

**FTC History: Bureau of Economics Contributions to Law Enforcement, Research, and  
Economic Knowledge and Policy  
Roundtable with Former Directors of the Bureau of Economics  
Thursday, September 4, 2003  
New Jersey Building Conference Center**

**Opening Remarks  
Timothy J. Muris  
Chairman  
Federal Trade Commission**

Welcome to the celebration of the 100<sup>th</sup> anniversary of the FTC's predecessor agency, the Bureau of Corporations. Today we are joined by several distinguished guests, including thirteen former directors or acting directors of the Bureau of Economics. Given the integral role that the Bureau has played in the FTC's history, including its economic investigation and report writing and its involvement in law enforcement, it is fitting to commemorate this 100<sup>th</sup> anniversary.

Today's roundtable is only one of a number of our efforts to celebrate the rich history of the FTC. Other items include the Miles W. Kirkpatrick Award, established in 2001 to honor the commitment, talent, and contributions of individuals who, throughout their public and private careers, have made lasting and significant contributions to the FTC. I presented the first Kirkpatrick Award to Basil Mezines in 2001, and last fall, Robert Pitofsky received this award. Also, Marc Winerman, Chris White, and Jim Hamill, from our General Counsel's office, are working on an oral history of the FTC, and Marc has written a paper on the 1914 origins of the agency. Finally, we are in the planning stages for an event to celebrate the FTC's 90<sup>th</sup> anniversary.

The Bureau of Corporations was created as an investigatory agency within the Department of Commerce and Labor on February 14, 1903 – the same date that the Department of Commerce and Labor began. In 1915, the FTC replaced the Bureau of Corporations and then Commissioner of Corporations, Joseph E. Davies, became the FTC's first Chairman. The FTC's first chief economist was Francis Walker, former Deputy Commissioner of Corporations, who remained with the FTC for 26 years.

The new Commission inherited both staff and investigations from the Bureau of Corporations. The Corporation's investigatory role began a tradition of economic report writing and research that has continued to this day. Economic reports by the Commission and its staff have played a crucial role in policy making by Congress, other federal agencies, and state agencies and legislatures.

As we know, Congress included enforcement and adjudication, as well as investigative reporting, in the legislation that created the FTC. By the mid-1920s, the FTC was focused on law enforcement, with the FTC's Economic Division conducting economic investigations and writing reports. The functions of the Economic Division expanded in 1936 when the Robinson-Patman Act was passed. The Division, primarily through its accountants, supported RP cases. Sad, but true. Data collection became another activity of the Division in the late 1930s.

The Bureau of Economics was created in 1954, and its functions were further enlarged to include merger review, antitrust analysis, and case support. Consumer protection work became a regular Bureau of Economics activity in the mid-to-late 1970s, and competition and consumer protection advocacy was added in the late 1970s and 1980s.

Today's roundtable will consider the history of BE and its contributions to research, economic knowledge and policy, and antitrust and consumer protection law enforcement. To some extent, BE's history is recorded in published commentaries and other public documents, including FTC Annual Reports. There also are a number of older publications on the early

decades of the Commission and Bureau of Corporations.<sup>1</sup> More recent FTC history covering the Bureau of Economics is included in books and articles, including commentaries by current FTC General Counsel William Kovacic and a book I wrote and edited with Kenneth Clarkson, which provided a critical review of the FTC in the 1970s.<sup>2</sup> BE history also is discussed in the reviews or memoirs of several former BE Directors.<sup>3</sup>

Today's discussions will provide a valuable addition to this collection. We will augment what we think we know about the history of BE and the evolving or changing role of the

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<sup>1</sup>Carl A. Auerbach, "The Federal Trade Commission: Internal Organization and Procedure," *Minnesota Law Review*, 48 (1964) 383-522; John M. Blair, "Planning for Competition," *Columbia Law Review*, 64 (March 1964) 524-42; Stanley E. Boyle, "Economic Reports and the Federal Trade Commission: 50 Years Experience," *Federal Bar Journal*, (1964) 489-509; W.H.S. Stevens, "What has the Federal Trade Commission Accomplished?" *The American Economic Review*, 15 (1925) 626-651; and W.H.S. Stevens, "The Federal Trade Commission's Contribution to Industrial and Economic Analysis: The Work of the Economic Division," *The George Washington Law Review*, 8 (1940) 545-580.

<sup>2</sup>Kenneth W. Clarkson and Timothy J. Muris, eds. *The Federal Trade Commission Since 1970: Economic Regulation and Bureaucratic Behavior* (Cambridge University Press, 1981); Robert A. Katzmann, *Regulatory Bureaucracy: The Federal Trade Commission and Antitrust Policy* (Cambridge: MIT Press, 1980); William E. Kovacic, "The Federal Trade Commission and Congressional Oversight of Antitrust Enforcement," *Tulsa Law Journal*, 17 (1982) 587-671; Roger E. Meiners and Bruce Yandle, eds. *Regulation and the Reagan Era: Politics, Bureaucracy and the Public Interest*, (New York: Holmes & Meier, 1989); and Alan Stone, *Economic Regulation and the Public Interest: The Federal Trade Commission in Theory and Practice* (Ithaca: Cornell University Press, 1977).

<sup>3</sup>See, for example, Jesse W. Markham, "The Federal Trade Commission's Use of Economics," *Columbia Law Review* 64 (March 1964) 405-414; Willard F. Mueller, "The Role of Economics and Economists at the FTC in the 1960s: A Memoir," unpublished manuscript (February 2003); Frederic M. Scherer, "Sunlight and Sunset at the Federal Trade Commission," *Administrative Law Review*, 42 (Fall 1990) 461-487; Robert D. Tollison, "Antitrust in the Reagan Administration: A Report from the Belly of the Beast," *International Journal of Industrial Organization* 1 (1983) 211-221; and James Langenfeld and David T. Scheffman, "The FTC in the 1980s," *Review of Industrial Organization* 5 (Summer 1990) 79-98.

economist and economic analyses at the Commission from the perspective of those who know BE best – its former directors.

We seek to identify, from their experiences, significant BE contributions to economic research and knowledge and to antitrust and consumer protection policy. Likewise, we seek to identify the important but less visible BE contributions to FTC law enforcement actions. Finally, we hope to learn how internal and external influences affected BE's work, including the FTC's organization, resource levels, relationships with other Bureaus, lines of communication with the Commission, and trends and developments in the field of economics, the economy, the political environment, and technology.

Our panelists today consist of former BE Directors and Acting Directors from the past 50 years. They include Jesse Markham who served as Director from 1953 to 1955, and Fritz Mueller, who served in that capacity for nine years in the 1960s. Some of our guests served more than once as Director, such as Dave Scheffman, or as Acting Director, such as Mac Folsom.

Each of our panelists left his or her mark on the Bureau and the Commission and each has valuable knowledge to share with us today about the Bureau of Economics and the role of economic analysis at the Commission. Moreover, as their biographical sketches clearly indicate, each has had a distinguished career beyond their work here. They are well-recognized for their contributions to academia, other public service in government, consulting, and corporate

America. We also are pleased to have as our luncheon speaker another economist with a distinguished career here and beyond – former FTC Chairman James C. Miller, III.

Dave Scheffman, our most recent former BE Director, will moderate three sessions of our morning panel. Dave has served with distinction, for a combined total of 12 years – so far – in the Bureau. Luke Froeb, the current BE director, will moderate the fourth session this morning. Luke comes to us from Vanderbilt University, where he taught managerial economics, regulation, and antitrust for MBAs. Luke is new to the FTC, but he served as an economist at the DOJ in the late 1980s and early 1990s. BE Deputy Director Paul Pautler will moderate the afternoon panels. Paul has made valuable contributions to antitrust, consumer protection, advocacy and research since his start in BE in 1978. Paul also is a dedicated student of BE history.

It is well known that I consider good economics to play a crucial role in guiding the FTC's judgments and policies in its promoting competition and consumer protection missions. The Commission's enforcement missions must have a sound theoretical framework that is supported by solid empirical evidence and our enforcement programs must be focused on transactions and practices that pose the greatest threat of harm to the economic welfare of consumers. In addition, Congress gave the FTC a broader role as a deliberative body and independent expert on issues affecting the market. In this role, we hold public hearings, conduct studies, and issue reports to Congress and the public. BE is an integral part of these policy

research and development efforts as well.<sup>4</sup> I am proud of the outstanding efforts of our economists.<sup>5</sup>

In looking forward it is important to understand the path we have taken. We have

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<sup>4</sup>Current or planned activities include studies to improve the empirical understanding of the theoretical basis for our work; retrospective studies of consummated hospital mergers, oil industry mergers, and branded product mergers; reviewing two decades of change in the petroleum industry; analyzing merger outcomes (competitive effects and efficiencies); real-time monitoring of gasoline prices around the country; a study of the impact of mortgage loan disclosures on consumer understanding of loan terms and the ability to do comparison shopping; and continuing research on copy testing health claims in food advertising.

<sup>5</sup>Recent examples include the following: empirical economic and financial analyses of competitive issues in the cruise line merger investigation, Bureau of Economics, Federal Trade Commission, *Cruise Investigation: Empirical Economic & Financial Analyses* (Nov. 2002), available at <http://www.ftc.gov/be/hilites/ftcbeababrownbag.pdf>; the BE-sponsored Empirical Industrial Organization Roundtable to focus on the identification of topics needing more attention from researchers, Federal Trade Commission, *Empirical Industrial Organization Roundtable* (Sept. 11, 2001), available at <http://www.ftc.gov/be/empiricalioroundtabletranscript.pdf>; the BE-sponsored roundtable on issues related to merger efficiencies, Federal Trade Commission, *Understanding Mergers: Strategy & Planning, Implementation and Outcomes* (Dec. 9-10, 2002), available at <http://www.ftc.gov/be/rt/mergerroundtable.htm>; a BE working paper on use of scanner data in demand estimation and its application to horizontal merger analysis, Daniel Hosken et al., *Demand System Estimation and its Application to Horizontal Merger Analysis* (April 2002) (FTC Bureau of Economics Working Paper #246), available at <http://www.ftc.gov/be/workpapers/wp246.pdf>; the BE paper on best practices for data, and economic and financial analyses in antitrust investigations, Federal Trade Commission, Bureau of Economics, *Best Practices for Data, and Economics and Financial Analyses in Antitrust Investigations* (2002), available at <http://www.ftc.gov/be/ftcbebp.pdf>; a BE report on the effect of health and nutrition advertising claims on food consumption, Pauline M. Ippolito and Janis K. Pappalardo, *Advertising Nutrition and Health Evidence from Food Advertising, 1977-1997*, (Sept. 2002) (FTC Bureau of Economics Staff Report), available at <http://www.ftc.gov/opa/2002/10/advertisingfinal.pdf>; and the BE-sponsored roundtable on consumer protection issues in the home mortgage market, Federal Trade Commission, *Economic Perspectives on the Home Mortgage Market Roundtable* (Oct. 16, 2002), available at <http://www.ftc.gov/be/0212version.pdf>.

reached this point because of the steps taken by our panelists and other former BE Directors and those they worked with in BE. Each of our panelists can speak to positive steps taken during his or her tenure. Each, no doubt, can also speak to some frustrations and setbacks that BE experienced. Together they tell a story of evolution, adjustment, and progress that is a valuable lesson for us today.

Before I turn the program over to Dave Scheffman, I want to thank the Bureau of Economics staff for organizing today's event. I want to thank especially Denis Breen, Paul Pautler, Luke Froeb, and Dave Scheffman. Also, thank you to today's participants for sharing your views on the Bureau. I will now turn the program over to our first moderator: Dave Scheffman.