

# Rating the Competition Agencies: What Constitutes Good Performance?

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# Global Competition Review 2007, 2008: Competition Agency Rankings

- 40 Agencies Rated
- “Elite, Five Star” Authorities
  - “a five star rating simply indicates that an authority is at the top of its game”
- The Winners for 2007 and 2008 Are:
  - European Commission, DG Competition
  - UK Competition Commission
  - US Federal Trade Commission

Holman Jenkins, *Wall Street Journal*,  
June 2007

- On the FTC's Decision to Challenge the Whole Foods/Wild Oats Merger:
- "Some agency must qualify as the federal government's most squalid and disreputable. The FTC in recent years has been a catalog of bureaucratic pathology to inspire a modern day Gogol."

# Editorial, *New York Times*, June 2008

- Regarding FTC's Issuance of CIDs to Intel:
- "We are also hopeful that the decision means the FTC, which has shown little appetite for antitrust regulation under the Bush Administration, is finally ready to do its job. ... Whether the issue is tainted food or the mortgage crisis, this White House's hostility to regulation and coddling of big business has proved very costly to Americans. The next president will have to do a lot better."

# The Next President as Candidate, Statement to AAI (October 2007)

- “[T]he current administration has what may be the weakest record of antitrust enforcement of any administration in the

# What is Good Performance by a Competition Authority (CA)?

- What Are the Appropriate Criteria for Evaluation?
- By What Techniques Should We Measure Success or Failure in Satisfying the Evaluative Criteria?

# Why Care?

- Importance to Future Policy Choices
  - Allocation of agency resources
  - Assessment of competition policy system and powers entrusted to the competition agency
- Impact on CA and Perceptions of:
  - Courts
  - Firms
  - Consumers
  - CA Employees and Potential Recruits





# Themes

- Institutional Design and Capability Shape Policy Results
- Promote Acceptance of Norms that Emphasize Need for Incumbent Leadership to Make Capital Investments in Institutional Capacity

# What Is a Good CA? Broad Normative Criteria

- Central Question: Does the CA Improve Economic Performance/Social Welfare?
- Subsidiary Concern: Does the CA Use Sound Methods of Public Administration?
  - Internal quality control
  - Transparency and accountability
  - Minimization of compliance costs
  - Adaptation, reassessment, improvement

# Complications

- Welfare Effects Hard to Measure Directly
- Effect of Specific Matters Can Be Hard to Trace
- Competition Policy Is Evolutionary
  - Changes in theory and empirical knowledge
  - Was CA policy seen as good at the time?
  - What are the durable CA contributions?

# Conventional CA Report Card: What Matters?

- Initiation of New Cases

# Problems with Case Counts

- Boosting Totals with “Cheap” Matters
- Accounting for Difficulty
- Measuring Actual Impact
  - Legal doctrine
  - Economic effects



# Illustration: FTC Robinson Patman Cases: 1961 to Present

- 1961 1968: 134 (518)
- 1969 1976: 41
- 1977 1980: 8
- 1981 1988: 5
- 1989 1992: 0
- 1993 2000: 1
- 2000 Present: 0

# Illustration: FTC Merger Policy 1960s

- Low Concentration Thresholds
- Emphasis on Vertical and Conglomerate Transactions
- Indifference or Hostility to Efficiencies
- Contemporary View: Farsighted
- Today: Discredited



# Case Centric Report Card: Incentives for CA Leadership

- Focus on Inputs Rather than Outcomes
  - Take offs vs. landings
- Non Litigation Strategies Deemphasized
  - Advocacy, reports, studies
- Underinvestment in CA Capability
  - Building knowledge
  - Improving Infrastructure of CA relationships
  - 1960s and 1970s: Changes ultimately forced by courts, not internally driven

# Adverse Consequences

- Commitments/Capabilities Mismatches
- Root Causes of Problems

# Institutional Lessons

- Cumulative Nature of Policy Development
- Curb Capability/Commitment Mismatches
- Value of Investment in Capability/Knowledge
  - Avoid being trapped in wrong model
  - Respond to new learning/industry developments
  - Assess wisdom of regulatory status quo

# Ex Post Assessment

- Focal Points: Process and Outputs
- Means
  - CA self assessment
  - Peer review and benchmarking
  - External observers
  - Combination of methods

# Illustration: Mergers

- Compare Prior Assumptions to Actual Results
- Examine Implementation of Chosen Remedies
- Note Difficulty of Identifying Systematic Deficiencies in Enforcement

# Suggested CA Report Card

- Clearly Articulated Goals and Strategy?
- Problem Solving Orientation: Litigation and Non Litigation Initiatives and Outcomes?
- Capital Investments: Capability (Knowledge) and Infrastructure (e.g., Networks)?
- Ex Post Evaluation?
- Ethic of Continuous Improvement?
- Consistency with Current and Long Term Views?

