Statement of Commissioner Joshua D. Wright[*]

On the FTC's Bureau of Economics, Independence, and Agency Performance

August 6, 2015

"In disputes within a bureaucracy, the larger group usually wins; at both the FTC and the DOJ"[1]

The Federal Trade Commission's Bureau of Economics' (BE) role as an independent and expert analyst is one of the most critical features of the FTC's organizational structure in terms of enhancing its performance, expanding its substantive capabilities, and increasing the critical reputational capital the agency has available to promote its missions.[2] The role of economists within the FTC, as well as the ebb and flow of the relationship between BE and its counterparts in the Bureau of Competition (BC) and Bureau of Consumer Protection (BCP), have been the subject of considerable deliberation and commentary. As an economist and lawyer who has served in both BE and BC at various times and in various roles, and now as a Commissioner, I write to share my views on institutional design decisions and other strategies available to the FTC to maintain and strengthen that independence.

The question of how best to organize economists within regulatory agencies in general, and competition agencies in particular, is one that has attracted a significant amount of attention from legal scholars, regulators, practicing lawyers, and economists.[3] As part of a routine review of organizational units within the FTC, its Office of Inspector General (OIG) recently touched upon this question when it issued a report evaluating BE in order "to determine whether it optimizes its resources to efficiently and effectively accomplish its mission."[4] This statement is not intended to

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[*] I thank John Yun, my economic advisor, as well as several current and former BE economists, for helpful discussions on these issues. Of course, their comments should not be interpreted as endorsement of any of the views I express here.

[1] Douglas H. Ginsburg & Eric M. Fraser, *The Role of Economic Analysis in Competition Law*, *in* INTELLECTUAL PROPERTY, COMPETITION LAW AND ECONOMICS IN ASIA 37 (R. Ian McEwin ed., 2011).

[2] *See* William E. Kovacic, *Creating a Respected Brand: How Regulatory Agencies Signal Quality*, 22 GEO. MASON L. REV. 237 (2015).

[3] *See, e.g.*, Luke Froeb, Paul A. Pautler, & Lars-Hendrik Röller, *The Economics of Organizing Economists*, 76 ANTITRUST L.J. 569 (2009); Douglas H. Ginsburg & Eric M. Fraser, *The Role of Economic Analysis in Competition Law*, *in* INTELLECTUAL PROPERTY, COMPETITION LAW AND ECONOMICS IN ASIA (R. Ian McEwin ed., 2011).

[4] FED. TRADE COMM'N, OIG EVALUATION REP. NO. 15-03, EVALUATION OF THE FEDERAL TRADE COMMISSION'S BUREAU OF ECONOMICS at i (2015), [hereinafter *OIG Report*] *available at* https://www.ftc.gov/system/files/documents/reports/evaluation-ftc-bureau-

rebut OIG's evaluation generally and offers no comment on its view that more clear documentation and communication of roles within the agency could improve BE's performance. Rather, I write today to discuss my views on the important issues raised by the OIG Report concerning the organization and deployment of economists within the FTC, to provide some institutional context critical to understanding the relationship between BE independence and agency performance, and to highlight the need for a discussion of organizational reforms aimed at increasing the role of economic analysis within the agency.

The interactions between BE's independence, the quality of its recommendations, BE's relationship with BC and BCP, the integration of economic analysis into Commission decisions, and overall agency performance are complex. I explore what I consider to be the two most significant challenges to BE's independence in the modern FTC.[5] First, the asymmetry between the number of BC lawyers and BE economists on competition matters generates institutional incentives that weaken BE's independence at the staff level. Second, and relatedly, while appointing external academic economists as BE Director has many benefits, outside economists have only weak incentives to make investments that foster or increase BE's independence. I view these two issues as the primary threats to BE's performance, and thus to the FTC's overall ability to achieve its competition mission effectively. I conclude with some policy recommendations aimed at resolving or at least mitigating these concerns.

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economics/150630beevaluation.pdf. The OIG Report focuses primarily upon the possibility that BE's role within the agency is ill-defined and causes failed coordination among the bureaus: "although the BE stakeholders have a common understanding of its mission and processes, much of this knowledge is undocumented," which may lead to "incomplete or inconsistent communication," which may impede BE's ability to effective plan and coordinate with" the Bureau of Competition and Bureau of Consumer Protection." *Id*. The OIG Report offers a number of recommendations aimed at this diagnosis, in large part suggesting that BE dedicate greater resources to document its core mission, activities, and objectives; to measure its performance; and to improve its communication with BC and BCP. *Id*.

[5] BE has been organized as a separate bureau for most of the FTC's history, except for a brief period during the 1950s. *See* WILLIAM E. KOVACIC, CHAIRMAN, FED. TRADE COMM'N, THE FEDERAL TRADE COMMISSION AT 100: INTO OUR SECOND CENTURY, THE CONTINUING PURSUIT OF BETTER PRACTICES 40 (2009). As we discuss below, the challenges facing BE today are more about true independence than maintaining its status as a separate organization—although calls to subordinate FTC economists under attorneys have not entirely disappeared. *See* Froeb et al., *supra* note 3, at 569-570.

I. BE'S INDEPENDENCE IS CRITICAL TO FTC PERFORMANCE

BE's job is to serve the Commission.[6] BE's independence is critical to its performance because it provides incentives to conduct and make recommendations based solely upon sound economic analysis. BE staff members are evaluated and promoted not based upon the number of cases the agency brings or the number of BE recommendations in favor of enforcement, but rather upon the quality of their economic analysis as determined by Ph.D. economist managers trained in the discipline. BE's independence is thus critical to its performance. It is also the case, and generally well understood, that BE's effectiveness depends crucially upon how it is organized within the agency. On this point, the OIG Report notes, "Virtually all stakeholders interviewed recognized the importance of the BE's purpose in providing unbiased and sound economic analysis to support decision-making – a function that is facilitated by its existence as a separate organization."[7]

Former Chairman William Kovacic articulated well the benefits of an independent BE for case analysis, Commission decision-making, and competition policy research and development. Kovacic explains an independent BE is

> more likely to provide the ultimate decision makers with high-quality economic analysis and relevant information focused on questions of interest to those decision makers. For these purposes, subordinating the economists to attorney managers is likely to improve the coordination and agreement between the economist and her manager, but it is also likely to have deleterious long-run effects of at least four forms: (1) the loss of influence or "voice" of economics on policy and case selection, (2) loss of an alternative information flow to the decision makers, (3) poorer staff skill retention, and (4) inefficient use of economists with specialized skills or knowledge.[8]

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[6] The OIG Report makes frequent use of the term "stakeholder" when referring to various interested parties across the agency who provide comments on the role of BE and its performance (*e.g.*, "the assessment included interviews and data gathering from stakeholders across the FTC, including the BC and BCP, to which the BE provides economic analyses and research support." *See OIG Report*, *supra* note 4, at i. As a point of clarification, while BE's role in providing support to BC and BCP is important and critical – particularly in the context of litigation support – it must be emphasized that BE is not merely a supplier of the input of economic analysis to those bureaus. BE's principle stakeholder is the Commission, not the other bureaus. The "economic analyses and research support" it provides should be evaluated in that context.

[7] *OIG Report*, *supra* note 4, at 9.

[8] KOVACIC, *supra* note 5, at 41.

Former Bureau of Economics Director Michael Salinger and former Deputy Director Paul Pautler expand upon this fourth category of costs, focusing more upon the differentiated knowledge that economists contribute to the quality of agency analysis and decision-making:

> The economists are housed in their own Bureau because this structure reflects the importance of the discipline to the Agency's missions, improves efficiency, encourages skill development, and ensures clear communication up and down the chain of command. On the antitrust side of the agency, the separate organisation helps ensure an emphasis on a guiding principle in the evolution of antitrust doctrine in the United States over the past quarter century – economically sound antitrust enforcement protects consumers, not competitors. On the consumer protection side of the Agency, a separate organisational structure for economists provides the Commission with advice that is rooted in cost-benefit analysis.[9]

Similarly, Froeb, Pautler, and Röller, a trio of former government agency economists, highlight that an independent BE "is more likely to keep up with new methodologies and be able to apply them to enforcement questions."[10] This ability to keep up with developments in economic methodology, to improve technical skills, and to develop new methodologies is critical to fulfilling the agency's mission.[11] BE economists have contributed substantially to the quality of antitrust analysis in industries such as pharmaceuticals, hospitals, gasoline retailing, supermarkets, and digital platforms.

Ultimately, increasing BE's independence has led to increased integration of economics into agency decision-making at all levels – an unqualified success by any measure of agency performance.

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[9] Michael Salinger & Paul A. Pautler, *The Bureau of Economics at the US Federal Trade Commission, in* GLOBAL COMPETITION REVIEW, THE 2006 HANDBOOK OF COMPETITION ECONOMISTS 3, 4 (2006).

[10] Froeb et al., *supra* note 3, at 583.

[11] Relatedly, self-generated, independent research by BE economists is unequivocally a positive for the agency. Independent research fosters skill development, attracts and helps retain highly motivated and talented economists, and generates new methodologies to perform the agency's mission more effectively. These positive spillover effects often are overlooked, but are significant, and should inform the agency's decision with respect to BE hours allocated to case work and research.

II. TOO MANY LAWYERS, TOO FEW ECONOMISTS: A POTENTIAL THREAT TO INDEPENDENCE AND AGENCY PERFORMANCE

It is undoubtedly correct—and widely understood throughout the FTC—that a separate organizational division for economists, one with leadership that reports directly to Commission decision-makers, facilitates the production of unbiased and sound economic analysis.[12] Yet, as FTC alumni and students of its history understand, organizational separation between BE and BC/BCP is not sufficient to guarantee either BE's independence or its virtues to the agency.[13] A "separate" BE could effectively lack independence or the ability to influence agency decision-making when its recommendations deviate from BC or BCP.

This raises a fundamental question: from the perspective of a BE staff economist, how costly is a recommendation that dissents from BC's preferred course of action? BE staff economists might well perceive that strongly advocating their own dissenting views would come at a significant cost to the economist and to BE in the form of strained relationships with BC attorneys, reduced opportunities in future cases, and lack of inclusion in high-level case decision-making.[14] Thus, it is critical that BE structure itself organizationally in a manner that provides staff economists proper incentives to offer unfettered and independent recommendations.

It is important to recognize that BE staff economists, despite these costs, have rightfully earned a reputation as highly skilled and independent analysts within the FTC who are generally willing to make recommendations to the Commission – whether

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[12] *OIG Report*, *supra* note 4, at 9. Current agency leadership has recognized the importance of a separate BE. *See* FED. TRADE COMM'N, ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AGENCIES, SUBMISSION TO OECD 7 (2014) ("the agency is structured to ensure that both disciplines inform the ultimate decision;" "lawyers and economists write separate recommendation memoranda and submit them to the decision-makers through their own Bureau management;" "A key benefit of this approach is that it creates strong incentives for attorneys and economists to take each other's views into account").

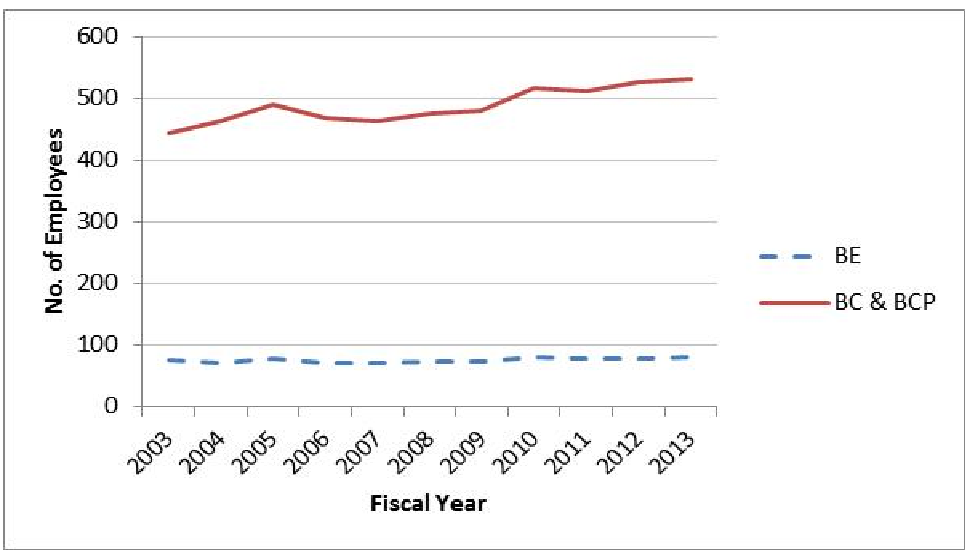
[13] For instance, while BE has generally existed as a separate bureau since the establishment of the FTC, its relative strength at the agency has varied significantly over time. *See* Lawrence J. White, *Economics, Economists, and Antitrust: A Tale of Growing Influence*, *in* BETTER LIVING THROUGH ECONOMICS 232-233 (John J. Siegfried ed., 2010) ("at the end of the 1960s outside reviews of the FTC…commented unfavorably…on the BE's lack of influence on policy and decision making within the agency;" "The 1970s brought a general strengthening of the position of economists at the two enforcement agencies;" "The involvement of economists in antitrust policy, as well as litigation support, took a sharp turn upward in the early 1980s").

[14] *See* Froeb et al., *supra* note 3, at n. 6 ("Part of the reason for the attorney-economist tension is the dual role that economists play in the investigation process. They are colleagues with attorneys during the initial investigation stage, but they normally provide a largely independent assessment of the case at the later decision stage. The second role changes the incentives of all the actors in the first stage").

that recommendation is shared by BC or otherwise – based upon their economic analyses and judgment. There is no shortage of cases where BE staff economists have recommended a course of action that differs from that recommended by BC or the course understood to be the preferred by the Commission. It would be a mistake, however, to imagine that FTC economists, lawyers, and Commissioners are immune to incentives that influence behavior on the margin; it would be equally faulty to assume the agency is so well designed that the incentives of the Commission and all of its agents are perfectly aligned. One important question, from an agency design perspective, is to identify potential sources of conflict that might weaken incentives for independent and potentially conflicting recommendations.

One potential answer begins with the fundamental and structural asymmetry in BE and BC staffing in competition cases. BE is simply outnumbered relative to the attorneys at a level that raises serious concerns about the ability of a particular staff member to develop and sustain a recommendation that is in opposition to the attorneys.[15] Of course, resource constraints can occur at all bureau size levels. What is important is the ratio of BE staff to other bureaus. Below, we plot the number of attorneys to economists over time.

Figure 1: Number of Attorneys to Economists at the FTC from 2003 to 2013



[15] *See OIG Report*, *supra* note 4, at 11 ("This ratio, however, does not capture work BE defers or does not address due to resource constraints"), *and* at 14 ("when case demand is particularly high, individual research or internal stakeholder requests…for research efforts may be paused or delayed due to a lack of staff availability").

What this figure illustrates is that BE economists are overwhelmingly outnumbered in terms of staffing on a given case. This has a very real impact on incentives in the recommendation process. In my experience, the typical BE staff recommendation memo is signed by a single economist or in some cases, two economists. In BE, the staff economist or pair of economists are free to write their own recommendation, and the role of BE management has historically been to allow the economists that freedom with broad structural and economic guidance and without imposing their own policy views on the economist. By way of comparison, a typical BC staff memorandum might be signed by somewhere around six to a dozen or so lawyers. Additionally, BC staff recommendations are often the product of significant review and input from BC management. While BC staff are free to differ from their management and do so on occasion, BC staff recommendations are generally understood to include the endorsement of BC management. The key point is that the asymmetry between the number of economists and lawyers with a vested interest in a recommendation in a particular case is significant. This places the BE staff economist with a dissenting view in a potentially precarious position. Given the asymmetries involved, dissent generally means that the single BE staff economist must defend his or her views against not just a single BC lawyer, but the majority of lawyers within a BC shop, as well as BC management, and sometimes Commissioners' attorney advisors that share BC's views. I have no doubt that a majority of recommendations are not influenced by this asymmetry. On the margin, however, particularly in those matters involving consents, this asymmetry might influence BE recommendations in manner that does not serve the Commission's interests.

Both BC attorneys and BE staff are responsible for producing a recommendation memo. The asymmetry is at least partially a natural result of the different nature of the work that lawyers and economists do. But it is important to note that one consequence of this asymmetry, whatever its cause, is that it creates the potential to weaken BE's independence. BE maintains a high level of integrity and independence over core economic tasks – e.g., economic modeling and framing, statistical analyses, and assessments of outside economic work – yet when it comes to the actual policy recommendation, I think it is fair to raise the question whether the Commission always receives unfiltered recommendations when BE dissents from the recommendation of BC or BCP staff.

One example of this phenomenon is the so-called "compromise recommendation," that is, a BE staff economist might recommend the FTC accept a consent decree rather than litigate or challenge a proposed merger when the underlying economic analysis reveals very little actual economic support for liability. In my experience, it is not uncommon for a BE staff analysis to convincingly demonstrate that competitive harm is possible but unlikely, but for BE staff to recommend against litigation on those grounds, but in favor of a consent order. The problem with this compromise approach is, of course, that a recommendation to enter into a consent order must also require economic evidence sufficient to give the Commission reason to believe that competitive harm *is* likely.[16] This type of "compromise" recommendation in some ways reflects the reality of BE staff incentives. Engaging in a prolonged struggle over the issue of liability with BC and BC management is exceedingly difficult when the economist is simply outmanned. It also ties up already scarce BE resources on a matter that the parties are apparently "willing" to settle.[17]

Furthermore, contrarian views can lead to conflict between the BC attorneys and the BE economist. They can lead to greater use of alternative resources for economic analyses, for example, hiring expert economists earlier in the process than otherwise warranted and requesting additional economic analyses and white papers from complainants.[18] They can also encourage BC to seek other substitutes for BE inputs, such as conducting their own economic analysis where they disagree with BE. These actions tend to undermine a cooperative relationship between BC and BE. This helps neither the Commission nor consumers.

III. DESIGNATING A STAFF ECONOMIST AS BE DIRECTOR MIGHT STRENGTHENINCENTIVES TO INVEST IN INDEPENDENCE

BE's management structure can also lead to incentives that do not necessarily strengthen BE's independence. As the report states, "The BE Director is appointed by the Chair of the Commission and serves at his or her pleasure. Historically, most

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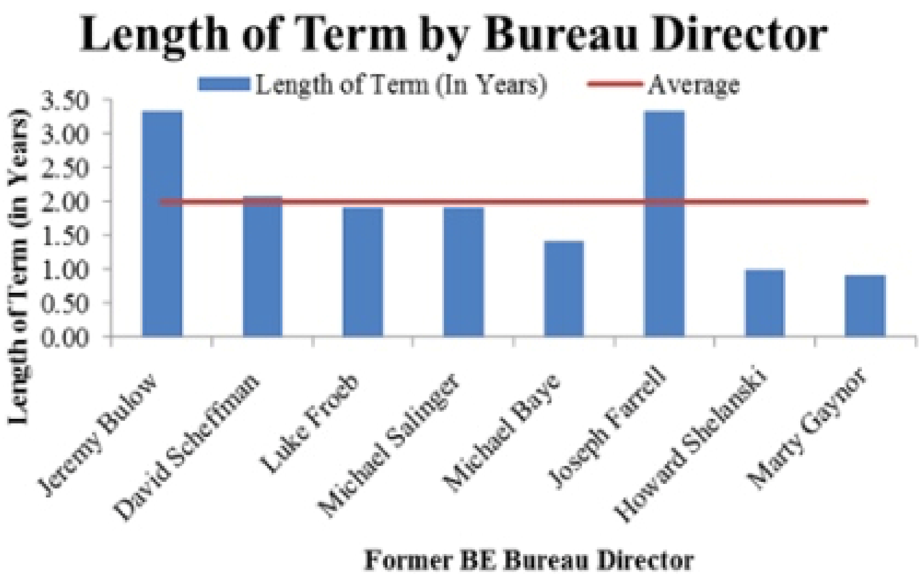
[16] One could hypothesize that the "compromise recommendation," as described here, is a function of economists' imperfect legal knowledge – that is, economists may not know that accepting a complaint and consent order requires evidence sufficient to establish reason to believe the underlying conduct is likely to harm competition – rather than weak incentives. My own experience suggests the former is not a likely explanation. One strategy for addressing this issue is for all BE staff recommendations to answer the following questions: (1) is competitive harm likely?; and, if so, (2) does the proposed consent order address the competitive harm?

[17] Of course, a firm's willingness to settle with the agency says little, and in some cases, nothing, about whether settlement is the right outcome from a consumer welfare perspective. *See* Douglas H. Ginsburg & Joshua D. Wright, *Antitrust Settlements: The Culture of Consent*, *in* 1 WILLIAM E. KOVACIC: AN ANTITRUST TRIBUTE – LIBER AMICORUM 177 (2012), *available at* http://www.ftc.gov/speeches/wright/130228antitruststlmt.pdf.

[18] It is not unusual for complainants to submit white papers focusing upon theories that indicate a particular type of conduct is harmful, while ignoring competing theories that suggest the conduct is beneficial. BE provides a balanced evaluation of the appropriate economic theories given the facts of the case.

directors have been academics on leave from their permanent positions. Since most academic institutions allow leaves of absence for 2 years or less, most BE Directors serve between 1 and 2 years."[19] Figure 2 below reproduces the table in the OIG Report that provides the term length of the past eight BE Directors.

Figure 2: BE Director Length of Term 1998 to 2014[20]



This observation begs the question whether modifying BE's management structure – and in particular, elevating an internal BE economist to the position of BE Director rather than an outside academic – would improve matters. The possibility warrants some evaluation and discussion.

There are no doubt significant potential benefits associated with current approach – that is, a temporary, Chair-appointed director from academia. These benefits include the ability to recruit and maintain high quality economists with an interest in research, to improve BE networking with academics, and to increase overall confidence in BE leadership.[21] It might also be the case that a short-term academic BE director with the option to return to academia at their leisure might be more willing to take an unpopular stand when it comes to engaging in long-term internal agency conflicts.

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[19] *OIG Report*, *supra* note 4, at 8.
[20] *Id*. at Table 5.
[21] *Id*. at 8-9.

The costs of the current approach to BE management imposed upon the agency and upon the beneficiaries of its missions are also potentially significant. For many decisions, a one to two year term is simply not enough time to provide directors appropriate incentives to make longer-term investments in increasing BE's independence and influence. This observation is not a criticism of the many fine economists who have served as BE's director. BE's recent directors have generally been very effective and provided sound economic insight on individual cases and investigations. They have also taken and advocated strongly within the agency positions opposed to BC or BCP where appropriate. Yet, there are many decisions within the discretion of a BE Director that generate benefits only long after he or she has returned to academics but require costs to be incurred immediately. While I sense no imminent threat to BE's overall independence – that is, there should be no longer be any question that a separate and independent division of economists is desirable for the agency. However, I am concerned about whether the current management structure is conductive to an institutional framework that provides staff with appropriate incentives to offer policy recommendations that are contrary to BC and BCP staff and, particularly, when those recommendations are contrary to the views of the appointing Chairman.

To be sure, the current management structure has features that can mitigate the potential costs associated with an academic BE Director's weak incentives. Career BE management, such as Deputy Directors, have played a critical role in facilitating at least partial internalization of the costs and benefits of investment into BE's independence and influence. The FTC has had the remarkable fortune in its recent history to have these roles filled with economists with a number of highly influential economic thinkers in their respective areas, with a wealth of antitrust and consumer protection experience. These economists included Pauline Ippolito, former Deputy Director and Acting Director, a recipient of the Presidential Rank Award for Distinguished Executive (over 30 years of experience); Paul Pautler, a former Deputy Director for Consumer Protection (over 30 years of experience); and Ken Heyer, former Deputy Director for Antitrust (over 30 years of experience at the Department of Justice and FTC). While it is a difficult challenge for the FTC to replace the experience and judgment offered by this recently departed trio of distinguished economists, the cupboard of highly qualified economists with managerial talent is not empty. BE remains very well managed, and it will need to be, as I suspect that challenges facing BE management in maintaining BE staff independence will become more acute in the years to come.

One possible approach to this issue would be to reconsider the design of BE's management structure. One possibility is to have *both* a temporary, academic economist appointed by the Chairman as well as a career economist to run the bureau. This approach would have the benefit of elevating a BE staff economist to a position of greater power within the agency, reporting directly to the Commission decision-makers, and presumably the ability to voice BE's concerns and priorities to the Commission. There are a variety of ways to think about a BE management redesign along these lines. One approach would be to have the academic economist housed within the Chairman's office rather than the bureau. This approach has worked in attracting high profile law professors and academics from other departments to come to the FTC. Perhaps it would also work with economists, thus preserving the benefits associated with having a reputable academic economist walking the halls of the agency. Perhaps not. Regardless of the specific organizational design adopted, however, I believe empowering a career staff economist in such a leadership position would allow a fuller internalization of all of the costs and benefits involved with decisions that impact BE's independence. At a minimum, assessing whether an organizational structure exists that better optimizes the tradeoffs laid out above than the current approach is worthy of serious consideration.

IV. POLICY RECOMMENDATIONS

First, it comes as no surprise that I advocate hiring more full-time economists to close the staffing gap between BE and BC/BCP. Hiring more full-time economists is one obvious fix to the ratio problem.[22] There are many benefits to expanding the economic capabilities of the agency. Many cases simply cannot be adequately staffed with one or two staff economists. Doubling the current size of BE would be a good start towards aligning the incentives of the Commission and BE staff with respect to case recommendations.[23] While too quickly increasing the size of BE staff might dilute quality, a gradual increase in staffing coupled with a pay increase and a commitment to research time should help to keep quality levels at least constant.

Second, I suggest the FTC consider interpreting or amending FTC Rule of Practice 2.34 to mandate that BE publish, in matters involving consent decrees, and as

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[22] Others at the agency have commented on this ratio imbalance. *See Bulow: Too Many Lawyers, Too Few Economists*, FTC WATCH 555 (November 20, 2000), *available at* http://ftcwatch.com/ftcwatch-no-555-2000-20/ ("FTC Economics Bureau Director Jeremy Bulow laments that economists are outnumbered by lawyers by four to one at the FTC and that the Commissioners typically don't have either economic advisors or attorney advisors with economic backgrounds. Bulow joked last week that he if he were the FTC Chairman, he would recommend the agency reverse the economist-lawyer ratio"). It is worth noting that progress has been made in this arena. Each of the Commissioner's offices currently has either their own economic advisor or an economist on detail from the Bureau of Economics on a part-time basis.

[23] One potential solution to "compromise" recommendations specifically would be to require both BC and BE to offers their recommendation on *liability* to the Commission *before* the Commission considers recommendations on consents and remedies.

part of the already required "explanation of the provisions of the order and the relief to be obtained," a separate explanation of the economic analysis of the Commission's action. The documents associated with this rule are critical for communicating the role that economic analysis plays in Commission decision-making in cases. In many cases, public facing documents surrounding consents in competition cases simply do not describe well or at all the economic analysis conducted by staff or upon which BE recommended the consent. The additional explanation I have in mind would be a BE document, not requiring approval of the Commission. Aside from a high-level and general description of the economic analyses relied upon in recommending or rejecting the proposed consent order, the BE explanation could also provide the more general economic rationale for its recommendation. Requiring BE to make public its economic rationale for supporting or rejecting a consent decree voted out by the Commission could offer a number of benefits at little cost. First, it offers BE a public avenue to communicate its findings to the public. Second, it reinforces the independent nature of the recommendation that BE offers. Third, it breaks the agency monopoly the FTC lawyers currently enjoy in terms of framing a particular matter to the public. The internal leverage BE gains by the ability to publish such a document may increase conflict between bureaus on the margin in close cases, but it will also provide BE a greater role in the consent process and a mechanism to discipline consents that are not supported by sound economics. I believe this would go a long ways towards minimizing the "compromise" recommendation that is most problematic in matters involving consent decrees.

In sum, I believe the evidence strongly supports the view that increasing BE's independence leads to better agency decision-making and better enables the agency to fulfill its mission. History has shown that having a separate bureau is clearly important, but not enough to ensure true independence. There remain today institutional features at the FTC, namely the overwhelmingly disproportionate number of attorneys to economists and the 1 to 2 year term length of BE bureau directors, that hamper and potentially threaten, to some degree, the strength of BE's independence. The proposals discussed are obviously not the only possible solutions to the problems I have identified here. Rather, it is my hope that these ideas will invite the FTC, scholars, and commentators to contribute to what is, in my view, a much needed discussion of BE's independence and agency design.