Consume or Invest: What Do/Should Agency Leaders Maximize?

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October 22, 2015
Form, Process, Substance

• What to do vs. How to do it
• Institutional Arrangements
  – Structure
  – Process
  – Assessment
This Morning’s Agenda

• Leadership Incentives
• Consume or Invest
• Some Suggested Improvements
• Disclaimer: Personal Views Only
Joint Work with David Hyman

- Hyman & Kovacic, *Can’t Anyone Here Play This Game? Judging the FTC’s Critics*, G.W. L. Rev. (forthcoming 2015)
Effectiveness: Vital Foundations

• Legal Capacity
• Human Capability: Matched to Commitments
• **Capital Investments**
  – Policy R&D: Theory, commercial trends
  – Processes
• Policy Networks
Leaders and Legacies

• What Is a Good Agency?
• Activity Measurements Predominate
  – Launching cases
  – Collecting monetary penalties
  – “Extra Credit” for picking prominent targets
Is Law Enforcement Important?

• Of Course
• Defines Conduct Boundaries
• Influences Business Decisions
• Establishes Legitimacy
• However ...
Recurring Pathologies

• “Consumption” Prevails
  – Take-offs vs. landings
  – Commitment/capabilities mismatched

• Under-investment in:
  – Capability (especially knowledge)
  – Policy infrastructure

• Reputation Deficits
The Blind Side

• Failure to Assess Past Practice
  – Leniency

• Failure to Make Needed Investment in Personnel and Knowledge
  – Disruptive technologies
Leniency

• Anne Bingaman’s Investments
• Success
• Reassessment
  – Adaptation
• Operations Research: Marshall & Marx
Disruptive Technologies

• A Recurring Theme: FTC 1915-1925
• Knowledge Gaps
Government Intervention and Misuse of Regulatory Process

- Office of Policy Planning: Workshops and Hearings 2001 to Present
- State Action and Noerr Reports
- Advocacy: Contact Lenses, Certificate of Need
- *Phoebe, SCSBD, NCSBDE* built on the foundation of this prior work.
Potential Antidotes: “A Few Modest Suggestions”

- Adjust Norms for Agency Leaders
- “Means-Forcing” Investments
  - Human capital and institutional knowledge
  - Ask: What’s the annual R&D budget?
- Academics should enforce better norms.
- Improve Priority Setting & Program Selection
  - Lessons from U.K. Competition & Markets Authority
Improve Public Understanding of How Policy Develops over Time

- Cumulative Contributions are the Rule
- What role does/should regime change play?
  - Continuity v. change
    - Complements or Substitutes?
  - “New blood”
- Long-Term Investments Should be Applauded
- Short-Term Splashy Launches Shouldn’t Be Applauded Automatically