articulated agency mission. See <http://www.ftc.gov/os/2009/01/ftc100rpt.pdf>.

Agency and Judicial Independence

- Agency independence helps promote sound-decision-making.
- An independent judiciary, dedicated to the rule of law, that dispassionately renders decisions on the merits is very important.
- Informing judges about current competition policy analysis and economics is key.
 - U.S. antitrust agencies have organized seminars in Mexico, China, and elsewhere.

Agency Resources

- A successful competition agency requires adequate resources that are allocated to the highest-valued uses (types of matters).
- Hiring individuals with strong economics training (not just lawyers) is essential, given economics' increasing importance to sound competition policy analysis.
- Compensation should be adequate to attract quality candidates.

Agency Priorities

- Hard core cartel conduct should receive substantial attention.
 - Popular support for actions that lower prices to consumers may help a new agency.
- Competition advocacy directed as pointing out harmful effects of proposed rules and laws may enhance “competition culture.”
 - This requires certain economic capabilities.
 - There may also, of course, be political constraints.
- Do not focus on most complex matters at first.

Follow-Through on Priorities

- A competition agency needs the flexibility to focus its resources on whatever its priorities are.
- Ideally it should not have to dedicate substantial resources to every complaint it receives, no matter how insubstantial.
- Ideally there should be screens that allow an agency to quickly dispose of unmeritorious cases.

Provision of Assistance and Analysis

- How can a new agency seek assistance?
- Very experienced agencies may provide technical assistance.
 - E.g., the U.S. FTC and U.S. DOJ have long-established and highly successful programs.
- ICN and OECD are outstanding sources of “in the can” usable information.
- Let me turn to ICN and OECD analyses.

Agency Effectiveness Assessment

- I have already highlighted considerations bearing on the effectiveness of a new competition authority.
- In a related vein, the ICN also released a Report on its “Agency Effectiveness Project” at the 2008 ICN Annual Meeting in Kyoto.
- The Report, which reflected input from a wide variety of agencies and experts, is available at http://www.internationalcompetitionnetwork.org/media/library/CPI/CPI_WG_1.pdf.
- It sets forth operational and organizational characteristics that may be important for successful competition policy implementation.
- The ICN has also released reports on assessing the effectiveness of technical assistance.

Reducing Government Barriers to Competition

- Government barriers to competition are among the most pernicious, because they enjoy the imprimatur of the state.
- The OECD's Competition Assessment Toolkit provides a methodology for identifying unnecessary government restraints and identifying alternative, less restrictive policies that still achieve government objectives. See http://www.oecd.org/document/48/0,3343,en_2649_40381664_42454576_1_1_1_1,00.html.

Enhancing Cartel Enforcement

- U.S. DOJ has played a lead role in promoting leniency programs worldwide to uncover cartels, with excellent results, see www.usdoj.gov/atr.
- The ICN has adopted a detailed Anti-Cartel Enforcement Manual and ICN Cartel Working Group has prepared additional related materials, see www.internationalcompetitionnetwork.org.
- The ICN also has produced leniency program guidelines.

Merger Assessment Information

- The ICN has played a lead role in promoting both procedural and substantive convergence in merger enforcement.
- I would particularly commend to you the ICN Recommended Practices for Merger Notification Procedures and Recommended Practices for Merger Analysis, the ICN Merger Guidelines Workbook, and other merger-related sources, at <http://www.internationalcompetitionnetwork.org/index.php/en/library/doc-type/1>.

Merger Evaluation Convergence and Competitive Vitality

- A jurisdiction that adopts emerging global merger evaluation standards may promote the competitive vitality of its industries.
- That is because the host nation's industries may find it easier to make foreign acquisitions, and to attract foreign capital, if its procedural and substantive rules do not impose additional costs on mergers and acquisitions.

Unilateral Conduct Working Group

- The ICN also has a very active Unilateral Conduct Working Group (UCWG).
- It has issued Recommended Practices on Dominance/Substantial Market Power Analysis and has released reports on how member agencies assess particular practices, such as predatory pricing.
- The UCWG continues to assess additional practices engaged in by dominant firms.

Other ICN Activities

- The ICN has issued other “recommended practices” documents, including one dealing with State-Created Monopolies Analysis – of particular interest to nations which have had large public sectors.
- The ICN is member-driven – it will focus its initiatives on competition issues that are of greatest practical interest to its members.

Overall Benefits of ICN

- All competition agencies benefit from ICN participation, given resource constraints.
- The ICN allows agencies to learn the latest best thinking on competition policy and enforcement.
- It also enables agencies to build relationships among their peers that enhance the quality of international cooperation in enforcement and policy development.
- Furthermore, it helps strengthen members' "competition culture," thus contributing to economic growth and dynamism over time.
- ICN is a "public-private" partnership which allows useful private sector input to help inform policy-making.

Conclusion

- Thank you again for having invited me to this prestigious conference.
- I have focused on how a new competition agency may enhance its effectiveness – and, in particular, on the valuable role played by international institutions, such as the ICN, in promoting high quality competition policy and enforcement.
- I look forward to your questions.