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One Agency, Two Missions, Many Benefits: The Case for Housing Competition and Consumer Protection in a Single Agency

I. Introduction

Recent developments in the area of institutional design have included the integration of competition and consumer protection missions within the same agency. Such integration recently has occurred in the Netherlands, Finland, and Denmark, and is under way in Ireland. Although a few countries have taken steps away from a dual-mission structure,[2] the clear global trend in recent years has been to integrate competition and consumer protection missions.

This article

Section III discusses the various benefits that a dual-mission agency may obtain, including most importantly improvements in the performance in one mission based on the learnings from the other mission. Section III also addresses some areas in which the FTC may not have fully achieved such benefits in practice. Section IV argues that, notwithstanding the many benefits of integrating the two missions, there are some limits, including for example with respect to the importation of privacy considerations, which currently play a prominent role in the consumer protection mission, into the competitive effects analysis on the antitrust side of the house. Finally, Section V provides some recommendations for the FTC to consider in achieving an optimal integration of the competition and consumer protection missions and to maximize the benefits of the agency's dual mission.

II. Overview of the Dual Mission at the FTC

The FTC pursues a dual mission, as the only federal agency with both competition and consumer protection jurisdiction in broad sectors of the U.S. economy. First, the FTC enforces the federal antitrust laws to protect consumers from anticompetitive mergers and business conduct. Second, the Commission engages in enforcement efforts to protect consumers from fraudulent, deceptive, and unfair business conduct and to safeguard consumers' privacy and personal information.

As reflected in the FTC's current strategic plan, this dual mission can be described as follows: "Working to protect consumers by preventing anticompetitive, deceptive, and unfair business practices, enhancing informed consumer choice and public understanding of the competitive process, and accomplishing this without unduly burdening legitimate business

activity."[3] Accompanying, and closely related to, this mission is the agency's vision: "A vibrant economy characterized by vigorous competition and consumer access to accurate information."[4]

A. Authority and Tools Utilized in Pursuit of the Competition Mission

The FTC's competition mission is executed in principal part by the Bureau of Competition (BC), which enforces the "unfair methods of competition" prong of Section 5 of the Federal Trade Commission Act.[5] A violation of the Sherman Antitrust Act[6] is considered a violation of Section 5 of the FTC Act. The FTC also enforces the Clayton Act,[7] which, among other things, prohibits corporate acquisitions that may tend substantially to lessen competition. Finally, the courts and the FTC have interpreted Section 5 to go beyond the scope of the antitrust laws.[8]

The FTC uses several tools – both enforcement and non-enforcement – in pursuit of its competition mission.

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[3] FED. TRADE COMM'N, STRATEGIC PLAN FOR FISCAL YEARS 2014 TO 2018 3 (2014), *available at* http://www.ftc.gov/system/files/documents/reports/2014-2018-strategic-plan/spfy14-fy18.pdf.

[4] *Id.*

[5] Section 5 of the FTC Act provides in relevant part: "Unfair methods of competition in or affecting commerce . . . are hereby declared unlawful." 15 U.S.C. § 45(a)(1). The other prong of Section 5 involves unfair or deceptive acts or practices and serves as the basis for the FTC's consumer protection authority. *See infra* note 14. An overview of the FTC's investigative and enforcement authority on both the competition and consumer protection side is available on the agency's website at http://www.ftc.gov/about-) j 0 . 0 0 2 T c w 3 . 2 8 c - 0 . 0

Enforcement. This is the primary tool used by BC in pursuit of its competition mission. BC pursues its merger and conduct enforcement actions either in federal court or through an internal administrative litigation process.[9]

Competition policy research and development (R&D). Through the use of its unique research tools, including its authority to conduct studies under Section 6(b) of the FTC Act,[10] the FTC advances its competition mission by conducting policy R&D. This is done through information gathering and report writing, holding conferences and workshops on important competition issues, and academic-style research, among other means.[11]

Competition advocacy. The FTC – principally through its Office of Policy Planning – issues advocacy filings to state and federal policymakers, addressing the competition implications of proposed laws and regulations. The agencicati.00-2(ske)9Tj [(a)4(dva( )Tj 0.002 Tc 0.004 Tw

B. Authority and Tools Utilized in Pursuit of the Consumer Protection Mission

The FTC's consumer protection mission is executed principally by the Bureau of Consumer Protection (BCP), which enforces the "unfair or deceptive acts or practices" prong of Section 5 of the FTC Act.[14] For each of the two types of cases under this prong – unfairness and deception – the FTC has issued a policy statement laying out the factors the agency will consider in bringing consumer protection enforcement actions.[15]

education areas, regularly creating materials aimed at assisting consumers in protecting themselves from various fraudulent business practices and helping businesses comply with the FTC Act and the several consumer protection statutes enforced by the FTC.[18] Finally, the agency engages in rulemaking under both the FTC Act and several federal consumer protection statutes, issuing and enforcing several trade regulation rules aimed at remedying unfair or

competition policy and consumer protection policy take complementary paths to the destination of promoting consumer welfare."[22]

Another way to think of the relationship between the two missions is that they both deal with market distortions and both can be analyzed in economic terms. As former Commissioner Thomas Leary has explained, antitrust violations distort the supply side because they restrict supply and elevate prices, while consumer protection violations distort the demand side of the market because they create the impression that a product or service is worth more than it really is.[23] In fact, economic analysis ought to play a significant, if not central, role in pursuing both missions.

The complementary nature of these two disciplines inevitably leads to several benefits to housing competition and consumer protection in a single enforcement and policymaking agency.

A. Learning from One Mission Informs and Improves Efforts in the Other

The most significant benefit of maintaining a dual mission is the positive reinforcement of each mission provided by the other. In its submission to the 2008 OECD Policy Roundtable on the interface of competition and consumer protection policies, the FTC explained that it "has found that enforcing both antitrust and consumer protection laws reinforces the consumer welfare orientation that it brings to accomplishing both of its missions."[24] As former Chairman

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[22] *Id.* at 5; *see also* Deborah Platt Majoras, FTC Chairman, *Recent Actions at the Federal Trade Commission*, Remarks before the Dallas Bar Association Antitrust and Trade Regulation Section, at 1 (Jan. 18, 2005), *available at* http://www.ftc.gov/sites/default/files/documents/public_statements/recent-actions-federal-trade-commission/050126recentactions.pdf (arguing that the two missions focus, albeit with slightly different sets of tools, on the common goals of promoting efficiency and preventing consumer harm).

[23] *See* Thomas B. Leary, *Competition Law and Consumer Protection Law: Two Wings of the Same House*, 72 ANTITRUST L.J. 1147, 1147-48 (2005). *See also* Neil W. Averitt & Robert H. Lande, *Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law*, 65 ANTITRUST L.J. 713, 714 (1997) ("[A]ntitrust violations (which impair the menu of options) stem from market failures in the general marketplace *external* to consumers, whereas consumer protection violations (which impair the individual's ability to choose) flow from *internal* market failures that take place, in a sense, 'inside the consumer's head.'").

[24] OECD Policy Roundtable, *supra* note 22, at 231 (Contribution of the United States).

Muris has argued, “Competition theory that excludes consumer policy is not only shortsighted but, given the growing importance of consumer issues, can ultimately be self-defeating. Consumer policy that ignores its impact on competition can result in cures worse than the disease.”

a. Theoretical Benefits

The FTC's efforts to stop false and deceptive advertising are an important component of its consumer protection mission. Those efforts, however, can yield outcomes that are even better for consumers and consumer welfare when they reflect a greater understanding of, and appreciation for, competition.

To achieve the goals of both missions –

products.[28] In 1984, the Kellogg Company began claiming on labels and in advertising that All

First, in advertising substantiation, I have seen the beginning of a problematic retreat from our historical enforcement policy in this area. The FTC's Advertising Substantiation Policy Statement[29] dates back to 1984, and follows the doctrine first announced in the Commission's 1972 decision in *Pfizer, Inc.*[30] The statement sets forth the requirement that advertisers must have a reasonable basis for making objective claims before the claims are disseminated.[31] Additionally, advertisers must possess at least the level of substantiation expressly or impliedly claimed in the ad; thus, if an ad makes an express claim, such as "tests prove," "doctors recommend," or "studies show," the substantiation must, at a minimum, reflect that standard.[32] This policy statement has stood the test of time and proved to be an invaluable tool to the agency in assessing advertising claims. Equally important, it has provided guidance to industry on the types of truthful, non-deceptive claims that can be made for products or services.

One of the goals of the *Pfizer* analysis is to balance the value of greater certainty of information about a product's claimed attributes with the risks of both the product itself and the suppression of potentially useful information about it.[33] Under such an analysis, the burden for substantiation for health- or disease-related claims involving a safe product, such as a food, for example, should be lower because the risks to consumers from using the product are typically lower.

Recent Commission orders, however, seem to have adopted two random controlled trials (RCTs) as a standard requirement for health- and disease-related claims for a wide array of

[29] Thompson Med. Co., Inc., 104 F.T.C. 648 appx. (1984) (FTC policy statement regarding advertising substantiation).

[30] Pfizer, Inc., 81 F.T.C. 23 (1972).

[31] *Thompson Med. Co.*, 104 F.T.C. at 839.

[32] *Id.*

[33] *See id.*

products. For example, in *POM Wonderful LLC*, the majority determined that claims that the product purports to "treat, prevent or reduce the risk of heart disease, prostate cancer, and [erectile dysfunction] must be substantiated with [at least two] RCTs."[34] The majority's intent is for these studies to be a proxy for proof of causation; that is, they indicate that the product actually treats the disease.[35] Further, in a number of recent settlements, the FTC has included the requirement of two RCTs in its consent orders.[36]

Requiring two RCTs may be appropriate in some circumstances where use of a product carries some significant risk, or where the costs of conducting RCTs may be relatively low, such as for weight loss or for other conditions whose development or amelioration can be observed over a short time period. My concern is that, given the expectation created by this series of orders that two RCTs will be required to substantiate any health- or disease-related claims for many relatively-safe products, it seems likely that producers may forgo making such claims about products, even if they may otherwise be adequately supported by non-RCT evidence. For example, mill

Commission demands too high a level of substantiation in pursuit of certainty, it risks losing the benefits to consumers of having access to information about emerging areas of science and the corresponding pressure on firms to compete on the health features of their products.

A second area of concern is the c

uses of their information that facilitate competition. For example, consumers who choose not to allow the collection or sharing of broad categories of information may no longer be exposed to offers by competitors selling products or services that provide better value, pricing, or quality. In turn, these changes could have negative consequences not just for individual consumers exercising their choice over how their information is used following a particular transaction, but also on the market more generally.

Before seeking new privacy legislation, it is important to identify a gap in statutory authority or to identify a case of substantial consumer harm that the agency would like to address, but cannot, with our existing authority, especially given the array of financial, medical, and health and safety harms already reachable under our current FTC authority or other laws. Similarly, in evaluating a contemplated enforcement action in the privacy area, we ought to be fully cognizant of the competitive implications of such action. Otherwise, it is difficult to tell whether the additional privacy protection or enforcement action is necessary or will, on balance, make consumers worse off. Information sharing has benefits for consumers such as reducing online fraud, improving products and services, and increasing competition in the market overall. A policy that limits the ability of advertisers to access and use information (whether collected directly from consumers, or indirectly through affiliates, different brands within the company, or from third parties) to reach target audiences may have unintended effects on consumers and the marketplace that any policymaker, particularly one with responsibility for consumer protection and competition, must carefully consider.[39]

2. Assessing Consumer Protection Defenses in Competition Enforcement

The learning at the FTC also runs from the consumer protection mission to the competition mission. For example, our consumer protection efforts can be helpful in assessing defenses in competition matters where the justifications for anticompetitive conduct are couched in terms of protecting consumers from various potential harms. There are several historical examples of this benefit, largely concentrated in the health care area. The claimed justifications typically have involved concerns that consumers may be deceived by certain types of advertising or concerns about adverse effects on consumers' health.

In *California Dental Association*,[40] the FTC challenged an allegedly anticompetitive implementation of a dental association's prohibition on "false or misleading" claims about prices or competence. The FTC determined that the association applied its advertising guidelines in a way that actually restricted truthful, non-deceptive advertising.[41] In particular, the guidelines effectively precluded advertising that characterized a dentist's fees as being low, reasonable, or affordable, as well as advertising of across-the-board discounts. Drawing on its expertise and experience in the area of deceptive advertising, the Commission rejected the association's claims that its particular implementation of the rules was necessary to prevent deception of consumers.[42] The Commission concluded, among other things, that the association "effectively prohibited

[40] 121 F.T.C. 190, 284 (1996) (Commission opinion). Although the Ninth Circuit upheld the Commission opinion, the Supreme Court vacated the Ninth Circuit decision, finding that the court's quick-look review of the association's advertising rules was too abbreviated under the rule of reason. *See* California Dental Ass'n v. FTC, 526 U.S. 756 (1999).

[41] 121 F.T.C. at 333.

[42] *Id.* at 316-20.

across-the-board discount offers, whether truthful or not. No purported policy of preventing

evaluate the necessity of certain dental procedures. In finding a violation of the FTC Act for this concerted action, the Commission assessed but ultimately rejected the federation's proffered justification for its collective refusal to provide x-rays: that it promoted higher quality care and more satisfied patients.[48] More specifically, the federation argued that withholding x-rays from insurance companies would prevent them from reaching erroneous conclusions regarding the least expensive, adequate course of treatment for dental patients. Such erroneous conclusions, the federation argued, would cause insurance companies to deny claims for adequate treatmagination-6(p)-45

contemporaneous evidence that the challenged conduct was motivated by health or safety concerns" reinforced the Commission's decision to reject the Board's public safety defense.[54]

3. Assessing Consumer Protection Justifications for Proposed Laws or Regulations in our Competition A

misleading information that some consumers value. Rather, these restrictions are likely to inhibit competition, frustrate informed consumer choice, and potentially lead to higher prices and decreased scope of, or access to, legal services.

Funeral Caskets. Based on our experience in promulgating and enforcing the Funeral Industry Practices Rule (Funeral Rule)[56] –

Optometry. The FTC has vast consumer protection experience in the area of optical goods, where it enforces the so-called Eyeglass Rule[59] and the Contact Lens Rule,[60] which require, among other things, the portability of eyeglass and contact lens prescriptions, respectively. In addition, FTC staff issued a report in 2004 on barriers to e-commerce in the

concerns.[68] This can be useful in both determining liability for a competition or consumer protection violation and fashioning an appropriate and effective remedy.

Third, for a dual-mission agency, there may be synergies in gaining political support and buy-in from other stakeholders for each mission. That is, having both missions in a single agency may improve public accountability and support for both missions.[69]

Fourth, a dual mission likely yields administrative efficiency, including economies of scope in the monitoring, developing, and sharing of expertise across the two disciplines,[70] as well as savings from the shared use of back-office and other functions, such as the general counsel's office, human resources, and other agency-wide support departments.

IV. Limits to Integration of Competition and Consumer Protection Missions

Notwithstanding the many benefits that can be obtained from integration of the two complementary disciplines of competition and consumer protection, there are limits to such integration. This section discusses both substantive and non-substantive downsides that may result from this type of integration.

B. Blurring the Lines between Competition and Consumer Protection

In some cases, the FTC has blurred the line between competition and consumer protection – with respect to both the alleged violation and the remedy sought by the agency – to the potential detriment of effective and transparent enforcement in both areas. This blurring of the lines, while in some sense an integration of competition and consumer protection principles, is more accurately viewed as an improper and unhelpful muddying of the two disciplines.

In the FTC's complaint against Negotiated Data Solutions LLC (N-Data), filed in connection with the settlement of that matter, the FTC alleged that N-Data had violated both the competition and the consumer protection prongs of Section 5 of the FTC Act by reneging on a commitment to license intellectual property.[75] Then-Commissioner Kovacic dissented from the *N-Data* consent in part due to his concerns that the Commission neither explained why it endorsed separate unfair method of competition and unfair act or practice claims nor integrated these two theories of liability.[76] Kovacic further explained, "More generally, it seems that the Commission's view of unfairness would permit the FTC in the future to plead all of what would have been seen as competition-related infringements as constituting unfair acts or practices."[77]

I raised similar concerns in dissenting from the Commission's consent agreement with Google Inc. and its Motorola Mobility LLC subsidiary settling charges that the respondents violated Section 5 of the FTC Act by pursuing injunctions against allegedly willing licensees of

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[75] *See* Negotiated Data Solutions LLC, FTC File No. 051-0094, Complaint ¶¶ 38-39 (Jan. 23, 2008), *available at* http://www.ftc.gov/sites/default/files/documents/cases/2008/01/080122complaint.pdf.

[76] *See* Negotiated Data Solutions LLC, FTC File No. 051-0094, Dissenting Statement of Commissioner William E. Kovacic, at 2-3 (Jan. 23, 2008), *available at* http://www.ftc.gov/sites/default/files/documents/cases/2008/01/080122kovacic.pdf.

[77] *Id.* at 3. *See also* Jonathan E. Nuechterlein, *Antitrust Oversight of an Antitrust Dispute: An Institutional Perspective on the Net Neutrality Debate*, 7 J. TELECOMM. & HIGH TECH. L. 19, 65 n.138 (2009) ("The FTC has been occasionally accused of blurring the lines between antitrust and consumer-protection principles to create hybrid, interventionist policies with no solid grounding in either antitrust law or consumer protection norms--a concern now heightened by the FTC's broad construction of its Section 5 authority in the N-Data case.").

standard-essential patents encumbered by commitments to license on reasonable and non-discriminatory terms.[78] In *Google/Motorola Mobility*, the Commission alleged that the respondents' conduct was both an unfair method of competition and an unfair act or practice.[79] One of the several concerns I raised in my dissent was that the inclusion of the unfairness count would "sow[] additional seeds of confusion" as to a finding of liability in the area of standard-essential patents and even the statutory basis of such liability.[80]

A few years earlier, in 2009, the FTC filed a complaint against Intel Corporation alleging unfair methods of competition, unfairness, and deception violations resulting from a course of conduct by Intel that included allegedly anticompetitive discounting arrangements with original equipment manufacturers and certain misrepresentations concerning its products.[81] In addition to raising the same concerns about alleging both competition and consumer protection violations for the same conduct that the *N-Data* case raised,[82] the contemplated relief identified in the *Intel* complaint also potentially blurred the lines between competition and consumer protection remedies. That relief included a requirement that Intel "correct the deceptive and misleading

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[78] *See* Motorola Mobility LLC and Google Inc., FTC File No. 121-0120, Dissenting Statement of Commissioner Maureen K. Ohlhausen, at 1-2, 4 (Jan. 3, 2013), *available at* http://www.ftc.gov/sites/default/files/documents/cases/2013/01/130103googlemotorolaohlhausenstmt.pdf.

[79] *See* Motorola Mobility LLC and Google Inc., FTC File No. 121-0120, Complaint ¶¶ 31-32 (Jan. 3, 2013), *available at* http://www.ftc.gov/sites/default/files/documents/cases/2013/01/130103googlemotorolacmpt.pdf. In finalizing the Decision and Order in this matter, however, the Commission removed the unfair act or practice count from the complaint. *See id.*, Complaint, at 6 (July 24, 2013), *available at* http://www.ftc.gov/sites/default/files/documents/cases/2013/07/130724googlemotorolacmpt.pdf.

[80] Ohlhausen, *supra* note 78, at 2.

[81] *See* Intel Corp., FTC Docket No. C-9341, Complaint (Dec. 16, 2009), *available at* http://www.ftc.gov/sites/default/files/documents/cases/091216intelcmpt.pdf.

[82] The FTC's complaint in *Intel* included 96 paragraphs describing Intel's alleged conduct and then identified all 96 as constituting unfair methods of competition, as well as unfair acts or practices. *Id.* at 17-18. In addition, the complaint averred that the conduct described in paragraphs 56 through 96 also constituted deceptive acts or practices. *Id.* at 17. *See also* Allan L. Shampine, *The Role of Behavioral Economics in Antitrust Analysis*, 27 ANTITRUST 65, 65-66 (Spring 2013) ("The FTC has recently been in the business of blurring the lines between antitrust and consumer protection. . . . [T]he FTCired66 (Spring 2013nu 0 Tc0(o c( )-1f)2(a)4 0.253 0 T0.003yw 0.259N t ro

statements and omissions it has made in the past."[83] As I explained in an April 2010 article, requiring a company to engage in corrective advertising is a burdensome remedy that the FTC had previously used only sparingly and in unique circumstances, circumstances that did not appear to be found in the *Intel* matter.[84] Although the Commission ultimately settled its case against Intel without imposing a corrective advertising requirement,[85] the initially contemplated relief in this matter presented another example of the pitfalls of conflating competition and consumer protection principles.

C. Other Potential Downsides of Integration

In addition to the substantive concerns I have about the FTC's integration of competition and consumer protection principles in particular cases, commentators have identified several other potential downsides to the integration of these two disciplines in a single agency.[86] One of those downsides is the potential for one mission to dominate the other, to the detriment of the latter.[87] Professor Kovacic provides a potential scenario of particular interest to the FTC – one that involves a sizeable imbalance in resource allocation across the competition and consumer protection missions at the agency. Kovacic asks: "If the FTC moved from a 55/45 split between consumer protection and competition to something like a 65/35 or 70/30 distribution, would the

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[83] *Intel* Complaint, *supra* note 81, at 22.

[84] *See* Maureen K. Ohlhausen, *The FTC Complaint against Intel Corporation: Implications for Consumer Protection*, CPI ANTITRUST J. 3-4 (Apr. 2010).

[85] In addition to blurring the lines between competition and consumer protection, the complaint and the consent in this matter failed to provide meaningful guidance on which alleged conduct violated Section 2 of the Sherman Act and which conduct violated Section 5 of the FTC Act.

[86] Commentators also have identified various practical considerations that may hinder the successful integration of competition and consumer protection into a single agency. *See, e.g.*, Simon Priddis, *"Let Me Not to the Marriage of True Minds Admit Impediments": Competition and Consumer Law in the UK*, 21 ANTITRUST 89, 89 (Summer 2007) ("Notwithstanding the abstract merits of this integrated approach, practical impediments to success remain, not least since competition and consumer protection law arise from sharply contrasting policy perspectives, use different tools to achieve their respective objectives, and historically at least, have measured success in different ways.").

[87] *See, e.g.*, Cseres, *supra* note 42, at 24.

wisdom of retaining a competition competence within the FTC, rather than moving the function entirely to the Antitrust Division of the Justice Department, come into question?"[88] The FTC, or any other dual-mission agency, ought to keep this potential outcome in mind as it allocates resources across its two missions.

Another potential concern regarding the integration of competition and consumer protection raised by commentators is that such integration can lead to a lack of clarity of purpose at the agency, which can result in diminished support for the agency's overall mission and efforts.[89] This concern is greater where the disciplines that are integrated in a single agency are inconsistent in their ultimate goals and more in the nature of substitutes than complements.[90] At the FTC, where competition and consumer protection largely are pursuing the same ultimate goal, this concern should not materialize. The agency, however, should always be mindful of the clarity of its mission and purpose.

A third downside of integration identified by commentators is the potential for "destructive rivalry" between the competing missions within an agency for prestige, headcount, and budgetary resources.[91] During my tenure at the FTC, the rivalry between the competition and consumer protection missions is much more accurately characterized as healthy than destructive.

Thus, while the FTC ought to remain vigilant to ensure that these downsides to integration do not materialize within the agency, the FTC's performance in the past twenty-five

[88] Kovacic, *supra* note 68, at 48.

[89] *See, e.g.*, Cseres, *supra* note 42, at 24.

[90] *See, e.g.*, Kovacic, *supra* note 68, at 11, 18.

[91] *See, e.g., id.* at 25.

practices in each mission, provides another setting for the effective integra

bureaus' mandate, agenda, and enforcement and policy tools – particularly outside the context of specific cases, with their attendant time constraints – would be beneficial for each of the three bureaus. This type of interaction occurs occasionally, but not as much as it should.

Third, the integration of the missions at the FTC would benefit from increased Bureau of Competition input on proposed consumer protection guides and guidelines, as well as the periodic review of such guidance. To my knowledge, this happens infrequently, if ever. Providing the Bureau of Competition with an opportunity to do a competitive assessment of contemplated consumer protection guidance should be a relatively easy and effective means for avoiding any potential adverse competitive effects from such guidance.[95]

Fourth, the integration of the two missions at the FTC would benefit from increased Bureau of Consumer Protection involvement in preparing consumer and business education materials on the competition side, where such materials are used much less frequently and where the issues are sometimes less intuitive than on the consumer protection side. The Bureau of Consumer Protection, through its Division of Consumer and Business Education, has significant expertise in preparing educational materials for use by consumers to make informed decisions and by businesses to comply with the various consumer protection laws, rules, and regulations. That expertise could be more frequently utilized on the competition side.

Finally, the integration of the FTC's two missions would benefit from increased involvement by the Bureau of Consumer Protection in the primary activities pursued by the Office of Policy Planning: competition and consumer protection advocacy. To be sure, there exists already a fair amount of consumer protection involvement in such advocacy. However, the consumer protection mission, as well as the agency as a whole, would benefit from increased participation by the Bureau of Consumer Protection in both individual advocacy efforts and the strategic policy planning that influences the selection of advocacy targets.

VI. Conclusion

As we celebrate the FTC's centennial, we can point to the dual competition-consumer protection mission as one of the defining institutional features of the agency. The benefits obtained from housing both missions within the FTC have been tangible and meaningful for U.S. consumers. Those benefits are not necessarily achieved or maximized in every matter pursued by the agency. Nor is the degree of integration of the two missions necessarily at an optimal level. However, as this article makes clear, there are steps the agency can take to remedy those shortcomings. Looking forward to the FTC's next century, consumers w