

AntitrustConnect Blog

No Need to Restrain “Carpet-bombing ... with Ugly Throw Pillows”: Creation of the FTC’s Economic Liberty Task Force

Steven J. Cernak (Bona Law PC) · Wednesday, March 1st, 2017

The Federal Trade Commission’s new Economic Liberty Task Force, launched by FTC Acting Chairman Maureen Ohlhausen, is an important step that addresses concerns from this blogger and others that the FTC’s commissioners should do more to head off the competitive restraints imposed by certain state licensing requirements. The move is consistent with recent efforts by the FTC to narrow the legal exemptions enjoyed by such licensing programs. More importantly, it should boost the FTC staff’s long-running efforts to explain and extol the benefits of competition, and to win the hearts and minds of state legislators and voters on these issues.

In *Phoebe Putney and NC Dental*, the FTC narrowed the federal exemption that protected some occupational licensing programs from antitrust review. In addition, the FTC staff has frequently responded to requests from states to opine on the potential negative competitive effects of various state licensing schemes. I [have urged](#) the FTC commissioners to do more to educate legislators and consumers, not just win lawsuits, and the task force is an important start.

Ohlhausen [announced](#) her intent to create the task force on February 23. As she and others at the FTC have done in the past, Ohlhausen decried the creation of state occupational licensing requirements that seem unnecessary to protect the public’s health and safety. She captured that sentiment in one of the more colorful phrases ever used in an antitrust speech. Commenting on state licensing of interior designers, she declared:

I challenge anyone to explain why the state has a legitimate interest in protecting the public from rogue interior designers carpet-bombing living rooms with ugly throw pillows.

To coordinate and enhance the FTC’s current efforts in this area, the Economic Liberty Task Force will work to “advance economic liberty issues, with a particular focus on occupational licensing regulations.” This internal FTC group will seek input from other stakeholders, especially elected state leaders and other officials, to develop

ways to narrow or eliminate overbroad occupational licensing restrictions.

Ohlhausen was careful to note that well-tailored licensing schemes can be helpful in protecting public health and safety in certain professions, such as doctors and electricians. She also professed her belief in federalism, pledging to respect the decisions of politically-accountable state actors that clearly articulate a policy to displace competition.

I have suggested in the past that the FTC commissioners should provide greater support and publicity for their staff's advocacy efforts in this area, and I fully support the Task Force's creation. Below are additional suggestions to further its ambitious goals:

- Make sure the FTC Task Force members spend some time outside the Beltway exploring these and other economic liberty issues—if the recent election taught us anything, it is that many folks outside Washington have different views than those inside Washington.
- Listen to those state officials—they might have something helpful to say about the dividing line between, say, doctors and interior designers. They might also suggest other steps the FTC can take to increase economic liberty.
- Don't limit your interactions to the officials—check in with the local companies, chambers of commerce, or trade associations whose views might be different, both from the FTC's but also from those of the state officials.
- And while you're there, don't forget to reinforce the value and benefits of competition protected by well-supported antitrust laws. It sounds odd for a government agency to be the one explaining the virtues of vibrant private markets but, given [comments in the media in the last year calling for more regulation](#), it seems many in the country could use a refresher course on competition's benefits.
- The Task Force should consider endorsing [the ALLOW Act](#), or something like it, as model state legislation that might help prevent overbroad regulations from creeping back into states in the future.

The Task Force won't end unnecessary regulation. But by shining a light on it and explaining competition's benefits in discussions with officials, companies, and voters, the Task Force could play an important part in restoring a vibrant local and national economy.

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