



ICN Advocacy Workshop

“Competition Impact Assessment of Legislation”

Presentation by

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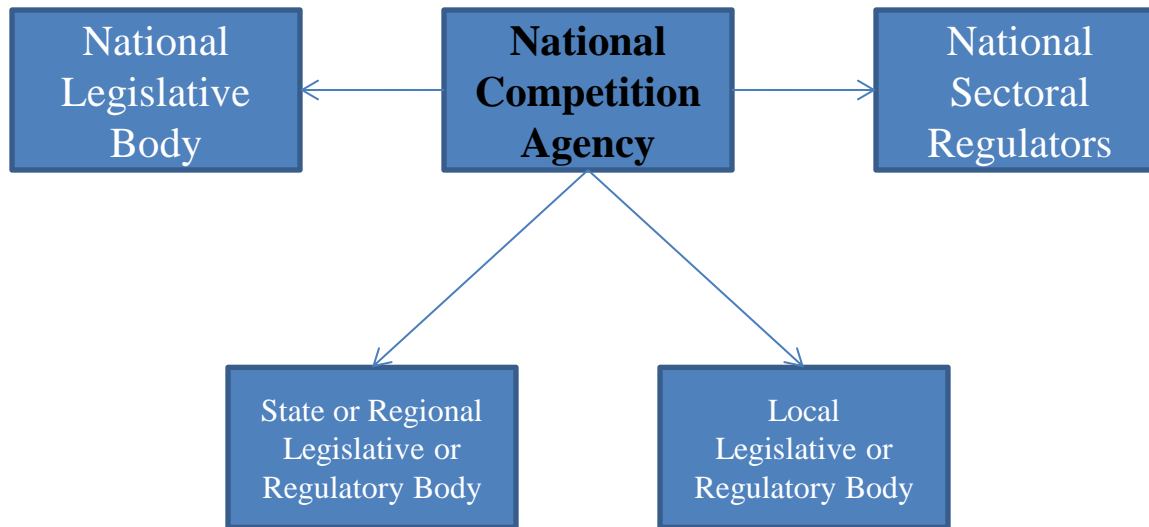
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Scope of Remarks and Disclaimer

- ***Scope of Remarks:***
 - Scope of Legislative Advocacy
 - Processes for Evaluating Success
 - Factors Influencing Success
- ***Disclaimer:***
 - Personal Views
 - Not the views of the Commission or any Commissioner



Advocacy Directed at “Legislation” and “Regulation”



Forms of Advocacy

Formal (Typically Public)

- Testimony (Written or oral)
- Advice Letters
- Amicus Briefs
- Reports
- Analysis & Recommendations
- Conferences and Workshops

Informal (Often Private)

- Consultations with legislators or regulators
- Staff-to-staff cooperation
- Providing specific drafting comments or suggestions on draft laws or regulations

*Varied forms of advocacy complicate process of evaluation;
“informal” may be more difficult to track and assess.*



Sample Areas of Recent US FTC Activity

- ***Federal (Proposed Rule Making)***
 - Implementation of Consumer Financial Protection Board (CFPB) Mortgage Disclosure Regulations
 - Federal Energy Regulatory Commission (FERC) – accounting and financial reporting requirements for third party providers of ancillary services
 - Other agencies: FCC (telecommunications); ITC (international trade), CMS/CMMI (Accountable Care Organizations)
- ***State and Local (Legislation and Regulation)***
 - Scope of Practice Restrictions on Mid-Level Professionals
 - Legislation; Regulation; State Appointed Boards
 - Dentistry, Nursing, Veterinarians
- Note Mix of consumer protection and competition topics



Measuring Competition Advocacy Results - Methodology

- ***When? Continuing, Short and Long-term***
 - *Continuing*: ongoing dialogue with recipients before & after submission
 - *Short*: Annual Survey & Review
 - *Long*: Five Year Collective Review
- ***Why? Purposes of Assessment***
 - Not just to evaluate “success”
 - Evaluate *criteria for selection*
 - Identify *areas of repeated concern*
 - Inform *future advocacy efforts*
 - Assess and build *agency expertise* in specialized areas
- ***How? Criteria for Measuring Results***
 - What defines “success”?
 - Adoption/Rejection/Modification of legislation? Too narrow? Agency “influence?”
 - How do criteria vary for different kinds of advocacy?



Challenges to Measuring Effectiveness

- ***Defining and Measuring “Success”:***
 - Whether outcomes are *consistent* with the agency’s position or merely *influenced* by it?
 - Determining the *degree* of agency success
 - Initial, partial, complete
- ***Causation:***
 - Separating out agency influence from other factors
 - Eliminate “coincidental” alignment of outcome with advice
- ***Interpreting “no response” in Surveys***
 - Some recipients may not have welcomed agency comments



FY 2011 Survey Results (Competition Only)

- ***Methodology***
 - Typically staff phone contact/follow-up
 - Prepared for annual FTC Report
 - <http://www.ftc.gov/opp/gpra/2011parreport.pdf>
- ***Advocacy Letters, Briefs & Testimony***
 - Competition – 16
- ***Success Rate (Initial, Partial or Complete)***
 - Competition – 10/16 (3 remained pending)



Two Examples from FY 2011

Successful (Partial)

- **Facts:** EPA requires reporting of data regarding greenhouse gas emissions
- **Proposed Action:** Proposed regulation to expand disclosures to cover various inputs to “emission equations”
- **FTC Advice:** Expand definition of “confidentiality” to equation information that could facilitate collusion
- **Regulatory Action:** EPA sought public comment on threat of disclosures to competition; regulation modified only in part (implementation delayed)
- **Possible Reason?**
 - Cost/benefit analysis given EPA’s purposes
 - Perception of limited threat to competition

Unsuccessful

- **Facts:** Florida limitations on scope of practice of Advanced Practice Registered Nurses absent physician supervision
- **Proposed Action:** bill to reduce constraints
- **FTC Advice:** Support
- **Legislative Action:** Bill failed
- **Possible Reason?**
 - Heavy lobbying by physician groups



Five Year Assessment - 2006

- ***Methodology*** – More Formal and Systematic
 - Surveys, initial + one round of follow-up
 - 45% Response Rate
 - Contacted: requestors, regulators, bill sponsors
 - 12 questions focused on quality and impact of advocacy; also role of press coverage
- See Note of the United States, OECD Roundtable on Evaluation of the Actions and Resources of Competition Authorities (2007)



Five Year Assessment – 2006

Principal Findings

- ***Comments Received Attention*** (94% “considered”)
- ***Comments Provided New/Different Information*** (54% Agreed)
- ***Comments Affected Outcome***
 - > 50% adopted in whole or part
 - > 50% “influenced” outcome
 - When outcome consistent with FTC position, 74% responded that the FTC's advocacy influenced the outcome
- ***Work Product Perceived as “High Quality”***
 - 70% agreed - sound analysis and clear reasoning
- ***Agency Weighing In Mattered***
 - 81% - origination of comments with agency caused them to give more consideration to the arguments presented
- ***Publicity Mattered***
 - Outcome more likely to be consistent with agency position when the matter receives press coverage.



Factors that Can Influence Success

Factors Promoting Success

- *From 2006 Survey:*
 - Comments actively solicited
 - Press coverage of proposed action
 - NOT of agency position

Factors Impeding Success

- *From 2006 Survey:*
 - Unsolicited
 - No press coverage of proposed action

Other Possible Factors:

Comparative Institutional Advantage:

- Perception of agency's competition expertise
- Resources devoted by agency to competition analysis

Political Context (e.g., lobbying efforts) – “Receptivity”

- Organized support or opposition to proposed action?
- Political party alignment with respect to the issue

Perceived quality of advocacy

Clarity of cost/benefit analysis



Institutional Benefits of Advocacy Evaluation

- ***How can agencies build on advocacy efforts over time?***
 - Advocacy as a study & learning experience
 - Generate Policy Papers Based on Previous Advocacy
 - Review previous, legislation/regulation-specific advocacies
 - Synthesis & analysis of prior advice
 - Arm opponents of anticompetitive legislation/regulation with broader guidance for future, similar legislative/regulatory efforts
 - Preserve agency resources by limiting repetition
 - Publicize advocacy documents
 - Build results of review into criteria of selection
 - More institutional hesitancy to intervene absent invitation
 - BUT, better intuitions about problem areas – e.g. “scope of practice” limitations
- ***How can agencies be more proactive in identifying areas of concern?***
 - Workshops and sectoral studies can follow or lead to advocacy



Other Ways to Measure Effectiveness?

- Improve Survey
 - Better questions; higher response rate
 - Follow-up independent research
- Track advocacy recipient communications or outreach to the agency over time
- Other Research:
 - Citations to agency comments and amicus briefs
 - (e.g., FTC amicus filing with ITC cited with approval by federal judge)
 - Identify recipient statements consistent with agency advice
 - Deliberations
 - Letters
 - Speeches
 - Quotes in news articles





The End

Federal Trade Commission