
FTC Workshop Examines Competition and Consumer Protection Issues in Rooftop Solar Industry

JULY 1, 2016

On June 21, 2016, the Federal Trade Commission (FTC) held a [workshop](#) to examine competition and consumer protection issues in the rooftop solar industry—also known as solar “distributed generation.” Beyond exploring a wide range of issues related to rate design, competition and state net metering policies, the workshop signaled a growing interest among federal and state regulators to address—potentially through the issuance of binding regulations—perceived consumer protection challenges in the industry.

The Role of the FTC and the States in Promoting Competition and Consumer Protection in the Rooftop Solar Industry

A key issue being debated by stakeholders is the role of the FTC in promoting competition and consumer protection in the rooftop solar industry, and how that role might affect actions taken by state regulatory authorities (such as state public utility commissions) in the same area.

The FTC [has taken the position](#) that it is “uniquely positioned” to ensure that rooftop solar develops “under conditions of free and fair competition, and that consumers are well-informed about its pros and cons and the options available to them.” In this regard, the FTC emphasized that its authority to target deceptive advertising was highlighted in its [Green Guides](#) and [Guides for the Use of Environmental Marketing Claims](#)—which are applicable to the marketing of rooftop solar—and noted that it previously issued [Solar Power for Your Home](#) guidance for consumers. The FTC also noted that it recently commenced an [enforcement action](#) against a company for making allegedly illegal robocalls to generate leads for solar panel installation companies.

Notwithstanding the FTC’s interest in and prior actions addressing rooftop solar, a number of state officials argued that primary regulatory responsibility for regulating the rooftop solar industry should lie with the states, given their primary jurisdiction over electric generation and retail electric sales. Those officials, however, acknowledge there is a potential role for the FTC to work with the states to identify best practices for the rooftop solar industry, as well as to develop templates for consumer communications.

Recognizing the potential for new regulations to be issued—at either the federal or state level—to

address consumer protection issues in the rooftop solar industry, the Solar Energy Industry Association (SEIA) has recently taken several proactive steps, including publishing a [Solar Business Code](#) and issuing [standardized disclosure forms](#) for lease and power purchase agreements. Whether the SEIA's forms are sufficiently comprehensive to constitute “best industry practices”—and will be adopted by a majority of industry members—remains an open question.

Identification of Specific Consumer Protection Priorities

Separate from the jurisdiction issues, panelists at the workshop agreed that it was important to curb deceptive trade practices in solar advertising and ensure that consumers have access to reliable and digestible information. A recurring theme was that consumers often lack clear information when making solar purchasing decisions, especially in terms of comparing offers, understanding and negotiating contracts, and dealing with bad actors. Specific questionable practices identified included:

- misleading advertising, such as website advertising for “free solar panels”;
- high-pressure sales tactics and biased information from solar installers;
- lack of standardization in solar energy products and services, which can make it hard for consumers to understand the quality of the product and easier for salespeople to embellish their pricing quotes; and
- anticompetitive efforts to promote proprietary products and limit consumer choice.

Implications for Businesses in the Residential Solar Industry

While the FTC is only beginning to examine competition and consumer protection issues in the rooftop solar industry, the workshop is a clear indicator that the FTC plans to be more active in this industry in the future. While certain subjects—like net-metering policy and financial incentives for solar generation—may fall outside the FTC's jurisdiction, consumer protection issues lie squarely within the Commission's ambit. As a result, companies should both stay abreast of the FTC's actions as it continues to evaluate consumer protection-related issues in this area, and take appropriate steps to ensure that their marketing practices and contracts conform to applicable law and best industry practices.