

Competition Advocacy & Industry-Wide Antitrust at FTC

Luke M. Froeb,
Bureau of Economics, FTC

December 7, 2004,
Office of Fair Trading
London

The views expressed herein are not purported to reflect those of the Federal Trade Commission, nor any of its
Commissioners

Acknowledgements & Citation

- Paul Pautler, FTC
- **James C. Cooper, Paul A. Pautler & Todd J. Zywicki, THEORY AND PRACTICE OF COMPETITION ADVOCACY AT THE FTC, George Mason University School of Law, Working paper 04-48.**
- **John Parisi and Randy Tritell, FTC**

Outline

- I. Competition Advocacy at FTC
- II. Industry wide investigations at FTC

Competition and Consumer Advocacy

- Efforts to eliminate outmoded or counterproductive regulation and legislation
- Restraints on competition in electronic commerce (contact lenses, wine, automobiles, burial caskets,....)

Entry restrictions

- Our wine report (Wiseman & Ellig, July 2003) indicated that e-commerce in wine could save high-end wine consumers 8% to 21% on their purchases if they used the cheapest forms of shipping. Perhaps more importantly for those consumers they were able to buy labels that were not available locally. Sales to minors have not been a problem, yet half the states ban internet sales of wine.

Entry restrictions

- We are conducting a survey of contact lens purchasing to examine the effect of internet sales on pricing and convenience in sales from WalMart, chain optometry centers, and traditional optometrists.
- We filed commentary at the CFTC supporting the entry of an alternative commodity futures exchange in the US, Eurex. Commissioner Lukken credited the FTC comment for the favorable ruling in Feb 2004.

Still more entry restrictions

- Non-attorney provision of low-end legal services (real estate closings, simple wills, etc.) Interstate comparisons indicated that consumers could save hundreds of dollars.
- Northern NJ (lawyers) vs Southern NJ (laymen). Closings are \$1000 less in the south.
- Virginia where closing costs are \$175 more when lawyers are involved for similar transactions.
- Our stand - let informed consumers choose.

Information restrictions

- Our examination of mortgage disclosures indicated that focusing consumer attention on a piece of the mortgage decision , rather than on the bottom line cost caused them to make bad decisions. (Lacko & Pappalardo, 2004)
- Disclosing the fees paid to brokers led consumers to choose more expensive loans. (Banks don't have to disclose their “cut” of the mortgage fees).

Information mandates

- In the Rx drug industry, our work on PBMs lead to a comment to the California governor suggesting that California avoid mandating disclosures on PBM contract terms. Based on the FTC comment, the Governor vetoed the legislation in September 2004.

Bad regulation

- Our study of mandated divorcement of gasoline retailing from refining (Vita, J Reg Econ 2000) indicated that such mandates raised gasoline prices by 3 cents per gallon. We commented to several states that such mandated vertical divestiture is bad policy and is bad for consumers. At least one state (New York) appears to have listened.

So who is in favor of the old approach?

- Incumbent producers, of course. Change is hard for everyone, so those with a stake in the status quo lobby hard to keep things as they are.
- No one can prove that the incumbents are not competing vigorously, but they certainly don't want to face new competitors with a new approach.

Industry-wide antitrust enforcement

- UK MIR approach (Geroski, October 2004)
Market inquiries based on structure or performance.
- FTC experience from the 1970s:
 - Exxon (oil – in search of a theory)
 - General Foods (coffee predation)
 - DuPont (preemptive capacity expansion in TiO₂)
 - Kellogg (excessive product introduction in cereals)
 - Ethyl (facilitating practices)

Industry-wide antitrust

- Prosecutors getting ahead of economics (Mike Spence, Bell J Econ., 1977 – DuPont; Dick Schmalensee, Bell J Econ 1978 - Kellogg)
- Cases taking years to litigate
- Targeting cases via profit data (FTC line of business reporting)