



UNITED STATES OF AMERICA  
**Federal Trade Commission**

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**Prepared Opening Remarks of Commissioner Noah Joshua Phillips\***

**FTC Hearing #11: The FTC's Role in a Changing World**

**Federal Trade Commission  
Washington, DC  
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Good morning and thank you all for joining us today. I'm pleased to be here to welcome everyone to the second day of our internationally-focused hearings.

In our increasingly globalized world, the FTC's international efforts—as both an antitrust and a consumer protection authority—are essential to our agency's success. We hope, as well, that they assist our sister agencies around the world. It is important that we examine our international efforts critically, in order properly to continue and to adapt our best practices in a rapidly-changing world.

As I, and others, have noted, competition enforcement has proliferated over the last several decades. In the early 1990s, the number of competition regimes hovered around 20; while today, fewer than thirty years later, over 100 additional jurisdictions have established such regimes, bringing the total to around 130.<sup>1</sup> At

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\* The views expressed below are my own and do not necessarily reflect those of the Commission or of any other Commissioner.

<sup>1</sup> See, e.g., Commissioner Noah Joshua Phillips, U.S. Fed. Trade Comm'n, IP and Antitrust Laws: Promoting Innovation in a High-Tech Economy, 2019 Patents in Telecoms and the Internet of Things Public Workshop, ACT The App Association, Washington, DC (Mar. 20, 2019), [https://www.ftc.gov/system/files/documents/public\\_statements/1508165/app\\_association\\_keynote\\_fin\\_al.pdf](https://www.ftc.gov/system/files/documents/public_statements/1508165/app_association_keynote_fin_al.pdf); COMPETITION DIRECTORATE-GENERAL OF THE EUROPEAN COMMISSION, COMPETITION POLICY BRIEF 1 (May 2016) (“In the past 25 years, the number of competition regimes around the world has increased from around 20 at the beginning of the 1990s to around 130 today.”),

the same time, forces including the Internet, smart phones, and other connected devices have brought consumer protection issues front and center worldwide. The world is globalized, and the global emphasis on competition and consumer protection issues we see now underscores the need for us to consider not only how our enforcement efforts affect domestic policy and behavior, but also the international ramifications of these decisions.

During my tenure as a Commissioner, I have had the opportunity to engage in a number of international efforts on both the competition and consumer protection sides of the house. This includes traveling abroad for competition and consumer protection conferences, and actively participating in these ongoing debates. For instance, I have participated in OECD competition meetings in Paris, attended the ICDPPC meeting last October in Brussels, and earlier this year traveled to Chile for meetings of APEC's Data Privacy Subgroup. Through these experiences, I have seen firsthand how important it is for enforcers across the globe to have open and honest dialogues, as we seek to foster a global community that protects consumers and competition—and secures to citizens in all our countries the benefits of economic growth that global trade and innovation offer.

There are many areas that demand the FTC's attention on the international front, but let me highlight just a few. On the consumer protection side, first,

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[http://ec.europa.eu/competition/publications/cpb/2016/2016\\_002\\_en.pdf](http://ec.europa.eu/competition/publications/cpb/2016/2016_002_en.pdf); William E. Kovacic, *Extraterritoriality, Institutions, and Convergence in International Competition Policy*, 97 AM. SOC'Y INT'L L. PROC. 309, 309 (2003) ("Competition law is an increasingly common element of public economic policy. A half-century ago, only one country, the United States, had antitrust statutes and active enforcement. Today over ninety jurisdictions have competition laws, and the number will exceed one hundred by the decade's end.").

technology allows all sorts of activity more easily to cross-borders. This fosters beneficial interaction, but also makes it easier for unlawful activity to spread internationally, and frustrate law enforcement efforts. We must continue our efforts to work with international partners, through both multilateral institutions and direct partnerships, to identify trends and bring enforcement actions to put an end to scams, frauds, and other activities that harm consumers here and abroad. To that end, the Commission has repeatedly called for making the SAFE WEB Act permanent, giving us more tools to use in our work with international partners. I have actively supported these calls, and will continue to do so, as I believe SAFE WEB is critical to our international relationships and our consumer protection agenda.<sup>2</sup>

Further, we need to support privacy and international data flows by working toward the interoperability of data privacy regimes, building out tools like the APEC Cross-border Privacy Rules. We must and will continue to support the Privacy Shield, by facilitating data transfers with the EU and continuing our enforcement efforts and partnership with the Department of Commerce. And, more broadly, as we in this country debate the future of our privacy system, we must remain engaged in the robust international debate and share our experiences. Though some may think we don't "do" privacy in the U.S., we have in fact been "doing" privacy since the 1970s with the introduction of the Privacy Act and Fair

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<sup>2</sup> *Oversight of the Federal Trade Commission: Hearing Before the Subcomm. on Digital Commerce and Consumer Protection of the H. Comm. on Energy and Commerce, 115th Cong. (2018) (statement of Noah Joshua Phillips, Commissioner, Federal Trade Commission).*

Credit Reporting Act,<sup>3</sup> one of the first privacy statutes in the world. The lessons we have learned are important both domestically and internationally.

On the competition side, we likewise observe today international M&A and conduct that transcends borders. As our world becomes ever more interconnected, it is common to see more than one competition enforcer analyzing the same or similar mergers or behavior. And, as our participants today will discuss, different enforcers are often products of different legal traditions and regimes, which can affect how they investigate, analyze, and ultimately seek to remedy the conduct before them.

In my experience, enforcers often work well with one another to share information and best practices and to avoid impairing one another's ability to vindicate their own laws. When analyzing the same conduct, for instance, enforcers can often obtain the parties' consent to share information with one another. And organizations like the ICN and the OECD are instrumental in providing fora outside of individual cases where important, substantive discussions can take place.

It is critical that enforcers continue these efforts. While some differences between outcomes across jurisdictions are to be expected, unwarranted inconsistencies—for instance, where deviations are not justified by clearly-established rules or traditions—can raise serious concerns. And they can call into question the validity of such efforts not only in the jurisdiction at issue, but in others, as well.

For instance, we have seen due process concerns being raised by the actions (or alleged failures) of jurisdictions globally, and allegations that various

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<sup>3</sup> Privacy Act of 1974, 5 U.S.C. § 552a; Fair Credit Reporting Act, 15 USC § 1681 et seq.

jurisdictions are employing competition laws not to foster competition, itself—the well-recognized goal of these regimes<sup>4</sup>—but to vindicate other values, such as protecting national champions.<sup>5</sup> If true, such conduct threatens to create an appearance to the public that, rather than focusing on consumers and competition, enforcers are reacting to, and seeking to one-up, one another. This perception could undermine globally enforcers’ efforts to protect competition and consumer welfare.

The U.S. has an important role to play in preventing the misuse or the coopting of competition laws. We benefit from the oldest, most experienced antitrust regime in the world. The Antitrust Division of the Department of Justice has been enforcing the antitrust laws since the Sherman Act was promulgated in 1890, and the Commission has been protecting consumers and competition since it was established in 1914.<sup>6</sup> Given our rich experiences, our actions are closely monitored by foreign authorities, particularly newer regimes looking to build their own experience and to establish their enforcement priorities. This is a testament to our agencies’ dedication and hard work, but it is also a tremendous responsibility. Both where we excel and where we fall short, it is likely others may follow. It is,

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<sup>4</sup> See, e.g., OECD, Policy Roundtables, Competition on the Merits, OECD Doc. DAF/COMP(2005)27, at 9 (2005), <http://www.oecd.org/daf/competition/abuse/35911017.pdf> (“There is substantial agreement among jurisdictions on the broad goals and methods of enforcing competition laws against abuse of dominance, particularly with respect to studying harm to competition, not competitors, through the use of economics.”).

<sup>5</sup> See, e.g., Pan Kwan Yuk & Tim Bradshaw, *Qualcomm handed record \$774m antitrust fine in Taiwan*, FIN. TIMES (Oct. 11, 2017), <https://www.ft.com/content/7f757226-ae9e-11e7-aab9-abaa44b1e130>.

<sup>6</sup> Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1-7; Federal Trade Commission Act of 1914, 15 U.S.C. §§ 41-58, as amended.

therefore, critical that we continue to act with the utmost respect for the laws and goals we are tasked with enforcing.

Our reputation as thoughtful, rigorous enforcers depends on our continued commitment to bringing solid cases, following due process, and advocating domestically and globally. These hearings are another important step in furthering the Commission's international efforts. I look forward to hearing from participants, today and in written comments, how we can best target our resources in these important areas.

Thank you.