

The Role of Economists in Competition and Consumer Advocacy

September 4, 2003

What is the Advocacy Program?

The interests of consumers are not always well represented in some legislative and regulatory forums. The goal of the Commission's advocacy program is to share our experience and expertise with governmental and self-regulatory bodies about the potential effects on consumers of proposed legislation, rules, industry codes, etc.

VERSUS

We tell other people how to do their job through market-based approaches to regulation and public policy.

What is the Advocacy Program? (Continue)

Tollison (1983, p. 217) says the purpose of the early 1980s intervention program was to attack government-maintained monopolies through comments to other regulatory agencies.

I think that such a resource allocation [toward advocacy] by the agency is wise, for at least its attorneys and economists are pointing their guns at real monopoly power.

When Did the Advocacy Program Start?

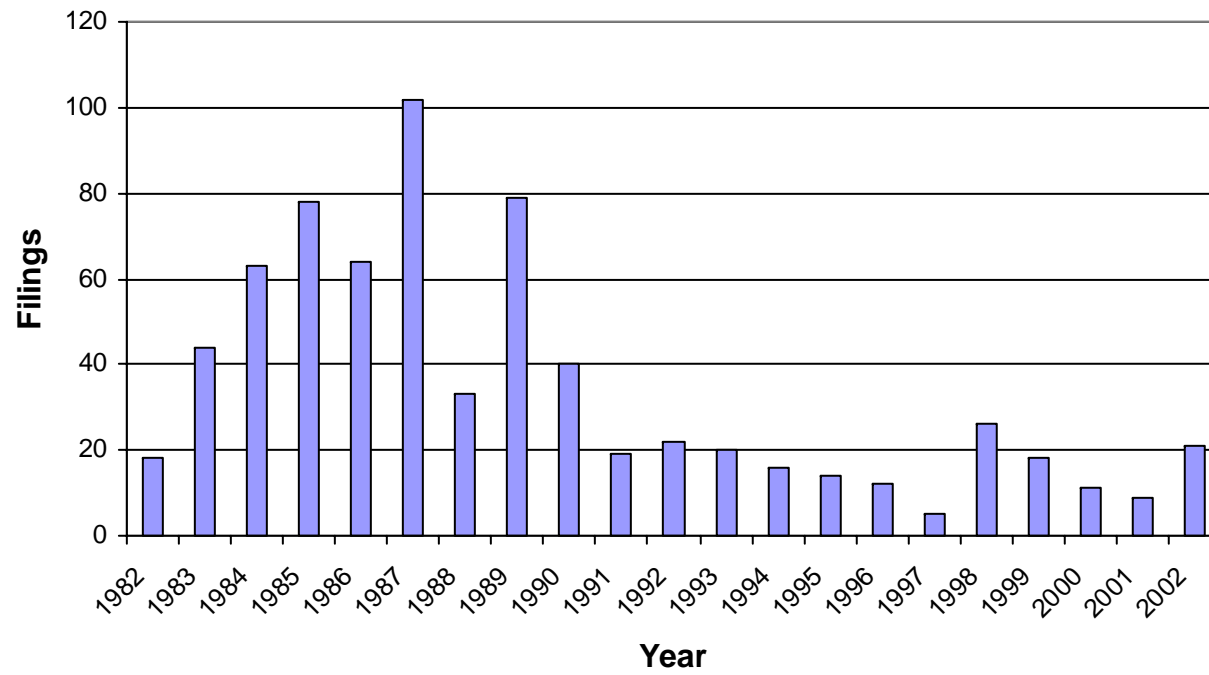
1. In the earliest days of the Commission, when the FTC submitted comments to the Fuel Administration (on coal pricing) and the War Industries Board (on steel).
2. Competition advocacy was made part of the competition mission in 1974, under Chairman Louis Engman. (Kovacic 1982, p. 649).

When Did the Advocacy Program Start? (Continue)

3. As a result of several 1970s BE economic reports documenting the costs imposed by clumsy government policies (e.g., petroleum pricing, optician regulation, occupational licensing). (Scherer 1990, p. 471).

4. Brainchild of Chairman James C. Miller III (Tollison 1983, p. 217).

Advocacy Filings 1982-2002



How Active Has the Advocacy Program Been and What Has It Cost?

Number of filings = 714 from 1982-2002

Peak 1987 = 102

Through 1997 = 5

Current 2002 = 21

Resource use at peak 1987: <4% FTC (<35 workyears);
6-8% BE (7-10 workyears).

Current <1% FTC (5 workyears); 2% BE (1-2 workyears).

Advocacy Topics: Hardy Perennials

Restraints on international trade (1975-1990) in steel, Canadian softwood lumber, DRAMS computer chips, tuna non-rubber footwear, etc. Fifty-three filings between 1982-1989.

Restraints on health care advertising and commercial practices and contracting (1978-1994).

Horizontal restraints and entry barrier legislation (e.g., occupational regulation) lobbied for by various professions and business groups, including attorney ethics codes (1980-2000).

Advocacy Topics: Hardy Perennials (Continue)

Regulation issues in airlines (Love field, Logan airport, “use or lose” landing slot, etc.), rail, and truck transportation (1980-1993).

Postal regulation issues (a dozen filings from 1981 to 1989).

Regulatory reform in telecommunications: broadcasting, and cable TV regulation, must carry, fin-syn, PTAR, electromagnetic spectrum allocation, telephony (1983-1995), (3 dozen FCC filings over the years).

Advocacy Topics: Hardy Perennials (Continue)

Auto dealer entry restrictions and off-site auto sales (1982-1995).

Taxicab regulations (Twenty filings from 1983-1989).

State regulation of gasoline sales and marketing (dozens from 1984 to 1992, 2002 - 2003).

Regulation of health and nutrition claims for foods in advertising and labeling (1987-1993, 2000, 2002).

Restructuring of the electricity generation, transmission, and distribution industry (1995-2002) FTC advocates competitive structure rather than using behavioral rules

Topics Lasting a Few Years

State Anti-takeover legislation 1984-1990

Health Care Certificate of Need laws 1983-1989

Rental Car legislation 1988-1990

Selective contracting and "any willing provider" laws 1993.
Pharmacy groups and others lobby state legislatures for protection against the anticipated effects of HMOs and health care reforms

Effects of the Comments - Some Nonrandom Examples

(1) Corporate Average Fuel Economy Standards 1986, 1988. Decisions not to raise the automobile fuel efficiency standards were based on an empirical analyses provided by BE staff.

(2) Certificate of Need regulation in North Carolina in 1989. BE comment played a key role in the Policy Board recommendation against continuing the entry restraints. Last in a series.

Effects of the Comments - Some Nonrandom Examples (Continue)

(3) Use or Lose rules for landing slots at four major U.S. airports. In August 1992, the FAA increased the "use-or-lose" usage rate from 65% to 80% on a weekly basis citing prominently to the FTC comment, which reported that slot usage by the major slot-holders already approaches or exceeds 90%, and that larger firms used their slots more intensively than did smaller owners.

(4) Comments to the FCC regarding the relative merits of price cap regulation versus rate of return regulation in 1987 provided the factual basis for the FCC action. Chairman of the FCC, cited FTC empirical results as the basis of the FCC policy choice in a letter to Congressman

Effects of the Comments - Some Nonrandom Examples (Continue)

Dingell in 1988. The research suggests that interstate long-distance prices could fall by 7 percent if AT&T could price its service more flexibly. In addition, entry restrictions tend to raise rates by 10 percent.

(5) BE's empirical work showed that rules proposed by FDA in 1992 would disallow health claims for large classes of healthy food, such as fish and lean meats. FDA altered the rules so that better versions of bad foods would be able to tout their superior characteristics.

Effects of the Comments - Some Nonrandom Examples (Continue)

(6) FTC staff filing to FDA on direct-to-consumer prescription drug advertising in early 1996 “turned the tide” toward allowing information to flow to consumers regarding drug therapy options according to unsolicited comments by an attorney for an advertisers trade association.

Effects of the Comments - Some Nonrandom Examples (Continue)

(7) FTC efforts to highlight the competition issues in electricity industry restructuring had an impact as one leading researcher in the area (Bill Hogan) used BE's arguments to make the point that open access to transmission grids would only work if sellers truly trusted the independence of the grid operator. In addition, one FERC Commissioner used FTC staff advocacy comments as a principal basis for his speech material. (Massey on ISOs).

Advocacy Favorites: Pick Six

(1) Massport's (Boston's airport authority) Program for Airport Capacity Efficiency, February 29, 1988.

The staff of the FTC commented on Massport's proposal to change its landing slot prices to reflect costs, including congestion costs. These comments were the focus of much media attention, and the Executive Director of Massport in a March 1988 letter thanked the FTC staff for helping shape Massport's policy. BE did additional work on possible follow-up briefs after DOT tried to kill the Massport proposal.

Advocacy Favorites: Pick Six (Continue)

(2) The Federal Communications Commission's AM/FM Radio and Television Ownership Rules, July 15, 1987.

In July 1987 the BE staff commented on the FCC proposals for alterations in the form of regulation of radio ownership. FCC rules restricted the extent of ownership of radio and TV stations in the same market. BE staff presented theory and empirical evidence to support the idea that such cross-ownership could be efficient and lower production costs without leading to adverse competitive consequences due to increased concentration. In December 1988 the FCC liberalized their rules regarding cross-ownership and cited to the FTC staff comments on efficiency aspects of cross-ownership generally.

Advocacy Favorites: Pick Six (Continue)

(3) The FCC's Financial Interest and Syndication Rule which restricted ownership of the rights to re-run TV shows, 3 filings in 1990-1991.

The FTC staff argued for repeal of these outdated rules. New empirical analysis relating to the proper market definition was provided in an appendix and the FTC staff comment was the only unbiased comment to directly address the issues raised by the economic analysis of the movie coalition's experts. DOJ Assistant Attorney General Rill found the economic analysis "superb".

Advocacy Favorites: Pick Six (Continue)

(4) The FCC's Must-Carry Rule for Cable TV, November 26, 1991.

The "must-carry" rules, compelled local cable systems to retransmit on its basic service tier all of the locally broadcast stations. This comment contained a careful empirical analysis of the effects of must-carry requirements showing that the must carry rules did not solve a significant problem, since almost all cable stations carried all the local stations whether they were required to or not. The cable systems apparently wanted to carry stations people wanted to watch. There was also no evidence that the cable companies were trying to monopolize any advertising market as the must-carry proponents alleged.

Advocacy Favorites: Pick Six (Continue)

(5) Housing and Urban Development proposals to ban referral fees paid by home mortgage lenders, July 15, 1988; Follow-on RESPA Reform, 2002.

Made the point that regulating one small component of the price of a bundle of services was likely to mislead mortgage shoppers and lead to higher, not lower, mortgage rates for borrowers.

(6) Federal Energy Regulatory Commission's open access rules for electricity distribution, August 7, 1995. BE's opening salvo in 8 years of comments on various aspects of electricity system regulatory reform.

Selected BE Reports Used in the Advocacy Program

International trade restraints 1977, 1980, 1984, 1987,
1989, 1994

State board optometry rules 1980

Airport landing slot allocation 1983, 1988

Taxi entry and price regulation 1984

Dental hygienists 1986

Retail market area laws for auto dealers 1986

Certificate of need and health care services 1986, 1987,
1988

Selected BE Reports Used in the Advocacy Program
(Continue)

State anti-takeover laws 1987

Regulation of long distance telephony 1988

Ocean Shipping 1989, 1996

Trucking deregulation 1988, 1995

Health claims for foods before and after the NLEA 1989,
1996, 2002

Occupational regulation 1990

Selected BE Reports Used in the Advocacy Program
(Continue)

Other BE-funded studies:

Hospital Merger Report 1991-1994 (various journals)

Natural Gas Pipelines 1993

Regional Effects of Import Restraints 1996

Cable TV Must Carry 1997

Fats and Oils Advertising before the NLEA 2000

Gasoline Divorcement 2000

Selective Contracting and Any Willing Provider Laws 2001

Advocacy Program Evaluations

Some effort was made to assess the Advocacy Program's impact.

Celnicker, 1989 Law Review article reviewing 1985 - 1987 comments concluded that

the FTC provided input that decisionmakers found useful.... Sixty-five percent of the survey recipients indicated that they either had requested, or plan to request, FTC input on other issues.

A follow-up survey done internally over the next 2 years produced the same conclusion.

Advocacy Program Evaluations (Continue)

The 1989 ABA Antitrust section's "Kirkpatrick Report" stated:

The FTC's Competition and Consumer Advocacy Program is one of the most important of the FTC's various projects.... It has generally provided quality advice about issues of consequence.

Advocacy Program Evaluations (Continue)

The FTC's competition advocacy program permits it to accomplish for consumers what prohibitive costs prevent them from tackling individually. It is the potential for the FTC to undo governmentally imposed restraints that lessen consumer welfare, and to prevent their

Advocacy Program Evaluations (Continue)

imposition, that warrants the program's continuance and expansion. ...potential benefits from an advocacy program exceed the Commission's entire budget.

These positive evaluations, however, were followed by the decline and then near-death of the program over the 1990 to 1997 period.

Advocacy Program as a Bureaucratic Vagabond

Since 1980 each Bureau played a role in Advocacy, with BE being the key substantive player. The process required a lot of coordination (not to mention patience).

1980-1982 The Bureau of Competition (BC) provided most of the coordination. (Healthcare competition and international trade restraints focus).

1983-1984 The program is formalized and centered in the Bureau of Consumer Protection's Evaluation division. The intervention effort was lead by Andrew Strenio.

Advocacy Program as a Bureaucratic Vagabond (Continue)

1985-1986 New head of the program, Walter Vandaele. BC's policy group under Sid Moore also played a substantial role as did Keith Anderson, head of Regulatory Analysis in BE.

1986-1988 Executive Director's Office. The coordination function was handled by Jim Giffin.

1988-1994 Office of Competition and Consumer Advocacy (OCCA) was formed and Richard Fielding and Bruce Levine took over control, replaced by Michael Wise in 1992?

Advocacy Program as a Bureaucratic Vagabond (Continue)

1994-1997 BE becomes home of the program. Mike Wise remained with the Program, becoming Associate Director for Advocacy and Legal Counsel in the Bureau of Economics.

1998-2001 Advocacy moves to Policy Planning. Bill Cohen handled the coordination tasks for four months and Michael Wroblewski took over in April 1998.

Advocacy Program as a Bureaucratic Vagabond (Continue)

2001-2003 GC/Policy Planning split the function. The management of the advocacy function moved briefly to GC with Mike Wroblewski in June 2001, then it moved to OPP in 2001/2002 with Jerry Ellig, except for electricity and pharmaceutical patent matters which Wroblewski retained.