

**Looking Back to Move Forward:
Preserving the Progressive Tradition at the FTC
Keynote Address by Commissioner Edith Ramirez
New York State Bar Association Antitrust Law Section Dinner
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It is a pleasure to be here in New York, speaking to so many who share the Federal Trade Commission's mission of keeping markets healthy and competition robust.¹

We all operate today in a time when markets are morphing at lightning speed; when products and industries that did not exist ten years ago shape the economic landscape; when consumers' opportunities to access innovative goods and services are surpassed only by equally innovative threats to consumers' privacy and pocketbooks.

This evening I would like to discuss how we at the FTC navigate these unpredictable times, relying on a roadmap penned almost a century ago by members of the Progressive movement, who themselves were struggling to navigate their own unpredictable times.

The FTC was established at the height of the Progressive Era and imbued with principles based on the best thinking of the great minds of the day. Today, we still adhere to those principles with results that would make our founders proud: the Commission issues decisions rooted in bipartisan consensus reached through scientific and careful analysis of the record and facts at hand.

As an American history buff with a particular interest in the Progressive Era, I cannot help but be struck by the similarities between then and now. As today, the economy at the start of the 20th century was struggling to overcome major financial shocks that had pushed down wages, increased unemployment, and hit the working poor and newly emerging middle class hardest. The public, fueled by stories from a new class of muckraking journalists, was rapidly losing faith in government's ability to respond to the economic and social challenges of the times.

By 1914, Progressive leaders had started to develop and put in place a public policy framework relying on the dispassionate decisions of experts in the new social sciences. Corruption and cronyism began to give way to consensus based on fact and reasoned analysis.

That year marked three milestones of American history that illustrate just how fully our nation was turning toward a brave new world governed by rationality. First, the FTC Act made it through Congress and created an agency that was, in the words of a 1914 Senate report,

¹ The views expressed in these remarks are my own and do not necessarily reflect the views of the Commission or any other Commissioner.

“competent to deal with [complex antitrust matters] by reason of information, experience, and careful study of the business and economic conditions of the industry affected.”²

Second, noted journalist and thinker Walter Lippmann published, to great acclaim, the Progressive manifesto, *Drift and Mastery: An Attempt to Diagnose the Current Unrest*, in which he argued that, to respond effectively to profound economic and social upheaval, the public needed to make collective decisions based on scientific methodology and hard evidence.³

And third, with the disappearance of the bustle in the late 1800s and the rise of hemlines above tripping level, women’s clothing finally began to make sense.

Of course, that first milestone – the creation of the FTC – is of most interest to me and I assume most of you in this room tonight. But I hesitate to examine it through the lens of Walter Lippmann’s work. Although I believe he described the philosophical underpinnings of the FTC well in *Drift and Mastery*, his views on antitrust regulation do not withstand modern scrutiny. Rather than breaking up monopolies and allowing competition to produce efficient markets, Lippmann believed trusts managed by dispassionate technocrats – a class of Platonic philosopher-CEOs – were the remedy for the abuses of the Standard Oils of his time.⁴

So I will turn to women’s fashion instead.

There is a wonderful exhibit at the Daughters of the American Revolution museum in Washington right now called “Fashioning the New Woman: 1890 to 1925,” displaying how clothes adapted during the Progressive Era to match women’s increasing role in business, academia, and public policy. One of the earliest dresses in the collection, an afternoon dress from 1890, is all bustle, cinched waist, and adornment. It required 14 pounds of undergarments to hold the whole thing up, no doubt rendering the unfortunate wearer unable to sit, move, work, protest for the vote, talk in a normal tone, or do much of anything. By contrast, the more practical clothes displayed from the 1920s befit the modern woman taking her place in the office, on college campuses, and at the polls.

Those designing clothing for women were taking a Progressive view of the task, fashioning attire with the “proper knowledge of both the public requirements and practical affairs” of their clients.⁵ That quote, by the way, is not from a turn of the century fashion rag, but from the Senate Report on the creation of the FTC. Like the fashion designers of that time, the FTC was, and is, meant to come to its decisions after thorough consideration of the “public requirements and practical affairs” of the industries we regulate. And like the Progressives of that time, the Commission was – and is – meant to arrive at an apolitical consensus by analyzing the evidence with rigorous application of sound social science.

² S. Rep. No. 597, 63d Cong., 2d Sess. 9 (1914) (hereinafter Senate Report).

³ Walter Lippmann, *DRIFT & MASTERY: AN ATTEMPT TO DIAGNOSE THE CURRENT UNREST* (Univ. of Wis. Press 1985) 147-51 (1914).

⁴ *Id.* at 78-88.

⁵ Senate Report at 11.

In my view, that description fits today's FTC like a Gibson Girl's shirtwaist dress.

I. The FTC Today

Oscar Wilde's famous take on fashion is that one "can never be overdressed or overeducated," and with at least the latter part of that analysis, the FTC is in complete agreement. The Commission could not tackle a modern antitrust investigation, which routinely involves millions of pages of documents and a myriad of facts and figures, without the backing of our economic research and policy arms. Both are direct legacies of the Bureau of Corporations that was folded into the FTC upon its founding. In addition to working on investigations with our very capable attorneys in the Bureau of Competition, the FTC's Bureau of Economics staff also routinely engages in policy-oriented economic research. Our Office of Policy and Planning similarly devotes itself to antitrust policy issues. This evening, I would like to highlight how we have used our research and policy functions in two areas: mergers and high-tech matters involving intellectual property.

II. Mergers

As antitrust enforcers, we routinely forecast how mergers or challenged conduct will impact future competition. The predictions and assumptions underlying our actions must be sound, and one way to ensure that is to engage in retrospective analysis of past enforcement decisions. Mastery of this history is particularly important when the Commission is struggling with whether to bring an enforcement action in a complex and close case. Two such studies make my point: the FTC's hospital retrospective project in the early 2000s and the merger remedy study in the 1990s.

A. Hospital Retrospectives

The reinvigoration of the FTC's hospital merger enforcement efforts, due in large part to the hospital retrospective project, represents one of the best comeback stories since, well, 1914, when ankle boots – last seen on soldiers at the end of the 19th century – began to reappear below women's slowing rising hemlines.

Throughout the 1980s and early 1990s, the FTC and Department of Justice successfully challenged a number of hospital mergers, and courts were receptive to the agencies' arguments that such mergers were harmful to consumers.⁶ Beginning in 1994, however, antitrust agencies suffered seven consecutive hospital merger losses.⁷

⁶ See, e.g., *FTC v. Univ. Health, Inc.*, 938 F.2d 1206 (11th Cir. 1991); *United States v. Rockford Mem'l*, 717 F.Supp. 1251, *aff'd*, 898 F.2d 1278 (7th Cir. 1990).

⁷ See *FTC v. Tenet Healthcare Corp.*, 186 F.3d 1045 (8th Cir. 1999); *United States v. Long Island Jewish Med. Ctr.*, 983 F. Supp. 121 (E.D.N.Y. 1997); *FTC v. Butterworth Health Corp.*, 946 F. Supp. 1285 (W.D. Mich. 1996), *aff'd mem.*, 121 F.3d 708 (6th Cir. 1997); *United States v. Mercy Health Servs.*, 902 F. Supp. 968 (N.D. Iowa 1995), *vacated as moot*, 107 F.3d 632 (8th Cir. 1997); *FTC v. Freeman Hosp.*, 911 F. Supp. 1213 (W.D. Mo. 1995), *aff'd*, 69 F.3d 260 (8th Cir. 1995); *FTC v. Hosp. Bd. of Directors of Lee Cty.*, 1994-1 Trade Cas. (CCH) ¶ 70,593 (M.D. Fla.), *aff'd*, 38 F.3d 1184 (11th Cir. 1994);

In 2002, the FTC decided to examine why the hospital merger program had fallen so hopelessly out of style. The Bureau of Economics and Competition undertook a retrospective study of the effects on pricing and quality of care resulting from a handful of consummated hospital mergers.⁸ This project was supplemented by a series of health care hearings convened jointly with DOJ.⁹

BE's empirical studies revealed that many hospital mergers were, as the agencies had contended, anticompetitive.¹⁰ BE showed that hospital competition was highly localized. Even mergers in metropolitan areas with a large number of hospitals could cause competitive harm because patients demand the inclusion of certain institutions in their insurance networks.¹¹ The studies also showed that quality of care does not necessarily improve with consolidation.¹²

Armed with this information as well as the findings from the workshops, the Commission revamped its approach to litigating hospital cases. To show competitive harm, the FTC now emphasizes how a merger can leave an insurer with few alternatives to include in its network, increasing the bargaining leverage of the combined hospital and leading to higher prices.¹³ We have also used retrospectives, which provide real-world backup for our arguments, to bolster judges' confidence in our predictions of price effects.

California v. Sutter Health Sys., 84 F. Supp. 2d 1057 (N.D. Cal.) (denying preliminary injunction in hospital merger challenge by the California Attorney General), *aff'd mem.*, 217 F.3d 846 (9th Cir. 2000).

⁸ Press Release, Fed. Trade Comm'n, Federal Trade Commission Announced Formation of Merger Litigation Task Force (Aug. 28, 2002), *available at* <http://www.ftc.gov/opa/2002/08/mergerlitigation.shtm>.

⁹ These hearings culminated in the publication of the 2004 Health Care Report. FED. TRADE COMM'N & DEP'T OF JUSTICE, *IMPROVING HEALTH CARE: A DOSE OF COMPETITION* (July 2004) (hereinafter 2004 Health Care Report), *available at* <http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf>.

¹⁰ *See, e.g.*, Joseph Farrell et al., *Economics at the FTC: Retrospective Merger Analysis with a Focus on Hospitals*, 35 REV. OF INDUS. ORG. 369 (2009).

¹¹ *See, e.g.*, Deborah Haas-Wilson & Christopher Garmon, *Two Hospital Mergers on Chicago's North Shore: A Retrospective Study*, FTC Bureau of Economics Working Paper 294 (Jan. 2009) (finding that although the Chicago metropolitan area contained more than 100 hospitals, the merger between Evanston Northwestern Healthcare and Highland Park Hospital nevertheless resulted in higher inpatient prices at the merged hospitals); Steven Tenn, *The Price Effects of Hospital Mergers: A Case Study of the Sutter-Summit Transaction*, FTC Bureau of Economics Working Paper 293 (Nov. 2008) (finding that although the Bay Area contained a large number of hospitals, the acquisition of Summit Medical Center by the Sutter Hospital Network, which owned Alta Bates Medical Center, nonetheless resulted in higher inpatient prices at the merged hospitals).

¹² *See, e.g.*, David J. Balan & Patrick S. Romano, *A Retrospective Analysis of the Clinical Quality Effects of the Acquisition of Highland Park Hospital by Evanston Northwestern Healthcare*, FTC Bureau of Economics Working Paper No. 307 (Nov. 2010).

¹³ Opinion of the Commission, *In re ProMedica Health System, Inc.*, Docket No. 9346 (June 25, 2012), at 6, 12, 35-39, 47-49, *available at* <http://www.ftc.gov/os/adjpro/d9346/120625promedicaopinion.pdf>; 2004 Health Care Report at 11-12, 17.

Our new approach sparked a winning streak, starting with the *Evanston* case in 2007,¹⁴ that includes three successfully-litigated merger challenges¹⁵ and a growing tally of hospital deals abandoned after the FTC threatened a challenge.¹⁶ These victories are a perfect fit for consumers already burdened with staggering health care costs. And they came about because we tailored our approach on a pattern created by our Progressive Era predecessors—sophisticated economic analysis and a nuanced understanding of hospital markets.

B. Divestiture Study

Most merger retrospectives focus on whether enforcers correctly identified anticompetitive transactions. But during the 1990s, the FTC used the same type of intensive historical review to examine the effectiveness of merger remedies, particularly divestitures.¹⁷

Although the analysis found that three-quarters of FTC-ordered remedies produced the desired outcomes, it uncovered problems with the remainder.¹⁸ The agency learned that many buyers of divested assets lacked the information they needed to succeed; that sellers tended to look for weak buyers or sometimes tried to undermine the buyer's success; and that divestitures limited to select assets often failed to produce the intended results.¹⁹

Based on this, the FTC adopted a number of changes to its divestiture policies.²⁰ Identifying upfront buyers capable of restoring competition is now a central part of our assessment of a proposed divestiture package. When necessary, we also require the seller to facilitate the transfer of technology and knowledgeable staff to the buyer. We sometimes turn to interim trustees to oversee the process, especially when the order requires ongoing ties between the buyer and seller. And finally, where possible, we favor divestitures of full, freestanding business units.

Nowhere are these improvements more evident than in our pharmaceutical divestitures. Prior to the study, FTC pharmaceutical orders were definitely underdressed, typically requiring

¹⁴ Opinion of the Commission, *In re Evanston Northwestern Healthcare Corp.*, Docket No. 9315 (Aug. 6, 2007), available at <http://www.ftc.gov/os/adjpro/d9315/070806opinion.pdf>.

¹⁵ See *Evanston* at 1-2; *ProMedica* at 1-2; *FTC v. OSF Healthcare Sys.*, 852 F. Supp. 2d 1069 (N.D. Ill. 2012) (transaction abandoned following district court's grant of a preliminary injunction pending a full administrative trial on the merits).

¹⁶ See Order Dismissing Compl., *In re Reading Health Sys.*, Docket No. 9353 (Dec. 7, 2012); Order Dismissing Compl., *In re Inova Health Sys. Found.*, Docket No. 9326 (June 17, 2008), available at <http://www.ftc.gov/os/adjpro/d9326/080617orderdismisscpt.pdf>.

¹⁷ FED. TRADE COMM'N, A STUDY OF THE COMMISSION'S DIVESTITURE PROCESS (1999) (hereinafter "Divestiture Study"), available at <http://www.ftc.gov/os/1999/08/divestiture.pdf>.

¹⁸ *Id.* at 8-10.

¹⁹ *Id.* at 10-13, 18-29.

²⁰ See Fed. Trade Comm'n, Frequently Asked Questions About Merger Consent Order Provisions, available at <http://www.ftc.gov/bc/mergerfaq.shtm>; Divestiture Study at § II.C.3.

only the divestiture of the relevant IP to a buyer of the seller's choosing.²¹ The FTC has replaced those modest orders with more robust requirements²² – requirements that our informal follow-up studies have shown overwhelmingly achieved the desired results.

While I recognize that merger retrospectives can be hard to conduct and may not answer every difficult question,²³ I believe they are both useful and necessary. I also recognize that one of the biggest obstacles to this type of analysis is a lack of post-merger data.²⁴ To address that, it is worth considering whether the FTC should use its subpoena power and information gathering authority under Section 6(b) of the FTC Act to obtain necessary data.²⁵ It is also worth exploring whether to include ongoing production obligations as part of our consent decrees, particularly in cases where the decision to settle rather than litigate was a close call. If such an inquiry were to reveal that certain kinds of settlements do not work in certain markets, we would have to rethink our calculus for deciding when to litigate a case.

I also think we should do more to encourage outside scholarship in this area. Academics have shown considerable interest in merger policy, and many have made valuable contributions.²⁶ But their efforts have sometimes been hampered by, among other things, a lack of information about how we as enforcers make our decisions. We do our best to explain our reasoning in Commission statements, especially in difficult cases, but that is probably an area where we could stand to do better.

²¹ See, e.g., *In re Dow Chemical Co.*, Docket No. 3533 (Sept. 23, 1994).

²² See, e.g., *In re Watson Pharm. Inc.*, Docket No. C-4372 (Dec. 14, 2012) (requiring the acquiring party to divest certain overlapping pharmaceutical products and to provide requisite technical assistance to buyers that have been identified and vetted by Commission staff in advance).

²³ Among other challenges, merger retrospectives often suffer from information deficiencies, can be burdensome and resource intensive, and may not yield meaningful results, particularly in cases where it is difficult to isolate the impact of a transaction on prices. See, e.g., John Kwoka & Daniel Greenfield, *Does Merger Control Work? A Retrospective on U.S. Enforcement Actions and Merger Outcomes 2-3* (Nov. 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1954849; Note by the Delegation of the United States, *Roundtable on Impact Evaluation of Merger Decisions*, Organization for Economic Cooperation and Development 3-6 (June 20, 2011) (hereinafter “U.S. OECD Merger Retrospective Submission”), available at <http://www.justice.gov/atr/public/international/273463.pdf>; Dennis W. Carlton, *The Need to Measure the Effect of Merger Policy and How to Do It*, 22 ANTITRUST 39 (Summer 2008).

²⁴ See, e.g., Kwoka & Greenfield at 3; Hunter et al. at 34.

²⁵ Section 6(b) of the FTC Act, 16 U.S.C. § 46(b), empowers the Commission to require the filing of “annual or special . . . reports or answers in writing to specific questions” for the purpose of obtaining information about “the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals” of the entities to whom the inquiry is addressed.

²⁶ Over 70 merger retrospective papers were published between 1985 and 2010. U.S. OECD Merger Retrospective Submission at 6; see also Graeme Hunter et al., *Merger Retrospective Studies: A Review*, 23 ANTITRUST 34 (Fall 2008) (reviewing merger retrospective studies conducted from 1990-2008); Matthew Weinberg, *The Price Effects of Horizontal Mergers*, 4 J. COMP. L. & J. ECON. 433 (2007) (surveying the literature on the price effects of horizontal mergers); Paul Pautler, *Evidence on Mergers and Acquisitions*, 48 ANTITRUST BULL. 119 (2003) (same).

III. IP Studies

Intellectual property in the high-tech sector is another area where we weave research into our enforcement efforts. For well over a decade, the Commission has studied the role that patents play in high-tech industry. Our work on this is too extensive to summarize in a short speech, but let me touch on a few highlights.

In 2002, the FTC and DOJ held a series of hearings that resulted in a 2003 FTC report focused largely on patent quality.²⁷ The FTC devoted significant attention to the special challenges facing the high-tech sector, and the study confirmed what was already clear to market participants: firms developing new products were facing a dense thicket of overlapping patents of vague scope and ambiguous quality; they perceived themselves as litigation targets; and they relied increasingly on defensive patents. The result was a full-blown patent arms race in the tech sector with disturbing implications for innovation, competition, and consumers.²⁸

These same hearings exposed the complicated economic incentives at play when patented technologies are incorporated into industry standards – what we refer to today as “standard-essential patents.” Industry players and academics urged the agencies to recognize the pro-competitive role that standard setting organizations play in reducing the risk of abuse by standard-essential patent owners. Others disputed that abuse was common and cautioned the agencies against mandating particular SSO policies, suggesting that onerous patent disclosure or licensing requirements could slow the SSO process and discourage participation. The broad evidence and testimony collected during those hearings is summarized in our 2007 joint report with DOJ and provides the basis for the enforcement guidance that is set forth.²⁹

The FTC built on the extensive 2002 record with a second set of hearings that began in 2008, focusing on competition policy issues associated with patent notice and remedies.³⁰ These hearings were completed in 2010 and informed our 2011 report on “The Evolving IP Marketplace.”³¹ And while the evidence confirmed the important role that exclusive patent rights and a strong system of remedies play in promoting productive R&D expenditures and technology transfers, we also found that the growing patent thicket in the IT sector continues to

²⁷ U.S. Dep’t of Justice & Fed. Trade Comm’n, Hearings on Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy, *materials available at* <http://www.ftc.gov/opp/intellect/index.shtm>; FED. TRADE COMM’N, TO PROMOTE INNOVATION: THE PROPER BALANCE OF COMPETITION AND PATENT LAW AND POLICY (2003) (hereinafter “2003 Report”), *available at* <http://www.ftc.gov/os/2003/10/innovationrpt.pdf>.

²⁸ 2003 Report at 30-55.

²⁹ U.S. DEP’T OF JUSTICE & FED. TRADE COMM’N, ANTITRUST ENFORCEMENT AND INTELLECTUAL PROPERTY RIGHTS: PROMOTING INNOVATION AND COMPETITION 33-56 (2007), *available at* <http://www.ftc.gov/reports/innovation/P040101PromotingInnovationandCompetitionrpt0704.pdf>.

³⁰ Fed. Trade Comm’n, Hearings on The Evolving IP Marketplace, *materials available at* <http://www.ftc.gov/bc/workshops/ipmarketplace>.

³¹ FED. TRADE COMM’N, THE EVOLVING IP MARKETPLACE: ALIGNING PATENT NOTICE AND REMEDIES WITH COMPETITION (2011), *available at* <http://www.ftc.gov/os/2011/03/110307patentreport.pdf>.

act as a drag on resources and innovation.³² We also looked at industry reaction to the Supreme Court’s landmark *eBay* decision and cases applying the four-factor *eBay* framework, leading us to recommend several ways for courts to better align application of the test with competition policy.³³

Since our 2011 Report, we have held two additional workshops that have taken a deeper dive into some of the topics examined previously. In June 2011, we looked more closely at the costs and benefits of various SSO polices for managing the risk of undue patent leverage.³⁴ And just this past December, the agencies held a workshop dedicated to the economics of what we call “patent assertion entities” – known derisively as “patent trolls” – companies that are in the business of buying, selling, and asserting patents.³⁵ A central empirical question, which we will continue to examine, is whether PAEs encourage invention or instead hamper innovation and competition. I am confident the agencies’ talented economists and policy staff will advance the dialogue on this as well as the many other tough questions raised by PAEs.

This brings me to our most recent enforcement action in the patent arena: Google. As most of you know, earlier this month we announced that Google settled claims that it had violated Section 5 of the FTC Act following its acquisition of Motorola Mobility by pursuing injunctions against willing licensees for alleged infringement of several Motorola standard-essential patents.³⁶ The Commission alleged that Google breached the FRAND commitments Motorola had made to various standard-setting organizations before its technologies were adopted into the relevant standards.

Infringement claims in the smartphone sector raise many of the complex patent policy issues the Commission has studied, and our order in the Google matter reflects many of the lessons learned. To remedy the alleged violation, the Commission ordered Google to follow a process-based approach to resolving its disputes with potential licensees that respects the *quid pro quo* inherent in a FRAND commitment. Broadly speaking, Google may not seek an injunction based solely on a dispute over licensing terms without first seeking a FRAND determination from a neutral third party.³⁷ At the same time, the order recognizes that in making a FRAND commitment, a SEP holder does not give up its right to exclude where it cannot secure a license on fair and reasonable terms. Under the order, Google is free to seek an injunction where the infringing firm is not subject to jurisdiction in the United States, or the infringer

³² *Id.* at 52-56.

³³ *Id.* at 217, 228-234.

³⁴ Fed. Trade Comm’n, Workshop on Patents and Standard Setting: Tools to Prevent “Hold-Up,” June 21, 2011, *materials available at* <http://www.ftc.gov/opp/workshops/standards/index.shtml>.

³⁵ U.S. Dep’t of Justice & Fed. Trade Comm’n, Patent Assertion Entity Activities Workshop, Dec. 20, 2012, *materials available at* <http://www.ftc.gov/opp/workshops/pae/>.

³⁶ *See In re Motorola Mobility LLC and Google, Inc.*, FTC File No. 121-0120 (Jan. 3, 2013) (decision and order), *available at* <http://ftc.gov/os/caselist/1210120/index.shtm>.

³⁷ *Id.* §§ III-IV.

refuses to agree to licensing terms set by a neutral third party.³⁸ By requiring that Google keep the promises that Motorola willingly made to the relevant SSOs, the Commission's order protects the critical interests of all stakeholders in the SSO process, including, importantly, consumers.

IV. Google Search

Before I conclude, I would like to say a few words about the other Google matter we recently concluded and which is, no doubt, on most of your minds – our decision to close the investigation of Google's search practices. Let me say at the outset that this decision is a perfect example of our evidence-based, consensus-driven approach to antitrust.

As most of you know, the heart of the investigation concerned allegations that Google harmed competition and consumers by unfairly preferencing its own content and demoting the content of rivals on its search results page. After evaluating the extensive factual record developed over a 19-month investigation, and taking into account considerable input from market players, the Commission unanimously concluded Google's search design changes were product improvements that did not, on balance, harm competition or consumers, even if they may have harmed certain rivals.³⁹

The post-decision commentary runs the gamut. Some applaud us; some recognize the complexity of the investigation and defer to our expertise; some claim we got it completely wrong. The critics' main charge is that Google's design decisions will ultimately reduce choice and competition in internet services. However, the evidence did not reveal that Google's design changes were predatory. It suggested instead that Google was engaged in competition on the merits. Particularly in fast-paced technology markets, condemning legitimate product improvements risks harming innovation and consumers. The evidence in this case simply did not support taking that drastic step.

Others assert that we wrongly focused on Google's intent. I can tell you that is a misreading of the Commission's statement. Evidence showing why a company made the decision it did is certainly relevant in antitrust when it casts light on the effects of that decision⁴⁰ – and that is exactly the role Google's intent played in our investigation.

Still others question whether we ignored the advertising side of the market. We did not. In this multi-sided market, advertisers, as well as content providers, largely follow search users, and the investigation did not show that Google likely acquired or retained those users through anticompetitive tactics.

³⁸ *Id.* ¶ II(E). Google also retains the option to seek an injunction against a potential licensee that itself files for an injunction against Google for infringement of its own SEPs without following a procedural course similar to what Google must follow under the order. *Id.* ¶ IV(F).

³⁹ See Statement of the Commission, *In re Google, Inc.*, FTC File No. 111-0163 (Jan. 3, 2013), available at <http://ftc.gov/os/2013/01/130103googlesearchstmtofcomm.pdf>.

⁴⁰ See, e.g., *United States v. Microsoft Corp.*, 253 F.3d 34, 59 (D.C. Cir. 2001).

Now, while I may disagree with such criticisms, these questions are all legitimate ones. But, in my view, others are not. Some have claimed, without basis, that the Commission yielded to pressure from Google, the White House, Congress, or all three. You will not be surprised to hear that I take issue with those accusations. As in all of our cases, our decision in this investigation was based on our independent assessment of the facts and our interpretation of the law, nothing more and nothing less.

V. Conclusion

Coco Chanel once said: “Fashion changes, but style endures.” The FTC is fortunate to have inherited from our Progressive Era founders a style that has allowed us to endure as an effective, consensus-driven agency able to respond to each successive year’s economic challenges. While the markets of today may bear little resemblance to the markets of tomorrow, the process of studying – scientifically, rigorously, apolitically – the causes and effects of our past actions and the markets we regulate will keep the FTC grounded, useful, and relevant into the uncertain future.