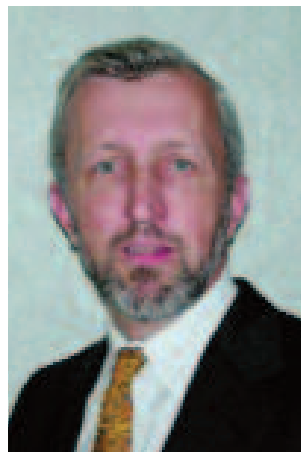


The Industry Pays For An FTC Fishing Trip

The irony was hard to miss. On the very day that a delegation from NAMM was on Capital Hill, lobbying for music education to the approving nods of Congressional Representatives and Senators, a few blocks away at the Federal Trade Commission building agency lawyers were in the process of sending subpoenas to a large contingent of industry suppliers. Their cause for concern? That manufacturers of music products may be engaging in some unspecified behavior that may violate the Section 5 of the FTC act, which “prohibits unfair or deceptive acts or practices in or affecting commerce.” So while Congress thinks what the industry sells is a societal good, the FTC apparently thinks the way we do it breaks the rules.

With a broad mandate to oversee the vast \$12 trillion U.S. economy, we can’t help but wonder what it was that drew the FTC commissioners’ attention to the pint-sized music products industry. We’re confident it wasn’t a surge in complaints from disgruntled consumers who felt they had been overcharged by greedy monopolists. Whatever measure you use—product selection, value received for dollar, profit margins (or, more appropriately, ‘lack thereof’)—consumers are getting a better deal on music and audio gear than at any time in history. So that means the FTC investigation was probably incited by someone with an axe to grind: maybe an independent dealer group concerned that Guitar Center is using its heft to secure a pricing advantage, or perhaps an internet retailer chafing at MAP price restrictions, or possibly a mass merchant seeking access to more product lines, or then again maybe just someone who’s angry and wants to see industry suppliers in pain. Since the FTC isn’t talking and no one has rushed to take credit for launching the investigation, the question remains unanswered. There is one certainty, however: The industry should brace itself for some serious pain.

The FTC’s subpoena sounds innocuous enough—an investigation of anti-competitive practices that may harm consumers. In reality though, it’s the equivalent of a heavy fine on the industry’s suppliers. By the time you read this, suppliers will have already spent millions on legal fees and staff time in an effort to comply with the FTC’s exceedingly broad information request, which encompasses basically every shred of sales and cost data on every product offered over the last ten years; the unit and dollar purchases of every customer for the same time frame; advertising, promotional, and co-op expenditures per product; along with any internal documents pertaining to competitive analysis or comparative



market shares. And for good measure, the FTC is asking for minutes, tapes, invitations, attendance rosters, and any other documents relating to all association meetings in the past decade. One final costly detail: This vast trove of data has to be delivered in an FTC approved format and storage medium. Furthermore, the Feds aren’t messing around. You either send the materials they want or they come and confiscate your computers.

If FTC Commissioners have some hard evidence of wrongdoing, was it really necessary to burden such a broad slice of the industry with costly and intrusive demands for information? Or if the agency has only a vague sense of possible wrongdoing, is it fair to subject an industry to an all-out inquisition? Whether even the best-qualified FTC staffers will be able to make sense of the millions of bits of data they have requested is open to debate. The more pressing concern is that with so much information at hand, they will no doubt turn up stuff that could be made to look incriminating—an intemperate email, some pricing disparities, contradictory MAP requirements, etc.

The FTC shrugs off these issues, saying that corporations must shoulder the burden of these investigations in the name of protecting consumers. Our response is that it’s not “corporations” but the people employed by them who are shouldering the burdens. And, if you’re going to place a costly burden on thousands of individuals—make no mistake, the cost of this FTC investigation will be felt in paychecks throughout the industry—you should present a stronger case of compelling wrongdoing. In short, if the FTC has a case against the music industry, they should make it and limit the fishing expedition. If they’re just poking around, maybe they have too much time on their hands. Finally, claims of widespread price fixing, collusion, or injuring the consumer seem tenuous at best, given that the past decade has been characterized by plummeting prices in every price category.

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