

AGENDA

WORKSHOP ON SECTION 5 OF THE FTC ACT AS A COMPETITION STATUTE

**601 New Jersey Avenue, N.W.
Washington, D.C.
October 17, 2008**

OPENING REMARKS

9:00 - 9:15

Chairman William E. Kovacic

PANEL 1: THE HISTORY OF SECTION 5

9:15 - 10:05

This panel will review the history of Section 5, including its enactment by Congress, the FTC's enforcement, and the courts' responses. It will consider: What legal, economic, and policy concerns have been historically important in the interpretation of Section 5? What principles concerning the scope of Section 5 can be garnered from Supreme Court and appellate court decisions? How has the agency applied Section 5 in consent agreements over the past two decades?

Panelists:

Marc Winerman, Attorney Advisor to Chairman William E. Kovacic
Steve Calkins, Associate VP for Academic Personnel and Professor of Law, Wayne State
Moderator, Neil Averitt, Office of Policy & Coordination, FTC

MORNING BREAK

10:05 - 10:15

PANEL 2: INTERPRETATIONS OF SECTION 5

10:15 - 12:00

This panel will discuss a range of possible legal interpretations of Section 5. Particular questions that this panel might consider include the following: Is Section 5 coterminous with the Sherman Act? Does the Sherman Act encompass all conduct that is harmful to competition? Does Section 5 authorize the FTC to fill technical gaps in the coverage of the other antitrust statutes? Should Section 5 be interpreted to reach practices that pose some threat to competition and few offsetting benefits to consumers, where enforcement is limited to the FTC and relief is limited to an injunction prohibiting or undoing the challenged conduct?

Panelists:

Robert Pitofsky, Professor, Georgetown Law School
Michael Salinger, Professor, Boston University School of Management
Michael Antalics, Partner, O'Melveny & Myers
William Page, Professor, University of Florida College of Law
Robert Lande, Professor, University of Baltimore School of Law
Daniel Crane, Professor, Benjamin Cardozo School of Law
Moderator, Richard Dagen, Special Counsel, FTC

LUNCH BREAK

12:00 – 1:15

REMARKS

1:15-1:30

Commissioner J. Thomas Rosch

PANEL 3: APPLICATION OF SECTION 5 TO BUSINESS PRACTICES

1:30 - 3:00

The third panel will consider the possible application of these interpretations to various instances of business conduct, including the practical implications of enforcement actions. The questions discussed by this panel may include the following: What are examples of contemporary business conduct that may be unfair methods of competition addressable by Section 5? How does this conduct harm competition and consumers? How can an unfair method of competition be defined so as to avoid capturing benign or procompetitive conduct, and so as to offer sufficient guidance and predictability for business?

Panelists:

Susan Creighton, Partner, Wilson Sonsini Goodrich & Rosati
Thomas B. Leary, former FTC Commissioner; Counsel, Hogan & Hartson
Abbott (Tad) Lipsky, Partner, Latham & Watkins
David Balto, attorney, former Assistant Director for Planning, FTC
Albert Foer, President, American Antitrust Institute
Moderator, Holly Vedova, Attorney Advisor to Commissioner J. Thomas Rosch

AFTERNOON BREAK

3:00 - 3:15

REMARKS

3:15 - 3:30

Commissioner Jon Leibowitz

PANEL 4: APPLICATION OF SECTION 5 TO STANDARD-SETTING ISSUES

3:30 - 5:00

The fourth panel will examine the application of Section 5 to competition issues involving standard-setting. This panel will consider many of the same practical questions that were before

Panel 3, but with the focus sharpened to the special context of standard-setting. In that context, what economic evidence and analysis would be useful in identifying violations? What evidence and analysis would be useful in identifying limiting principles?

Panelists:

Robert Skitol, Partner, Drinker Biddle & Reath

Richard Taffet, Partner, Bingham McCutchen

Geoffrey Oliver, Partner, Jones Day

Scott Peterson, Hewlett-Packard Co.

Michael Lindsay, Partner, Dorsey & Whitney

Jack Slobod, Senior Director, IP Licensing, Philips Electronics

Amy Marasco, General Manager, Standards Strategy, Microsoft

Moderator, Robert Davis, Attorney Advisor to Commissioner Jon Leibowitz