



United States of America
Federal Trade Commission

**Remarks of Acting Chairman Maureen K. Ohlhausen¹
The FTC at 100 [Days]**

**Kelley Drye: The First 100 Days
Watergate Hotel, Washington, D.C.
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Thank you so much for having me. As many of you know, a few years ago I headed the “FTC at 100” project.² That team assessed the agency from top to bottom in anticipation of the FTC’s 100th birthday, which we celebrated in 2014. Today, I’ll discuss a second “FTC at 100” milestone: the FTC at 100 *days* into President Trump’s new administration. Our FTC at 100 project resulted in a 200+ page report; this speech will be a bit shorter, I promise.

The new administration has announced a number of priorities, but three related ones are particularly relevant to our efforts at the FTC. First, the President has emphasized his desire to unleash job creation. Second, the White House has sought to correct federal government overreach in a number of areas. Third, the administration has taken several actions to reform federal regulatory processes and to reduce burdensome regulation.

At the FTC, an independent agency, we are pursuing related initiatives in each of these areas. I’ll take each in turn.

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

² See, FTC, FTC at 100: Into Our Second Century, <https://www.ftc.gov/news-events/events-calendar/ftc-100-our-second-century-washington-dc>.

Economic Liberty

First, job creation. My first major initiative after being named Acting Chairman was to establish a task force to advance economic liberty, with a particular focus on occupational licensing reform.³ Unnecessary and excessive occupational licensing destroys jobs, increases costs for consumers, and threatens economic liberty. Overbroad occupational licensing inflicts disproportionate harm on the parts of our society least able to bear it – low and middle income Americans, veterans, and military families. Unfortunately, occupational licensing has exploded in this country over the last few decades for no good reason. You shouldn't need a permission slip from the government to start a new business or to get a new job unless there exists a compelling public health or safety reason.

Yet sometimes licensing organizations go even further, sending letters, warnings, or even fines to people who aren't even attempting to operate a business. You may have heard, it was in the news last week, of the Oregon man who spoke out publicly against a particular red light camera in his city.⁴ He argued, based on calculations he had performed, that the yellow light was too short. For his troubles, he earned a \$500 ticket from the state board of engineers for unlicensed practice as an engineer.

Some of these licensing regimes exist purely to protect providers from competition and entrepreneurial innovation. Such special-interest laws reduce the vibrancy of our economy, stifle innovation, and increase consumer prices.

At the FTC, the Task Force continues to shine a spotlight on this issue, and we are working hand-in-hand with like-minded policymakers at the state level to turn back excessive

³ See, Remarks of Acting Chairman Maureen K. Ohlhausen, "Advancing Economic Liberty," (Feb. 23, 2017), <https://www.ftc.gov/public-statements/2017/02/advancing-economic-liberty>.

⁴ Eric Boehm, After Challenging Red Light Cameras, Oregon Man Fined \$500 for Practicing Engineering Without a License (Apr. 26, 2017), <http://reason.com/blog/2017/04/26/after-challenging-red-light-cameras-oreg>.

occupational licensing. We have decades of experience advocating against harmful licensing. We have and will continue to share our expertise to protect the interests of consumers and competition. Our newly launched Economic Liberty website is a centralized, easily accessible hub for all things related to occupational licensing.⁵ State officials can reference not only the extensive, prior work of our agency, but also explore how officials in other states are working to address this serious problem.

I see our work on economic liberty as part of a broader effort to expand and strengthen our competition advocacy work. All too often, policymakers across state and federal government hear only from one side when considering new laws or regulations. This is not particularly surprising. The concentrated benefits of special interest laws flow to a small groups of well-connected insiders, while the broader harms to competition and consumers are diffused across many people.⁶ The FTC has a critical role to play in correcting that imbalance by ensuring that legislators consider consumer interests and competition concerns. In my past role at the FTC, I used to run the FTC office responsible for this work. So I am well aware of both the challenges competition advocacy presents and important role this work ultimately has in protecting the public interest. We will continue speaking up for consumers through our competition advocacy program, and we're looking for additional ways to partner with interested policymakers to foster economic liberty.

Focus on Substantial Harm

A second characteristic of the past 100 days at the FTC addresses both concerns about federal overreach as well as good government efforts. I have directed agency staff to focus on

⁵ FTC, Economic Liberty, <https://www.ftc.gov/policy/advocacy/economic-liberty> (last visited May 3, 2017).

⁶ See, e.g., MATTHEW D. MITCHELL AND PETER J. BOETTKE, APPLIED MAINLINE ECONOMICS 73-74, Mercatus Center at George Mason University (2017), available at <https://ppe.mercatus.org/publications/applied-mainline-economics>.

where it will do the greatest public good. In both our competition and consumer protection work, I have directed our enforcement efforts on those matters that involve substantial harms. On the competition side, I think there has sometimes been too great a willingness to intervene in markets based on speculative harms, not grounded in either testable empirical facts or sound economic theory. When government intervenes in markets on the basis of unsupported supposition, consumers can lose the benefits of free market competition. These benefits are not trivial; they include things like more jobs, economic growth, higher living standards, and innovation. So our enforcement decisions need to be well-supported by both the facts on the ground and modern economic theory. Our mission is to prevent meaningful consumer harm, not to redesign the economy as we see fit.

Similarly, in our consumer protection work, focusing on substantial harm will ensure that we are not overreaching our statutory authority. In much of our consumer protection work, the harm we are stopping is obvious. A fraudster that sells a bogus product or service swindles consumers out of their money. A company that deceptively exaggerates the virtues of its legitimate products collects an unfair price premium that hurts consumers and disadvantages competitors. A debt collector who intimidates and bullies consumers into paying debts they don't owe turns fear into a paycheck. These cases can be factually complicated, but the FTC has a long history and a lot of experience addressing these harms.

In our privacy and cybersecurity work, however, this question can become more complex because of the shorter time in which the legal system has had to adjust to certain side effects of generally wondrous technological and social change. The legal system has been dealing with fraud for millennia. Not so with privacy and data security, and certainly not in an age of ubiquitous technology and data flows.

Therefore, to ensure that we at the FTC have a solid foundation as we face these increasingly complex data security and privacy questions, I have set up an internal task force to study the economics of privacy. The task force is headed by our Bureau of Economics, working closely with the Bureau of Consumer Protection. The goal of the task force is to encourage and clarify economic reasoning on issues relating to the privacy and data security marketplace. The task force seeks to better understand the markets for consumer information, incentives for the various parties in that marketplace, and how to quantify costs and benefits of different actions that the FTC or others could take.

The work of the task force will proceed in stages. Right now, we are focused internally. The task force is identifying the right people, the right questions to ask, and the best ways for getting answers. Once we have identified key questions, we plan to talk to stakeholders, including industry representatives, consumer advocates, and other government agencies. One of the first questions we will be considering and seeking input on is what work product the task force should produce, whether something more formal like a policy statement or workshop or something less formal like a working paper. I am excited about this initiative because I believe it will help us more effectively deploy our resources to address consumers' privacy and data security issues.

Regulatory Reform

Turning to the third and final topic, regulatory reform. President Trump campaigned on regulatory reform, and his early administration has focused on this topic. He has signed thirteen Congressional Review Act bills repealing a significant volume of administrative rules.⁷ He has issued an executive order requiring federal agencies to rescind two old regulations before

⁷ The White House, Press Release, "President Trump's 100 Days of Historic Accomplishments" (Apr. 25, 2017), <https://www.whitehouse.gov/the-press-office/2017/04/25/president-trumps-100-days-historic-accomplishments>.

promulgating a new regulation.⁸ And another executive order creates in each executive branch agency a regulatory reform officer responsible for identifying regulations that eliminate jobs, or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; or create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.⁹

The FTC is an independent agency and thus isn't directly subject to the executive orders. However, I share the President's desire to eliminate unnecessary and burdensome regulatory requirements that hurt our economy. As a result, at the FTC I have sought to maintain a culture of continuous improvement consistent with President Trump's call for efficient and effective government. Private firms face constant market pressure to innovate and improve, and I see no reason why government should operate any differently. Indeed, the FTC's core missions of protecting consumers and promoting competition are so important that we must challenge ourselves to improve every day.

Thus, I have kicked off a comprehensive effort to identify and implement steps to streamline FTC's procedural processes.¹⁰ This is a broad-based effort, and I'm not going to talk about every element of it here, but let me just highlight some key parts of this initiative. In every enforcement matter, we need to get to the right answer, and I generally think we are already doing a pretty good job of that. But are we getting to that answer in the most efficient way

⁸ The White House, Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs (Jan. 30, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>.

⁹ The White House, Presidential Executive Order on Enforcing the Regulatory Reform Agenda (Feb. 24, 2017), <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>.

¹⁰ See FTC, Press Release, "Process Reform Initiatives are Already Underway at the Federal Trade Commission" (Apr. 17, 2017), <https://www.ftc.gov/news-events/press-releases/2017/04/process-reform-initiatives-are-already-underway-federal-trade>.

possible? Or are we imposing excessive costs on the private sector or wasting internal resources? We are now looking at this issue internally.

On the competition side, we have built a process and procedure well suited to tackle the most analytically complex large mergers and the most cutting edge conduct matters. We undertake a sophisticated and empirically rigorous analysis in those matters, which is inevitably resource-intensive for all sides. That big, complex case is, in many ways, the paradigm that our investigative and litigation tools are built around.

However, our actual competition docket is not composed exclusively of these sorts of cases. I promise, not every matter that comes across my desk is a highly contested, multi-billion dollar merger raising complex policy issues. Thankfully! Some competition cases are sufficiently straightforward that an elaborate inquiry may not be necessary to resolve the open questions. As an agency, it is up to us to thoughtfully weigh the burden on the parties and the need to appropriately ground our enforcement decisions. This can be a nuanced question where reasonable people may disagree in particular cases, but the important thing is to make sure the question is getting asked by us every time it should be.

Similar work is underway on the consumer protection side. The ABA's Antitrust Section's Presidential Transition Report recommended that the FTC examine its practices in issuing Civil Investigative Demands for documents and information during investigations.¹¹ The report noted that CIDs can impose substantial costs on companies and suggested that they should be more focused and judicious.¹² I take these concerns seriously. In fact, such concerns are part

¹¹ American Bar Association Section of Antitrust Law, "Presidential Transition Report: The State of Antitrust Enforcement," at 28-29 (Jan. 2017), http://www.americanbar.org/content/dam/aba/publications/antitrust_law/state_of_antitrust_enforcement.authcheckdam.pdf

¹² *Id.*

of the FTC's official mission statement. People typically only quote the part of the FTC's mission statement that talks about protecting consumers and encouraging competition. But the mission statement continues: we are to "accomplish[] this without unduly burdening legitimate business activity."¹³

To make sure that we are living up to our own mission statement, I've instructed the Bureau of Consumer Protection to form an internal working group on our use of CIDs. The working group will recommend steps to make the Bureau's use of CIDs more efficient and cost-effective. To ensure that we are fully identifying private sector concerns, the working group will be speaking with outside parties on how we can improve. Now, to be clear, we will not sacrifice our agency's ability to protect consumers effectively – that is and will remain a core focus of the Commission. Nevertheless, I am certain that we can better focus our CIDs without sacrificing the quality and effectiveness of our work.

On a similar note, I've also instructed our Bureaus of Consumer Protection and Economics to integrate our economists' expertise earlier in our consumer protection investigations to better inform agency decisions about the potential effects of enforcement actions. On the competition side, our economists are typically involved at the get go. This has not usually been the case on the consumer protection side. Partly this is because we have many more consumer protection investigations at any one time, and many of those matters are, economically speaking, extremely straightforward. But in some cases, involving economists earlier will better focus an investigation on those practices that are causing actual consumer harm. This will streamline our information requests to companies, condense the length and

¹³ FTC, About the FTC, <https://www.ftc.gov/about-ftc> (last visited May 3, 2017).

breadth of our investigations, and, if the investigation warrants enforcement action, ensure that we have put ourselves in the best position to litigate and protect consumers.

Finally, as many of you are aware, the FTC was founded way back in 1914. During that time, we have naturally accumulated some rust and barnacles. Although we are primarily an enforcement agency, we do have a few regulations in place. Some of our regulations were enacted decades ago in very different economic and technological environments. Therefore, I've directed FTC staff to review our regulations to see which may have outlived their usefulness and whether we can leverage new technologies to make the existing rules more efficient and effective. I will speak more about that in the near future.

Conclusion

To sum up, my first 100 days as Acting Chairman have been busy. We've kicked off an effort to spur job creation and expand economic liberty by encouraging occupational licensing reform. We've sought to address concerns about overreach and good governance by refocusing enforcement efforts where we can do the most good: areas of substantial consumer injury. And we've pursued regulatory reform through a full agency effort to streamline investigations, involve economists earlier, and prune unnecessary and outdated regulations. The FTC's staff are talented and hardworking. Our mission is important. Thus, we ought to provide the most effective and efficiently operating agency possible. We're off to a great start and we'll continue the work. The American people deserve it.

Thank you again for the opportunity to speak to you today, and I'd be happy to take questions now.