

# Lipsky: FTC "lightning fast" compared to DOJ

Nihal Krishan 25 June 2017

Buy PDF



Nihal Krishan

The Federal Trade Commission is a faster, less bloated entity than the Department of Justice's antitrust division, the acting director of the FTC's bureau of competition said last week – especially because the FTC currently has only two commissioners.

## Latest News

[FTC judge questions Google victimhood](#)

[FTC supports CREATES Act before House antitrust subcommittee](#)

[States can do things feds and private litigants cannot](#)

[First economic liberty roundtable pushes for licence reciprocity](#)

[Don't forget the Russians: The Tipline for 28 July 2017](#)

## Tipline

News and notes from around the antitrust world

[Don't forget the Russians: The Tipline for 28 July 2017](#)

Abbott "Tad" Lipsky made the comparison at an American Bar Association event after another panellist, Jones Day partner Mike Knight, argued that the DOJ is a quicker, nimbler organisation than the FTC.

A former Antitrust Division lawyer and bureau of competition assistant director, Knight said that the DOJ addresses challenges faster than the FTC because the DOJ is structured as a linear chain, enabling staffers to get feedback from the top very quickly.

Getting clarity on an issue at the staff level is easy at the DOJ, he said, whereas resolving a problem at the more hourglass-shaped FTC is much more time consuming and difficult because everything has to go through the commissioners. Knight said that the FTC should make a more efficient feedback loop from commissioners to the staff.

Lipsky said he felt exactly the opposite about the comparison between the two federal antitrust agencies, in part because of the advantages of having a two-member commission at the FTC.

"I'm not saying it's persuasive that there should be a two-member commission, but based on prior experience... trying to get decisions made and cases advanced in a five-commissioner FTC apparently is exponentially far more difficult than getting them advanced in a two-commissioner FTC," Lipsky said. "There are less meetings, less, you know, stray thoughts that come in" with only two commissioners.

He said that over the past couple of decades, the DOJ's antitrust division has developed in the opposite direction.

When he served as deputy to Antitrust Division chief Bill Baxter, Lipsky said the agency "was a pellucid organisational structure: Baxter at the top, three deputies, three special assistants "and everything else was basically staff level. You had the litigation deputy to whom the office of operations reported, but the front office was essentially seven people."

Today, however, the antitrust division has a "spectacular array" of employees for a multitude of different responsibilities, Lipsky said.

"[I]t's been my experience in the several years leading up to my new service at the FTC that it

Text and email are best: The Tipline for 27 July 2017

Cracking: The Tipline for 26 July 2017

[More from Tipline](#)

## Events



[View all events](#)

[Sign up to GCR USA alerts](#)

was actually the commission that could give you a lightning fast answer and the DOJ which often bogged down into a frustrating degree of complexity,” Lipsky said.

Lipsky said that he didn’t want to “engage in too much finger pointing” but that he hoped for clarification at the Antitrust Division “to eliminate some of the objectionable features of enforcement on [the DOJ’s] side that have emerged.”

Dechert partner Paul Denis, who moderated the panel, noted that the Sunshine Act requires the FTC commissioners to have many meetings, which slows down the organisation.

Lipsky disagreed, saying that the Sunshine Act is not a “significant impediment” to the commission’s practice currently. He was “very pleasantly surprised... at how well the internal process actually works,” he said.

Lipsky, who said he would be stepping down from his position as acting director next week, was effusive that there is no better time to be at the FTC than now.

The agency is “a real 12 cylinder of [a] Ferrari right now and hitting on all cylinders and whether that would always be true depending on the membership of the commission and who’s in which position, I don’t know,” Lipsky said.

“[B]ut for present purposes there’s just never been a better time to be at the commission if you have the objective of applying the economic analysis and getting to the right answer as efficiently as you possibly can.”

Svetlana Gans, chief of staff to FTC chairman Maureen Ohlhausen, also spoke on the panel at the ABA event at Jones Day in Washington, DC.

USA News