



# Institutions and Competition Policy: Structure, Conduct, Performance

---

William E. Kovacic  
George Washington University Law School  
ESRC Centre for Competition Policy  
Norwich, 6 June 2013



# Graham Allison, *Essence of Decision* (1971)

---

- “If analysts and operators are to increase their ability to achieve desired policy outcomes, ... we shall have to find ways of thinking harder about the problem of ‘implementation,’ that is, the path between the preferred solution and actual performance of the government.”



# Competition Law: The Remarkable Modern Expansion

---

- Creation of Competition Law Systems
  - By 1950: <5
  - By 1975: <15
  - By 1990: <30
  - Today: 120+
  - By 2020: >130
- Diversity/Experimentation



# Some Notable Consequences

---

- Intensified Interest in:
  - *Structure*: Institutional design
  - *Conduct*: Incentives and motives
  - *Performance*
    - What is “good” performance?
    - How to measure it?
    - How to attain it?



# This Morning's Agenda

---

- Major Design Choices and Tradeoffs
- Managerial and Staff Incentives
- Performance Measurement



# Aims

---

- More Understanding of Design Choices
  - Interdependence
  - Links to system effectiveness
- Better Incentive Systems and Norms
- Improved Performance Measurement



# Resources

---

- GW Benchmarking Project
- Joint Work
  - James Cooper
  - David Hyman
  - Marc Winerman
- Contact: [wkovacic@law.gwu.edu](mailto:wkovacic@law.gwu.edu)



# Some Relevant Perspectives

---

- Economics (e.g., behavior)
- Law
- Political Science
- Public Administration
- Engineering (System Design/Tradeoffs)





# Structure: Eight Design Issues

---

- Status: Autonomy and Accountability
- Governance by Single Director or Board
- Stand-Alone Entity or Subunit
- Diversification of Policy Agents
- Optimal Portfolio of Policy Duties
- Optimal Portfolio of Policy Tools
- Integration of Decision Functions
- Quality Control Mechanisms



# Autonomy/Accountability Trade-Offs

---

- Autonomy: Independent from Interference in Decision to Prosecute
- Accountable for Policy Choices
- Impact on Effectiveness
  - Isolation: inability to influence choices
  - Especially: Advocacy



# Accountability and Better Disclosure

---

- Better Reporting of Activity
- Clear Statement of Priorities
- Ex Post Evaluation



# Governance

---

- Unitary Hierarchy
- Multimember Board
- Hybrids
  - Single Executive
  - Consultation with External Board



# Boards and Hierarchies Compared

---

## ■ Boards

- Less coherence and clear branding?
- Diversify expertise?
- More legitimacy?
- Better results from collective decisions?
- Harder to capture?
- Slower deliberation

## ■ Hierarchies

- Clearer branding
- Diversify expertise at deputy level
- Faster deliberation



# Stand-Alone Entity or Subunit

---

- Stand-Alone Body
  - Easier branding
  - Greater adaptability and responsiveness
  - Reduced transaction costs
- Subunit
  - Harder branding
  - Impact depends on quality of parent body



# Diversification of Policy Making Bodies: N or N+ Agents

---

- Monopolist Provider: Public or Private
- Multiple Agents in Same Domain
  - Combination of public or private agents
- Single Agent with Contestability
  - Bodies with scaleable portfolios



# Diversified Prosecution

---

- Impact on Policy Coherence
- Coordination Costs
- Benefits of Innovation/Rivalry
  - Does rivalry occur on the right margins?





# Portfolio of Policy Duties

---

- Single Purpose Agency
  - Example: Competition agency
- Multifunction Agencies
  - Modern trend
  - Example: Competition plus
    - Consumer protection
    - Procurement
    - Public utility access terms



# Single- or Multi-Functions

---

- Impact on Policy Coherence/Branding
- Deference before Courts
- Internal Coordination Costs
- Safeguard Against Capture?



# Portfolio of Policy Tools

---

- Law Enforcement
  - Civil powers
  - Criminal sanctions
- Rulemaking
- Research and Reporting
- Advocacy
- Broad Portfolio: Independence Effects



# Integration of Decision Tasks

---

- To Aggregate or Disaggregate
  - Decision to investigate
  - Decision to prosecute
  - Determination of culpability
  - Imposition of sanctions



# Consequences of Integration

---

- Quality Control Effects
- Equilibration by
  - Courts
  - Legislators



# Quality Control

---

- Aims
  - Rigorous Testing of Evidence
    - Overcome confirmation bias
  - Signaling Quality to Courts/Others
- Which Devices to Select and Where to Install Them?



# Conduct

---

- Management
  - Short term agents facing long-term needs
  - Inattention to “capital” investments
  - Credit-claiming: bad and good
- Professional Staff
  - Internal organization and incentives
- Internalize Benefits and Costs



# Performance

---

- Measures of Agency Effectiveness
  - Inputs (e.g., size of budget and staff)
  - Outputs (e.g., cases)
  - Outcomes (e.g., economic effects)
- Investments in Evaluation





# Strategy and Superior Norms

---

- Institutional vs. Individual Achievement
- Optimal Mix of Activity
- Clear Statement of Aims and Means
- Regular Reassessment and Upgrades



# Agency Lifecycles

---

- Accounting for Initial Conditions
- Early Predictable Challenges
- Foreseeable Vulnerabilities
- Capability/Commitment Mismatches
- Vectors of Development



# Some Next Steps

---

- Better Study and Sharing of Experience
  - Case studies
  - Workshops: e.g., Fordham
- Preparation for Leadership