

INDEPENDENCE OF COMPETITION AUTHORITIES FROM DESIGNS TO PRACTICES

-- United States --

1. In the United States, two agencies have responsibility for enforcing the federal antitrust laws: the Federal Trade Commission and the Department of Justice. The institutional design of these agencies is the subject of this paper.¹ as does their institutional design.

2. It is generally understood in the international antitrust community that antitrust agencies (like other law enforcement agencies) should be independent in the sense that their actions should be based on the facts and the law, and not on political considerations.² But there is less commonality of views as to how that should be accomplished as an institutional matter. So, while many antitrust agencies are functionally independent in some way, many are also clearly part of or directly responsible to the executive branch of government. Indeed, the multiplicity of organizational formats for antitrust agencies within the United States and in some other countries suggests that there are no established conventions on how they should be connected formally to the rest of the government.³

3. The rest of this paper discusses in turn institutional design and practice features of the Division and FTC.

1. The U.S. Department of Justice

4. The Division is a component of the Department of Justice, an executive branch agency, with responsibility for enforcement of the federal antitrust laws. The Division is led by an Assistant Attorney General appointed by the President. There is no set term for AAGs, but most serve for 2-4 years, and a change of administration (whether a change in party or not) almost always leads to new leadership in the Division.

5. The Division is usually established by statute and authorized and appropriated by Congress. The Division has a

1

competition enforcement actions are extremely rare, as there is a long and robust tradition of non-interference with FTC decisionmaking.¹⁰

15. As part of the HVEØu"competition advocacy efforts, FTC staff sometimes submits comments to other federal agencies or to state or local decisionmakers in order to focus their attention on important competition issues or factors, provide information about relevant FTC studies, or recommend competition-enhancing alternatives for proposed legislation or regulations.

16. The FTC is often asked to testify before Congress and to provide technical assistance on pending or proposed legislation. The FTC regularly appears in oversight hearings before the Senate and House committees responsible for antitrust policy.¹¹ Because the FTC is an independent agency, its testimony and written comments are not subject to the OMB interagency review and final clearance described above. The FTC rctvkekrcvgu"kp"QODØu"kpvgtc igpe{"engctcpeg"rtqegu" in a reviewing capacity.

17. Hiring, promotions, and discharge for the vast majority of FTC staff are subject to standard federal government rules. These employees are civil servants with full civil service protection.

¹⁰ FTC staff is aware of only one such instance in the 100-year history of the agency: in 1980, the enactment of an appropriations restriction required dismissal of a pending case in which the FTC was seeking cancellation of a trademark.

¹¹ The FTC provides confidential information to Congressional committees in response to duly authorized tgswguvu." rwtuwcpv"vq"Eqpi tguuØu"eqpuvkvwkqpcn" r q y gtu"qh" kpxguvk i cvkqp0" V jg"nc yu" i qxgtpki" v jg"HVE" fq" not provide a basis for rejecting such a request.