

The Role of Puerto Rico's Secretary of Justice

José A. Morales

Multistate Litigation Seminar Paper

January 6, 2003

This research paper reviews the powers and duties of Puerto Rico's Secretary of Justice, equivalent to other states Attorney General. Part I presents a brief description of the Attorney General Office historical development in Puerto Rico, and comments on the present structure. Part II examines the agency's capacity to enforce Antitrust Law, through ongoing litigation, *Wal-Mart v. Secretary of Justice*. Part III identifies consumer protections provided by the agency in connection with the Department of Consumer Affairs of Puerto Rico.

I. Introduction

A. Historical Note

Before Puerto Rico became a United States' territory, Puerto Rico had gained a significant measure of self-government under the Autonomic Charter of 1897 granted by the Spanish empire.¹ Nonetheless such autonomy was short lived. Puerto Rico was "ceded" to the United States under the Treaty of Paris as a result of the Spanish-American War.² The new sovereign established in Puerto Rico a military government from 1898 to 1900. Early in 1899 the Puerto Rican members of the Council of Secretaries (the Executive Cabinet under the Spanish flag) resigned, and the General-Governor abolished Puerto Rico's government under a general military order.³

In 1900, the Foraker Act transferred powers from an American military Governor to an American civilian Governor. Under the statute the President of the United States, with advice and consent of the Senate, would appoint the governor and his Executive Council of eleven members

¹ Under the Spanish system, Puerto Rico had a Ministry of Justice (the equivalent Attorney General Office) called "Ministerio de Gracia y de Justicia".

² Eulalio A. Torres, *The Puerto Rico Penal Code of 1902-1975: A Case Study of American Legal Imperialism*. 45 REV. JUR. UPR 2 (1976).

³ While Congress tacitly consented, military governors ran the island in an authoritarian fashion. For example, military commissions were established to judge civilians involved in common crimes, against US Supreme Court holding in *Ex Parte Milligan*, 18 US 281

(the six main departments were headed by Americans). The Organic Act created the Attorney General's office, which also formed part of the Executive Council.⁴ Later on, Puerto Rico's Political Code of 1902 established the Attorney General's functions and powers. Surprisingly, the Attorney General was also head of the Judiciary from 1900 to 1950 against all principles of separation of powers under a republican system of government.

In July 25, 1952, Puerto Rico changed that colonial status to a commonwealth relationship with the United States under the principle of "government by consent of the governed". The Constitution of the Commonwealth of Puerto Rico created a new sovereign, "the people of Puerto Rico", provided popular elections, an elected governor and legislature, and established the current republican structure where the Attorney General became the Secretary of Justice with its present constitutional functions.

B. Present structure

The Constitution of the Commonwealth of Puerto Rico –and the Federal Acts that validated it— changed the name "Attorney General" (used in the Foraker Act) to "Secretary of Justice". Puerto Rico, like five other states (Alaska, Hawaii, New Hampshire, New Jersey, and Wyoming), has a Secretary of Justice appointed by the governor, unlike other forty-three states where their State attorneys general are independent executive officers popularly elected.⁵ The Constitution requires the advice and consent of the Puerto Rico's Senate for such appointment,⁶ and makes the Secretary of Justice a member of the Governor's advisory council or constitutional cabinet.⁷

State law defines in broad terms the powers and responsibilities of the Secretary of Justice:

(1866), that civilians had to be judged in civilian courts for ordinary crimes during peace time. See Torres, *supra* note 2.

⁴ Specifically the Organic Act of 1900, approved in April 12 1900, 31 Stat 77, establishes the following:

That the Attorney General shall have all the powers and discharge all the duties provided by law for an attorney of a Territory of the United States in so far as the same are not locally inapplicable, and he shall perform such other duties as may be prescribed by law, and make such reports, through the Governor, to the Attorney General of the United States as he may require, which shall annually be transmitted to Congress.

⁵ Jason Lynch, Note: Federalism, Separation of powers, and the Role of State Attorneys General in Multistate Litigation, 101 COLUM. L. REV. 1998.

⁶ P.R. Const. Art. 4 Sec. 6.

Secretary of Justice shall represent the Commonwealth of Puerto Rico in all suits and proceedings, civil and criminal, to which it is a party, and when requested by the Governor or any head of a department, he may also represent, in any of the courts, any officer, employee or agent of the Commonwealth Government, suing or being sued in his official capacity.⁸

Although the Secretary of Justice exercises his or her independent professional criteria concerning the legal positions of such representation, the present constitutional arrangement implies that the Secretary of Justice, as a Governor's subaltern officer, must follow the public policies established by the Executive. Given that situation, Puerto Rico does not face a common dispute in other states between attorneys general and governors over litigation postures. According to James Lynch, in most states the attorney general possesses ultimate authority over litigation.⁹

In Puerto Rico, the Secretary's discretion decreases substantially if the case involves public policy decisions. The current Secretary of Justice, Anabelle Rodríguez, a former Solicitor General, has pointed out this particular relationship: "The functionary that does not agree with the Governor's established policy must try to persuade the Governor from that position. If the Governor remains in the same position, the functionary must comply, or resign".¹⁰ In other words, since the Secretary of Justice does not have a direct constituency to respond to, it does not enjoy the independent aura that Attorneys General usually do. But in Puerto Rico's political reality, the Governor usually gives deference to the Secretary's position, since it is the person with the legal expertise whom the Governor trusts.

This kind of constitutional arrangement provides a strong executive, under "one voice", that may arguably guaranty coherence in public policy. However, such structure sacrifices the

⁷ P.R. Const. Art. 4 Sec. 5.

⁸ 3 P.R. Laws Ann. Sec. 72 (1999).

⁹ Although a few disputes have produced state case law giving final authority to the governor. Compare *Feeny v. Commonwealth*, 366 N.E. 2d 12,62, 1266-67 (Mass. 1977) (holding attorney general possesses ultimate authority over litigation), with *People ex rel Deukmejian v. Brown*, 624 P.2d 1206, 1209 (Cal. 1981) (holding governor possesses ultimate authority over litigation). See Lynch, *supra* note 5.

¹⁰ Anabelle Rodríguez, *Abogando ante el Tribunal Supremo: Deberes y Obligaciones de la Oficina del Procurador General (Advocating in front of P.R. Supreme Court: Solicitor General's duties and obligations)*, 62 REV. JUR. UPR 87, 89 (1993).

assertiveness of independent agents that in other jurisdictions favor and safeguard certain public interests against state's government contingent conveniences.

Besides representing the Commonwealth of Puerto Rico, the Secretary of Justice also gives opinions, in writing, to the Legislature, as well as to the Governor or the Secretary of State, (also to the Controller, and to the Secretaries of Education, the Treasury, Transportation and Public Works), whenever it is requested on any issue of law.¹¹ Among other functions, the Secretary of Justice oversees criminal law enforcement, engages in public advocacy through the initiation of civil enforcement litigation, and exercises investigative authority in the prosecution of government misconduct. This research paper's main concern is the Secretary's Antitrust and Consumer Protection realm.

II. Antitrust

C. Statutes

As Thomas Greene and Robert Hubbard point out, under federal antitrust law, State Attorneys General represent the proprietary interests of the State when it is the victim of anticompetitive restraints.¹² "Thus, an attorney general can recover treble damages on behalf of the state as a purchaser of goods and services".¹³ Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, state Attorneys General can represent natural persons within the state as

¹¹ 3 PR Laws Ann sec. 71 (1999).

¹² 15 U.S.C. § 15 (1994). See Thomas Greene and Robert L. Hubbard, *State Antitrust Enforcement*, Previously published by the Practising Law Institute as part of the course material for the 43rd Annual Antitrust Law Institute.

¹³ *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439 (1945) (holding that the State of Georgia in bringing suit as a proprietor to redress wrongs suffered by it as owner of a railroad, and as owner and operator of public institutions, against railroads on charge of conspiracy in restraint of trade, was a "person" within provision of Clayton Act authorizing any person to sue for injunctive relief and to recover damages. Clayton Act, § 16, 15 U.S.C.A. sec. 26).

“parens patriae” and recover treble damages on behalf of those individuals.¹⁴ And can seek injunctive relief under § 16 of the Clayton Act.¹⁵¹⁶

Greene and Hubbard also indicate that under state antitrust law, historically, states have pursued state law claims in civil litigation as supplemental state law claims in federal court litigation. Traditionally in such civil litigation, state law claims were largely duplicated and thus were comparatively incidental to the federal law claims. Within the past decade, state law claims have increasingly been asserted to provide relief in civil litigation that federal law does not provide.

The Commonwealth of Puerto Rico in its “parens patriae” capacity has the authority, through its Secretary of Justice, to file class suits, as well as injunction suits, on behalf of the consumer-citizens.¹⁷ The Puerto Rico Department of Justice protects its citizenry from antitrust violations under the Puerto Rico Anti-Monopoly Act, Law 77 of June 25, 1964.¹⁸ Arturo Estrella notes that the Puerto Rican Statute of 1964 was basically inspired on federal legislation, “from which it draws heavily”.¹⁹ Nonetheless Puerto Rico’s Supreme Court has stated that far from imitating federal law, Puerto Rico’s antitrust law has an independent vitality cognizant of our definitional realities, which draw from different economic and cultural social facts.²⁰ Federal doctrine on this field is persuasive, but Puerto Rico’s antitrust applications must address such market differential realities. The Anti-Monopoly Act specifically states:

1) Section 258, Transactions in restraint of trade

Every contract, combination in the form of trust or otherwise, or conspiracy in unreasonable restraint of trade or commerce in the Commonwealth of Puerto Rico or in any section thereof, is hereby declared to be illegal and every person

¹⁴ 15 U.S.C. § 15c (1994).

¹⁵ 15 U.S.C. § 26 (1994).

¹⁶ See *California v. American Stores*, 493 U.S. 916 (1989) (divestiture to remedy an anticompetitive merger); *Hawaii v. Standard Oil Co.*, 405 U.S. 251 (1972) (right to seek injunctive relief to remedy injury to the general economy of the state).

¹⁷ 32 PR Laws Ann. Sec. 3341 (1999).

¹⁸ 10 PR Laws Ann. Sec. 257 (1999).

¹⁹ Arturo Estrella, *Antitrust Law in Puerto Rico*, 28 REV. COLEGIO DE ABOGADOS, 582 (1968).

²⁰ *General Gases & Supplies Corp. v. Shoring & Forming*, 2001 TSPR 54.

who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be guilty of a misdemeanor.²¹

2) Section 260, Monopolies

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce in the Commonwealth of Puerto Rico, or in any section thereof, shall be guilty of a misdemeanor.²²

3) Section 261 Mergers and acquisition

(a) It shall be unlawful for any person to acquire or contract to acquire the whole or any part of the stock or other share capital of any corporation or the whole or any part of the assets of any person engaged in trade or commerce in Puerto Rico, where in any line of commerce in any section of the Commonwealth of Puerto Rico, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.
[...]

(b) The fact that at the time of the acquisition the acquirer is not doing business in Puerto Rico does not exclude by itself the determination that the acquisition may have the effects herein proscribed, if from the economic potentiality of the acquirer such probability may be reasonably inferred.

(c) The Secretary of Justice is empowered, and by his delegation the Assistant Secretary of Justice in charge of monopolistic affairs, to, at the request of the acquirer, give his opinion on the legality of any acquisition of assets or share capital prior to the accomplishment thereof. The application for an opinion shall be filed in writing in the Office of Monopolistic Affairs and the same must include a disclosure of every material fact of the intended transaction.
[...]

(d) An opinion favorable to an acquisition entails immunity against any action on the part of the state for violation of this section. However, the state reserves the right to file any criminal, civil or administrative proceeding when a violation of the conditions of the opinion is committed, or when, after the acquisition is accomplished, the operation of the plan of acquisition or the activities which in effect are developed result inconsistent with the facts submitted to the Office of Monopolistic Affairs to obtain the opinion on the acquisition.²³
[...]

4) Section 269, Jurisdiction and enforcement provisions

The Court of First Instance is hereby vested with jurisdiction to prevent, prohibit, enjoin and punish violations of this chapter, and it shall be the duty of the Secretary of Justice to institute proceedings for injunctions or any other proceeding to prevent, prohibit, enjoin and punish such violations, and to obtain such other or further relief as may be appropriate.
[...]

²¹ 10 PR Laws Ann. Sec. 258 (1999).

²² 10 PR Laws Ann. Sec. 260 (1999).

²³ 10 PR Laws Ann. Sec 261 (1999).

Disobedience of an order of the court to enforce the provisions of this chapter is punishable as contempt and the person found guilty of said violation may be punished by a fine not exceeding twenty-five thousand (25,000) dollars, or by imprisonment not exceeding one (1) year, or by both penalties, in the discretion of the court.²⁴

As noted, Antitrust cases are handled by the Office of Monopolistic Affairs in the Department of Justice. Currently, such office processed a merger between Wal-Mart, a U.S. national retail store, and Amigo, one of the largest supermarkets in Puerto Rico. This process has turned into a bitter litigation contesting the parameters of the Secretary of Justice's powers to engage in Antitrust enforcement.

D. Case Law Analysis: Wal-Mart v. Secretary of Justice

Wal-Mart filed a Hart-Scott-Rodino Application with the FTC explaining its intentions to merge with Amigo. The FTC was concerned with three geographical areas that might raise antitrust violations, for that reason the agency issued a consent decree that included a proposed plan to divest four Amigo stores. A group of Amigo stockholders incorporated a company, Máximo, that would become the divestiture buyer. Meanwhile, the Secretary of Justice negotiated with Wal-Mart a number of conditions: (1) she required a fairness opinion letter from an independent party to evaluate the divestiture of the four Amigo stores to corroborate Maximo's veracity as a Wal-Mart competitor (the Secretary believed the proposed divestiture was not responsive enough to local antitrust concerns); (2) she required assurance that Amigo employees would be retained; and, (3) that after the merger, Wal-Mart would maintain a constant volume of purchases from local vendors.

Wal-Mart did not accept the conditions, and the Secretary of Justice filed a civil antitrust suit in the Commonwealth's courts, under the state anti-monopoly act. Simultaneously, Wal-Mart sought a preliminary injunction against the Secretary of Justice in the Federal District Court to enjoin the local court proceedings. The District Court, concerned with the irreparable harm Wal-Mart may suffer, issued the preliminary injunction, and prohibited the Secretary of Justice's decision "to impede, or interfere with the acquisition of Supermercado Amigo, Inc. by Wal-Mart Puerto Rico, Inc. and the divestiture by Wal-Mart of four Amigo stores to Supermercados

²⁴ 10 PR Laws Ann. Sec 269 (1999).

Maximo; or to seek a stay in any court of the Commonwealth of Puerto Rico [that interferes with the operations] of Supermercado Amigo as a wholly owned subsidiary of Wal-Mart Puerto Rico, Inc.”²⁵

The District Court found that the local civil action was frivolous, motivated by the desire to punish Wal-Mart’s decision not to agree to a voluntary commitment. It also concluded that the Department of Justice’s behavior during the negotiations (for example, incorporating new conditions and requirements on the latter part of the negotiation) revealed the Secretary’s bad faith in filing an antitrust suit as a result of political and public pressures, not from a real concern for antitrust violations. And finally, the District Court concluded that the conditions the Secretary of Justice required (retain Amigo employees and provide a specific volume purchase for local suppliers) conformed an illegal state protectionism that violated the Commerce Clause, the equal protection and due process rights of Wal-Mart.

At the present moment, the Department of Justice appealed this decision, requesting the First Circuit Federal Court of Appeals to stay such preliminary injunction, under *Younger v. Harris*²⁶ abstention doctrine (the rule of comity to minimize federal intervention with ongoing state proceedings to give the opportunity to State courts to appraise state defendant’s federal constitutional claims). The principal argument is that the District Court stepped out of his institutional competence to interfere with the Secretary of Justice’s legitimate prerogative to enforce state law. The Department of Justice argues that Wal-Mart’s allegations do not raise a federal question; and if there is any possible constitutional right violation, the state court is well suited to address such allegations.

At this moment one can only speculate about an Appellate Court’s decision. But certainly, the case raises important considerations regarding, primarily, the role of the Secretary of Justice in Puerto Rico, and secondly, the role of attorneys general in general. First, an immediate response is due to this alarming conclusion of the Federal District Court:

²⁵ Opinion and Order of December 26, 2002, at 53, . Civ. No. 02-2778 (PG), J. Juan Perez-Gimenez, US Dist Judge.

²⁶ 401 U.S. 37 (1971).

The parties that entered into this transaction recognized that the process would entail scrutiny by a federal and a state agency. The federal agency, fully capable as it is to review this type of transaction and having been instituted for that purpose, made a careful examination of the Wal-Mart/Amigo merger proposal and determined that it complied with federal antitrust laws from which the local laws minimally deviate. It is in the best interest of the people of Puerto Rico that under circumstances such as this one, where a federal and state agency are conducting parallel investigations and one has more resources available to it than the other, their government recognizes with full faith and credit the decisions of a federal agency such as the FTC when there is no indication that such decision was incorrect or unjust.²⁷

Puerto Rico's capability to pursue antitrust violations is jeopardized by this kind of conclusion.

The District Court implies that since the Department of Justice has little resources compared to the Federal Agency, it must refrain from reviewing such process. If that is the case, then Puerto Rico will never be able to review an FTC consent decree in an area that is supposed to have concurrent jurisdiction.

The District Court order definitely thwarts the trend pointed out by Green and Hubbard in which states are being more proactive in state civil antitrust litigation. The court imposes a deference obligation on the Secretary of Justice toward the FTC, and disregards the well established doctrine that federal antitrust regulations do not preempt state law. US Supreme Court has held that "Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies".²⁸ Arguably, the district court prevents a commonwealth law antitrust analysis once a Federal Antitrust analysis has taken place in the FTC.

²⁷ See Opinion and Order, *supra* note 25 at 51-52.

²⁸ *California v. ARC America*, 490 U.S. 93, 102 (1989) (holding that Rule limiting federal antitrust recoveries under Sherman Act to direct purchasers does not preempt indirect purchasers from recovering damages flowing from state antitrust law violations; it is not contrary to congressional purposes to allow indirect purchasers to recover under state antitrust laws, and laws permitting such recovery do not interfere with accomplishment of federal law purposes of avoiding unnecessarily complicated federal antitrust proceedings and encouraging direct purchasers to bring private federal antitrust actions, nor are state statutes subject to preemption because they might impose liability upon antitrust defendants over and above that imposed by federal law. Sherman Anti-Trust Act, § 1, as amended, 15 U.S.C.A. § 1; Clayton Act, § 4(a), as amended, 15 U.S.C.A. § 15(a)).

The attitude of the Ninth Circuit Federal Appellate Court in a similar case, *California v. American Stores*, is strikingly revealing.²⁹ California Attorney General filed an antitrust action (although in federal court) under federal and state antitrust law challenging a merger between American Stores, one of the nation's largest grocery retailers, and Lucky Store. American Stores alleged that California's claim had no likelihood of success on the merits because the FTC consent decree already reviewed all antitrust concerns. The Appellate Court pointed out that "California may have different interests than does the FTC in protecting its citizens from antitrust violations". The Court found that the District Court did not abuse its discretion granting an injunction to prevent the merger due to the likelihood of a possible irreparable harm (lessening the competition in the State of California).

Nonetheless, the Court of Appeals, for the Ninth Circuit, reversed the District Court injunction because the Court believed the divestiture ordered was not an available injunctive relief form. The US Supreme Court reversed that specific conclusion and held that: (1) divestiture is a form of "injunctive relief" authorized by Clayton Act section entitling any person to obtain injunctive relief against threatened loss or damage by violation of antitrust laws, but (2) private litigant must prove threatened loss or damage to his own interests to have standing to obtain divestiture relief under the Clayton Act section, and equitable defenses may protect consummated transactions from belated attacks by private parties when it would not be too late for Government to vindicate public interest.³⁰

Meanwhile, in the present case the Federal District Court for Puerto Rico is willing to grant a preliminary injunction curtailing the commonwealth's state official's quintessential function of enforcing state law and vindicating public interest. The district court analysis, besides raising

²⁹ 872 F.2d 837 (1988) (holding that Federal Trade Commission consent order, requiring grocery retailer to divest itself of 24 of its 54 supermarkets in Northern California and to agree to operate chain with which its chain was merging separately and to refrain from integrating companies' assets until conditions of consent order were satisfied, did not absolve all antitrust concerns in suit by state of California arising out of merger of chains; thus, State could be found likely to succeed on merits for purposes of its request for preliminary injunction. Clayton Act, § 7, as amended, 15 U.S.C.A. § 18).

³⁰ *California v. American Stores*, 495 US 271 (1990). See also *California v. American Stores Co.*, 492 U.S. 1301 (1989) (attending Motion to Stay); *California v. American*

possible concerns of comity and federalism,³¹ conveys an even worse message. It implies that state courts are simply not able to address anti-trust issues notwithstanding an established body of state law. Besides, if the local antitrust claim is frivolous, why presume or fear the state courts will not examine the allegations and make a proper determination over those issues? What obstacle impedes Wal-Mart from raising constitutional defenses against the violations the District Court found?

The District Court focuses its analysis on the unconstitutional conditions (for example, discriminating against outside vendors by assigning a purchase volume quantity to local vendors) the Secretary required during the negotiation. But... the fact that the Secretary asserted those claims in the bargaining table with Wal-Mart, renders void a state antitrust claim against a possible merger? A study on the merits may or may not arrive to the conclusion that the divestiture of four stores was enough to prevent a reduction of market competition. The Commonwealth, as well as the states, must be able, under state law, to make such review. The argument is exactly the same as in *California v. American Stores*. Puerto Rico might have different interests, like California did, from the FTC in protecting its citizens from antitrust violations.

The First Circuit probably won't address the degree of deference a state should give a federal agency in the antitrust realm, because FTC is not a part in the case. But the District Court's expressions certainly must not go unattended. The District Court seems to create new criteria in state and federal activity –if the Department of Justice has little resources, then the FTC consent decree should receive “full faith and credit”–. This criteria has implications for all the states' AGs, more specifically, the little ones who probably do not have as much resources as the FTC. Arguably, Rhode Island's Department of Justice, who is also under the First Circuit jurisdiction, could face a similar challenge. The amount of resources should be a practical consideration a

Stores Co., 493 U.S. 916 (1989) (granting certiorari); and *State of Cal. v. American Stores Co.*, 930 F.2d 776 (1991) (remand order).

³¹ *Toussant v. McCarthy*, 801 F.2d 1080 (1986) (holding that the scope of injunctive relief against state officers must be narrowly tailored because a federal district court's exercise of discretion to enjoin state political bodies raises serious questions regarding the legitimacy of its authority).

Department of Justice should take into account during the litigation process, but it should not –it can not– be a substantive-matter requirement in an antitrust suit.

III. Consumer Protection

Puerto Rico, like many other states, has an Unfair and Deceptive Practices Act. State law establishes in broad terms that “Unfair methods of competition, and unfair or deceptive acts or practices in trade or commerce are hereby declared unlawful”.³² Although the commonwealth law authorizes the Secretary of Justice to adopt rules and regulations to proscribe specific acts or practices, in a general manner or in any specific line of trade or commerce, consumer protections are enforced by the Department of Consumer Affairs.³³ The Secretary of Justice, while retaining all its faculties to assert consumer protections in state court, has the alternative to file and process administrative complaints in the Department of Consumer Affairs.

The Act Num. 5 of April 23, 1973 created the Department of Consumer Affairs in Puerto Rico, an independent agency that has as “a primary purpose to defend and implement the rights of the consumer, to restrain the inflationary trends; as well as the establishment and inspection of a price control over the goods and services for use and consumption”.³⁴ The Act transferred to the legislatively created agency the powers and faculties from a former weaker agency, “Consumer Services Administration”, and added stronger and broad consumer protection provisions.

³² 10 PR Laws Ann. Sec. 259 (1999).

³³ *Id.*

³⁴ 3 PR Laws Ann. Sec. 341b (1999).

Among those provisions, there are for example, the ability to (a) regulate, fix, control, freeze and review the prices, profit margins and yield rates on the capital invested at all marketing levels on the goods,³⁵ (b) give legal assistance to consumers in laudable cases, (c) investigate and resolve the claims and complaints presented by the consumers of goods and services acquired or received from the private sector of the economy. According to the Department of Consumer Affairs Annual Report of June 17, 2002, the agency processed 10,235 consumer claims during 2001, and 10,718 during 2002.³⁶ The current Secretary, Javier Echevarría, pointed out that the major amount of claims concern, first, construction disputes, second, deceptive practices and advertisement, and third, automobile complaints.³⁷

Another service the Agency provides is to enforce, fulfill and defend the rights of the consumers, just as they are promulgated in standing laws, through a structure of administrative adjudication with full powers to adjudicate complaints brought before its consideration and, to grant the pertinent remedies according to law.³⁸ The Act authorizes the Secretary to designate a staff of examiners whose function shall be to preside over the administrative hearings to be held in the Department, both of a quasi-legislative and quasi-judicial nature. The Annual Report informs that from the almost 350 agency employees, 60 are examiners. Javier Echevarría indicated that the 60 Examiners are supposed to be prepared in all consumer protections areas, but the examiners tend to specialize in specific areas, for example, construction disputes. The

³⁵ *Puerto Rico Department of Consumer Affairs v. Isla Petroleum, Corp.*, 485 US 495 (1988) (holding that Gasoline refineries and wholesalers brought action challenging constitutionality of regulation empowering Secretary of Puerto Rico Department of Consumer Affairs to fix prices and profit margins in gasoline wholesale and retail business. The United States District Court for the District of Puerto Rico, Jose Antonio Fuste, J., 640 F.Supp. 474, held that federal congressional intent preempted such regulation, and Secretary appealed. The Temporary Emergency Court of Appeals, William J. Jameson, J., 811 F.2d 1511, affirmed. Secretary petitioned for writ of certiorari. The Supreme Court, Justice Scalia, held that Congress' passage and subsequent repeal of comprehensive federal statutes providing for allocation and price controls on petroleum products did not manifest any congressional intent to preempt gasoline price regulation by Commonwealth of Puerto Rico in favor of free market control).

³⁶ Annual Report of work performed by the Secretary of the Department of Consumer Affairs during the 2001-2002 fiscal year, submitted June 17, 2002.

³⁷ Interview with Javier Echevarría, current Secretary of Department of Consumer Affairs, December 30, 2002.

Examiners are divided into six major offices assigned to different geographical areas: Arecibo, Bayamón, Caguas, Mayaguez, Ponce, and San Juan.

Other functions the agency must fulfill are: (e) represent the public consumer before any private entity or public organization, and before any court, or administrative organization. (j) To regulate and inspect the advertisements and the deceitful practices in commerce, including the faculty of inspecting the advertisement on the products and services published through different media of communications, as well as to require from the advertisers evidence as to the truthfulness of the advertisement published. (l) To promote and establish standards for the quality, safety and genuineness in services and in the products for use and consumption and to require compliance therewith. ³⁹ According to the Annual Report, the Department of Consumer Affairs had a General Budget of \$10,375,000 during the fiscal year 2001-2002, and for the current 2002-2003 fiscal year, the Legislature assigned \$10,681,000.

IV. A Final Thought

The subject matter of this research obviously mirrors Puerto Rico's political intricacies. For a couple of decades now, the Federal District Court for Puerto Rico —most of the individual judges—, has favored, case by case, a contraction of Commonwealth's autonomic prerogatives. It is a political, not juridical, option. The expansion of federal jurisdiction is seen as a way of practically integrating Puerto Rico to the United States, pending a vote for statehood that has not

³⁸ 3 PR Laws Ann Sec. 341 (1999).

³⁹ Other important functions that the Secretary must accomplish are: (p) to educate and guide the consumer in the adequate solution of his consumption problems and in the best use of his income and of his credit (s) In coordination with the other agencies and departments of the Commonwealth of Puerto Rico, promote and watch over the enforcement of all laws, rules, regulations and orders which affect the interests of the consumer. And (z) to establish a licensing and bonding system from the sale and rental of goods, products and services offered in Puerto Rico. 3 PR Laws Ann. Sec. 341s-z (1999).

been achieved up to now by the promoters of such status option through democratic referenda. Ironically in the particular case we have seen –Wal-Mart v. Secretary—, the political integration agenda runs counter to the federal doctrinal developments.

The Circuit Court must face this political course of action. At least the most radical pretensions of the Wal-Mart decision –that Puerto Rico will never be able to review an FTC consent decree in an area that is supposed to have concurrent jurisdiction— may be found in contradiction to the trend pointed out by Green and Hubbard in which states are being more proactive in state civil antitrust litigation. It additionally runs against the well established doctrine that federal antitrust regulations do not preempt state law.

A solution to this conundrum is to have other states join Puerto Rico in the assertion of states' prerogatives on the subject. Ironically, by equating Puerto Rico to other states in antitrust and consumer protection issues Puerto Rico may achieve autonomic definitions while evading complicated partisan political barriers. The Secretary of Justice may accelerate Puerto Rico's interest by incorporating other states with similar concerns about the impact of mega-stores on local commerce and employment.

The Secretary of Consumer Affairs may also benefit from this line of work within its jurisdiction on deceitful practices. Precedent has served well the Commonwealth interests as shown in *Nine West* (resale price maintenance suit by 50 states, Puerto Rico and D.C. against major shoe manufacturer; defendant agreed to pay \$34 million in damages to the states, to be distributed cy pres); and *In re Toys-R-Us Antitrust Litigation*, 191 F.R.D. 347 (S.D.N.Y. 2000) (forty-four states, D.C. and Puerto Rico sued Toys "R" Us and four toy manufacturers to recover damages for non-RPM vertical restraints; defendants agreed to a \$56 million settlement, \$37 million of which will be toys for needy children).⁴⁰

⁴⁰ See Greene and Hubbard, *supra* note 12.