



UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

## ***Federal Trade Commission Announces Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century***

The mission of the Federal Trade Commission (“FTC” or “Commission”) is to promote competition and to protect consumers from unfair and deceptive practices. In support of pursuing a vigorous law enforcement agenda, the FTC engages in substantial research to stay informed of market developments, shape its policy agenda, and identify opportunities to develop the law consistent with its enforcement authority. Beginning in September 2018, the FTC will hold a series of multi-day, multi-part public hearings (“hearings”) to consider whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policy.

The hearings pay tribute to, and are modeled after, the FTC’s 1995 Global Competition and Innovation Hearings under the leadership of then-Chairman Robert Pitofsky. Chairman Pitofsky’s hearings “were the first major step in establishing the FTC as a key modern center for ... ‘competition policy research and development’” and “sought to ‘articulate recommendations that would effectively ensure the competitiveness of U.S. markets without imposing unnecessary costs on private parties or governmental processes.’”<sup>1</sup> They “re-energized one of the FTC’s most valuable functions – to gather leaders in business, economics, law, and related disciplines to discuss tough, emerging problems and prepare public reports on the facts, issues, governing law, and the need, as appropriate, for change.”<sup>2</sup> Subsequent to the hearings, the Commission released two staff reports “*Anticipating the 21<sup>st</sup> Century*” on competition and consumer protection policy, respectively.<sup>3</sup> This new series of hearings honors Chairman Pitofsky’s legacy, and complements and enhances the agency’s robust enforcement program.

“The progress of the Federal Trade Commission in its modern era has built heavily upon the willingness of its people to assess their work critically and explore possibilities for improvement.”<sup>4</sup> The hearings and associated public comment process will provide opportunities for FTC staff and leadership to obtain input from a broad and diverse range of interested stakeholders and experts, and will stimulate thoughtful internal and external evaluation of the FTC’s near- and long-term law enforcement and policy agenda. The hearings may identify areas for additional study, enforcement, advocacy, and policy guidance, including improvements to the agency’s investigation and law enforcement processes.

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<sup>1</sup> Timothy J. Muris, *More Than Law Enforcement: The FTC’s Many Tools – A Conversation with Tim Muris and Bob Pitofsky*, 72 ANTITRUST L.J. 772, 773 (2005).

<sup>2</sup> *Id.*, at 774.

<sup>3</sup> [FED. TRADE COMM’N STAFF, ANTICIPATING THE 21<sup>ST</sup> CENTURY: COMPETITION POLICY IN THE NEW HIGH-TECH, GLOBAL MARKETPLACE](#) (1996); [FED. TRADE COMM’N STAFF, ANTICIPATING THE 21<sup>ST</sup> CENTURY: CONSUMER PROTECTION POLICY IN THE NEW HIGH-TECH, GLOBAL MARKETPLACE](#) (1996).

<sup>4</sup> [THE FEDERAL TRADE COMMISSION AT 100: INTO OUR 2<sup>ND</sup> CENTURY: THE CONTINUING PURSUIT OF BETTER PRACTICES, A REPORT BY FEDERAL TRADE COMMISSION CHAIRMAN WILLIAM E. KOVACIC](#) (2009), at (i).

The Commission will invite public comment in stages throughout the term of the hearings.

- Through August 20, 2018, the Commission will accept public comment on the topics identified in this announcement. Each topic description includes issues of particular interest to the Commission, but comments need not be restricted to these subjects.
- Additionally, the Commission will invite comments on the topic of each hearing session. The FTC will issue a news release before each session to inform the public of the agenda, the date and location, and instructions on submitting comment.
- The Commission will also invite public comment upon completion of the entire series of hearings.

The Commission is especially interested in new empirical research that indicates (or contraindicates) a causal relationship with respect to any of the topics identified for comment. Upon review and consideration of a public comment highlighting such research, the Commission may request the voluntary sharing of the data and models underlying the comment, in accordance with general principles of peer review of social scientific inquiry, and consistent with confidentiality or other limitations on the sharing of such data.

Commenters are invited to address one or more of the following topics generally, or with respect to a specific industry, such as the health care,<sup>5</sup> high-tech<sup>6</sup>, or energy<sup>7</sup> industries.

- 1) The state of antitrust and consumer protection law and enforcement, and their development, since the Pitofsky hearings.** Of particular interest to the Commission: (a) the continued viability of the consumer welfare standard for antitrust law enforcement and policy; (b) economic analysis and evidence on market competitiveness, enforcement policy, and the effects of past FTC enforcement decisions; (c) the identification of new developments in markets and in business-to-business or business-to-consumer relationships; (d) the benefits and costs associated with the growth of international competition and consumer protection enforcement regimes; and (e) the advisory and advocacy role of the FTC regarding enforcement efforts by competition and consumer protection

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<sup>5</sup> See, e.g., [FED. TRADE COMM'N, EMERGING HEALTH CARE ISSUES: FOLLOW-ON BIOLOGIC DRUG COMPETITION](#) (2009); [FED TRADE COMM'N & DEP'T OF JUSTICE, IMPROVING HEALTH CARE: A DOSE OF COMPETITION](#) (2004).

<sup>6</sup> See, e.g., [FED. TRADE COMM'N STAFF, PROTECTING CONSUMERS IN THE NEXT TECH-ADE](#) (2008); [FED. TRADE COMM'N STAFF, MOBILE PRIVACY DISCLOSURES: BUILDING TRUST THROUGH TRANSPARENCY](#) (2013).

<sup>7</sup> See, e.g., [FED. TRADE COMM'N, THE FEDERAL TRADE COMMISSION INVESTIGATION OF GASOLINE PRICE MANIPULATION AND POST-KATRINA GASOLINE PRICE INCREASES: A COMMISSION REPORT TO CONGRESS](#) (2006); [FED. TRADE COMM'N, GASOLINE PRICE CHANGES: THE DYNAMIC OF SUPPLY, DEMAND, AND COMPETITION](#) (2005); [FED TRADE COMM'N STAFF, THE PETROLEUM INDUSTRY: MERGERS, STRUCTURAL CHANGE, AND ANTITRUST ENFORCEMENT](#) (2004); [FED. TRADE COMM'N STAFF, COMPETITION AND CONSUMER PROTECTION PERSPECTIVES ON ELECTRIC POWER REGULATORY REFORM: FOCUS ON RETAIL COMPETITION](#) (2001); [FED. TRADE COMM'N STAFF, COMPETITION AND CONSUMER PROTECTION PERSPECTIVES ON ELECTRIC POWER REGULATORY REFORM](#) (2000).

agencies outside the United States, when such efforts have a direct effect on important U.S. interests. Comments filed in electronic form should be submitted using [this link](#).

- 2) **Competition and consumer protection issues in communication, information, and media technology networks.** FTC staff's 1996 *Competition Policy in the New High-Tech Global Marketplace* report<sup>8</sup> discussed the competitive analysis of both unilateral and joint conduct in industries subject to network effects; and FTC staff's 2007 *Broadband Connectivity and Competition Policy* report<sup>9</sup> addressed similar issues in the broadband internet access service market. Of particular interest to the Commission: (a) whether contemporary industry practices in networked industries continue to present competition and consumer protection concerns like those discussed in the prior reports; (b) the welfare effects of regulatory intervention to promote standardization and interoperability; (c) the application of the FTC's Section 5 authority to the broadband internet access service business; and (d) unique competition and consumer protection issues associated with internet and online commerce. Comments filed in electronic form should be submitted using [this link](#).
  
- 3) **The identification and measurement of market power and entry barriers, and the evaluation of collusive, exclusionary, or predatory conduct or conduct that violates the consumer protection statutes enforced by the FTC, in markets featuring "platform" businesses.**<sup>10</sup> Of particular interest to the Commission: (a) whether the platform business model has unique implications for antitrust and consumer protection law enforcement and policy; and (b) whether and how the presence of "network effects" should affect the Commission's analysis of competition and consumer protection issues in these markets. Comments filed in electronic form should be submitted using [this link](#).
  
- 4) **The intersection between privacy, big data, and competition.**<sup>11</sup> Of particular interest to the Commission: (a) data as a dimension of competition, and/or as an impediment to entry into or expansion within a relevant market; (b) competition on privacy and data security attributes (between, for example, social media companies or app developers), and the importance of this competition to consumers and users; (c) whether consumers prefer free/ad-supported products to products offering similar services or capabilities but that are neither free nor ad-supported; (d) the benefits and costs of privacy laws and regulations, including the effect of such regulations on innovation, product offerings, and other

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<sup>8</sup> [FED. TRADE COMM'N STAFF, ANTICIPATING THE 21ST CENTURY: COMPETITION POLICY IN THE NEW HIGH-TECH, GLOBAL MARKETPLACE](#) (1996), at Ch. 9.

<sup>9</sup> [FED. TRADE COMM'N STAFF, BROADBAND CONNECTIVITY COMPETITION POLICY](#) (2007).

<sup>10</sup> The Commission's workshop and report on the Sharing Economy addressed many issues related to "platform" businesses. [FED. TRADE COMM'N STAFF, THE SHARING ECONOMY: ISSUES FACING PLATFORMS, PARTICIPANTS & REGULATORS](#) (2016).

<sup>11</sup> The Commission has previously issued reports related to this area of inquiry, including *id.*; [FED. TRADE COMM'N STAFF, INTERNET OF THINGS: PRIVACY AND SECURITY IN A CONNECTED WORLD](#) (2015); and [FED. TRADE COMM'N, BIG DATA: A TOOL FOR INCLUSION OR EXCLUSION?](#) (2016).

dimensions of competition and consumer protection; (e) the benefits and costs of varying state, federal and international privacy laws and regulations, including the conflicts associated with those standards; and (f) competition and consumer protection implications of use and location tracking mechanisms. Comments filed in electronic form should be submitted using [this link](#).

- 5) **The Commission’s remedial authority to deter unfair and deceptive conduct in privacy and data security matters.** Of particular interest to the Commission: (a) the efficacy of the Commission’s use of its current remedial authority; and (b) the identification of any additional tools or authorities the Commission may need to adequately deter unfair and deceptive conduct related to privacy and data security. Comments filed in electronic form should be submitted using [this link](#).
- 6) **Evaluating the competitive effects of corporate acquisitions and mergers.** Of particular interest to the Commission: (a) the economic and legal analysis of vertical and conglomerate mergers; (b) whether the doctrine of potential competition is sufficient to identify and analyze the competitive effects (if any) associated with the acquisition of a firm that may be a nascent competitive threat; (c) the analysis of acquisitions and holding of a non-controlling ownership interest in competing companies; (d) the identification and evaluation of the exercise of monopsony power and buyer-power as arising from consolidation; (e) the identification and evaluation of differentiated but potentially competing technologies, and of disruptive or generational changes in technology, and how such technologies affect competitive effects analysis; and (f) empirical validation of the analytical tools used to evaluate acquisitions and mergers (e.g., models of upward pricing pressure, gross upward pricing pressure, net innovation pressure, critical loss analysis, compensating marginal cost reduction, merger simulation, natural experiments, and empirical estimation of demand systems). Comments filed in electronic form should be submitted using [this link](#).
- 7) **The evidence and analysis of monopsony power, including but not limited to, in labor markets.** Of particular interest to the Commission: (a) the analytic framework applied to conduct and transactions that negatively or positively affect competition between employers as buyers in labor markets; (b) evidence regarding the existence and exercise of buyer monopsony or market power in properly defined markets, including by employers in labor markets; (c) the exercise of monopsony power through collusion, including in labor markets through employer collusion; and (d) the use of non-competition agreements and the conditions under which their use may be inconsistent with the antitrust laws. Comments filed in electronic form should be submitted using [this link](#).
- 8) **The role of intellectual property and competition policy in promoting innovation.** The Commission has taken a dual-pronged approach to issues arising at the intersection of intellectual property and antitrust law: (1) antitrust enforcement against harmful business conduct involving intellectual property; and (2) competition advocacy regarding the development of intellectual property law.

The Commission has articulated its enforcement positions in a number of public documents, including the joint Commission and Department of Justice 2017 *Antitrust Guidelines for the Licensing of Intellectual Property*<sup>12</sup> and 2007 *Antitrust Enforcement and Intellectual Property Rights* report.<sup>13</sup> The Commission has engaged in substantial competition advocacy with respect to the legal and policy regime related to intellectual property rights, including its three “IP” reports: the 2003 *To Promote Innovation*<sup>14</sup> report, the 2011 *Evolving IP Marketplace*<sup>15</sup> report, and the 2016 *Patent Assertion Entity Activity*<sup>16</sup> report. Of particular interest to the Commission: (a) the adoption and utilization of novel business practices (beyond those addressed in the Commission’s prior guidance and actions)<sup>17</sup> with respect to obtaining or enforcing intellectual property rights, where such practices may be inconsistent with the antitrust laws; (b) identification of contemporary patent doctrine that substantially affects innovation and raises the greatest challenges for competition policy; (c) evaluation of intellectual property litigation in competitive effects analysis; and (d) evaluation of efficiencies and entry considerations in technology markets in merger analysis. Comments filed in electronic form should be submitted using [this link](#).

**9) The consumer welfare implications associated with the use of algorithmic decision tools, artificial intelligence, and predictive analytics.** Of particular interest to the Commission: (a) the welfare effects and privacy implications associated with the application of these technologies to consumer advertising and marketing campaigns; (b) the welfare implications associated with use of these technologies in the determination of a firm’s pricing and output decisions; and (c) whether restrictions on the use of computer and machine learning and data analytics affect innovation or consumer rights and opportunities in existing or future markets, or in the development of new business models. Comments filed in electronic form should be submitted using [this link](#).

**10) The interpretation and harmonization of state and federal statutes and regulations that prohibit unfair and deceptive acts and practices.** Of particular interest to the Commission: (a) whether and to what extent other enforcement entities authorized to prosecute unfair or deceptive acts and practices

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<sup>12</sup> [FED. TRADE COMM’N & U.S. DEP. JUSTICE, GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY](#) (2017).

<sup>13</sup> [FED. TRADE COMM’N & U.S. DEP. JUSTICE, ANTITRUST ENFORCEMENT AND INTELLECTUAL PROPERTY RIGHTS: PROMOTING INNOVATION AND COMPETITION](#) (2007).

<sup>14</sup> [FED. TRADE COMM’N, TO PROMOTE INNOVATION: THE PROPER BALANCE OF COMPETITION LAW AND POLICY](#) (2003).

<sup>15</sup> [FED. TRADE COMM’N, THE EVOLVING IP MARKETPLACE: ALIGNING PATENT NOTICE AND REMEDIES WITH COMPETITION](#) (2011).

<sup>16</sup> [FED. TRADE COMM’N, PATENT ASSERTION ENTITY ACTIVITY: AN FTC STUDY](#) (2016).

<sup>17</sup> Enforcement and policy issues with respect to standard essential patents are discussed in [FED. TRADE COMM’N & U.S. DEP. JUSTICE, ANTITRUST ENFORCEMENT AND INTELLECTUAL PROPERTY RIGHTS: PROMOTING INNOVATION AND COMPETITION](#) (2007), and have been the subject of seven FTC enforcement matters. Licensing conduct, such as tying and grantbacks, is discussed in the revised [FED. TRADE COMM’N & U.S. DEP. JUSTICE, GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY](#) (2017). The behavior of Patent Assertion Entities is discussed in [FED. TRADE COMM’N, PATENT ASSERTION ENTITY ACTIVITY: AN FTC STUDY](#) (2016).

apply FTC precedent in their enforcement efforts; and (b) whether the Commission can, and to what extent it should, take steps to promote harmonization between the FTC Act and similar statutes. Comments filed in electronic form should be submitted using [this link](#).

**11) The agency’s investigation, enforcement and remedial processes.** Of particular interest to the Commission: (a) whether the agency’s investigative process can be improved without diminishing the ability of the Commission to identify and prosecute prohibited conduct; (b) the extent to which the Commission’s Part 3 process facilitates timely and efficient administrative litigation; (c) the efficacy of the Commission’s current use of its remedial authority; and (d) willingness of affected parties to cooperate with the Commission in conducting post-investigation and enforcement retrospectives. Comments filed in electronic form should be submitted using [this link](#).

**Public Comments:** Interested parties may submit written comments on the topics listed above to the FTC. Electronic submission is preferred; comments in paper form are also accepted. FTC staff may use these comments in any subsequent reports or policy papers. **Comments should refer to “Competition and Consumer Protection in the 21<sup>st</sup> Century Hearings, Project Number P181201.” If an interested party wishes to comment on multiple topics, we encourage filing a separate comment for each topic. If an interested party wishes to make general comments about the hearings, we encourage filing a comment in response to Topic 1, using [this link](#).** For this stage of the public comment process, comments will be accepted until August 20, 2018.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. If you prefer to file your comment on paper, write “Competition and Consumer Protection in the 21<sup>st</sup> Century Hearings, Project Number P181201” on your comment and on the envelope, and **mail** your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex C), Washington, DC 20580; or **deliver** your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex C), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment may be placed on the publicly accessible FTC Website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided in Section 6(f) of the FTC Act,

15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

If any entity has provided funding for research, analysis, or commentary that is included in a submitted public comment, such funding and its source should be identified on the first page of any submitted comment.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. For this stage of the comment process, the Commission will consider all timely and responsive public comments that it receives on or before August 20, 2018. The FTC Act and other laws that the Commission administers permit the collection of public comments. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, available at <https://www.ftc.gov/site-information/privacy-policy>.

**For Further Information Contact:** Derek Moore, *Office of Policy Planning*, 202-326-3367, John Dubiansky, or *Office of Policy Planning*, 202-326-2182 or email us at [CCPhearings@ftc.gov](mailto:CCPhearings@ftc.gov).