

The FTC and the Future of Public Policy Affecting the Internet

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February 8, 2009

The FTC Portfolio and the Internet

- Competition Policy
- Consumer Protection
- Privacy and Data Protection
- Note: Regulatory Multiplicity
 - At home and abroad
 - Ron Spector's Example

FTC at 100 Self Study: Origins

- Era of Institutional Innovation and Upheaval
 - New systems and reform of existing systems
 - Financial crisis
 - Commercial dynamism
- 31 March 2008
 - Expiry date: About 20 January 2009
 - Best-if-used-by-date: 4 November 2008
- What to Do in 10 Months? Academic Model

Policymaking Environment

- Physics Eclipses Engineering
- Incentives for Leaders: “Consume” (Sue) Rather than Invest
- Dynamism Requires Upgrades/Experiments
 - Commercial phenomena
 - State of knowledge (e.g., economics)
 - Crisis opens basic questions about design
 - Result: imperative for institutional improvements

Positive Trend: Increasing Emphasis on Institutional Design & Implementation

- Recognition that Institutional Arrangements Deeply Influence Substantive Policy Results
- Example: More Focus on Operational Issues in International Organizations and Seminars
 - OECD, ICN, Fordham Workshop
 - *How do you actually do it?*

Redefinition of What Constitutes a “Good” Regulatory Agency?

- Recognizes that Institutions are Conduits through which Policy Content Flows
 - Effectiveness in many ways is a function of good administrative technique
- Emphasizes Capital Investments Whose Benefits Extend Well into the Future
- Commits Itself to Reassessment and Renewal

Overview

- Characteristics of Good Practice
- Implications for Internet Policy
- Caveat: Personal Views

Clear Definition of Aims

- Defining the Agency's Purpose: Everything Starts With Clear Statement of Aims
 - Internally (Long term view or Martin Lukes?)
 - Externally: Value of regular consultation
- Need for Continuing Restatement Light of New Conditions
 - Example: Financial crisis
- Links Between Aims, Programs, Results

Conscious Plan to Set Strategy

- Leadership Dilemma: “I Am So Busy That I Have No Time To Think, Much Less to Plan”
- Which Outlays Will Yield the Best Returns
 - For discretionary duties and mandates (reassess?)
- Portfolio Model: Risks and Returns
 - Doctrinal difficulty and resource implications
 - Accumulating and spending political capital
- Match Commitments to Capabilities
 - What cost, how long, who will do it?

From Case-Centric Orientation to Problem Solving

- Traditional Focus: Cases and Big Cases
 - Take-offs vs. landings
 - Underinvestment in long-term capability
- Emerging View: How Best to Solve Problems?
 - Right tools: mix of enforcement, advocacy, education, guidelines, self-regulation, studies
 - Value of flexible portfolio of policy instruments
 - Right agency/agencies

Internal Quality Control

- Independent Assessments by Different Operating Units
- Devil's Advocates and Scrutiny Panels

Investments in Building and Retaining Knowledge

- “Research and Development” Budget
 - Data collection and studies
- External Consultations: Hearings, Workshops
 - Early identification of trends
 - Connection with major external constituencies
- Partnerships with Academic Research Centers

Acquiring/Retaining Human Capital

- Links to Academic Community
- Individual Professional Development
- Information Management
 - Institutional memory
 - Electronic data sets
 - Capital budget: Investments in technology

Networks With Other Public Bodies at Home and Abroad

- Importance of Collateral Institutions: Sources and Solutions of Problems
- Reconfiguration?
- Problem Solving: Minimizing conflicts
- Synergies and Productivity Enhancements
 - Absorbing knowhow and benchmarking
 - Addressing common needs: e.g., training
 - Joint work on program development

Illustrations

- Merger Control
 - FTC/DOJ, FCC, PUCs, State AGs, Private Actions
 - Foreign authorities
- Consumer Protection
 - FTC, FCC, States
 - Foreign authorities

Communication and Education

- Is an Agency Effective Only When the Media and Commentators Say It Is?
- Education and Marketing
 - Traditional means
 - New media

Evaluation: Programs and Processes

- What Worked and What Did Not
- Increasing Importance of Assessing
 - Program outputs
 - Operations: e.g., measuring speed of activity
- Means
 - Internal assessment
 - Consultation with external experts
 - Peer review

Custom of Periodic Assessment

- Cumulative Nature of Policy Development
- Advantage of Superior Regulatory Design
 - Need for upgrades in statutes, organization?
- Respond to New Learning, Industry Trends
- Maintaining and Disclosing Data Sets on
 - Program activities: e.g., cases
 - Operational effectiveness

Regulatory Framework and the Internet

- Competition Policy Portfolio
 - Access, abuse, mergers
- Consumer Protection Portfolio
 - FTC experience and common carriers
- Privacy Portfolio
 - New framework or adjustments

Suggested Agency Report Card: What Is Good Administrative Practice?

- Well-Specified, Clearly-Communicated Goals?
- Careful Attention to Setting Strategy?
- Problem Solving Orientation?
- Internal Quality Control?
- Capital Investments in Knowledge, Networks, and Physical Infrastructure?
- Evaluation, Periodic Assessment, Adaptation?

Future of Regulation at Home and Abroad

- More Attention to Operational Issues
- Foster Norms for Leaders
 - Positive externalities for future agency leaders
 - Self-assessment and public discussion
- Capture Know-How (e.g., Histories)
- The Competition Worth Having