



United States of America
Federal Trade Commission

FTC HEARINGS

Opening Statement

Prepared Remarks of Chairman Robert Pitofsky*

October 12, 1995

*The views expressed are those of the Chairman and do not necessarily reflect the views of the FTC or any other Commissioner or staff.

One of the principal responsibilities of government regulators is to ensure that the laws they enforce are regularly reviewed, and occasionally adjusted, to take account of changing conditions in the world. Many recent challenges to the "overly intrusive" or "overly burdensome" regulatory state often should be addressed to obsolete regulation rather than regulation itself.

The responsibility to stay up to date is especially important in an area like antitrust and consumer protection enforcement:

1. The statutes that government regulators enforce are broad and sweeping, leaving much to prosecutorial discretion.
2. Many enforcement areas have become highly technical and specialized.
3. Patterns of trade are changing rapidly as a result of global competition and the increased importance and pace of technological change.
4. The courts have less time and less incentive to deal with the details of competition policy. [1]

The result is that enforcers have increasingly broad discretion to impose rules, often based on court decisions from the 1950s and 1960s, in a commercial world that has become a very different place.

The hearings that we initiate today are designed to address the responsibility of insuring that the competition and consumer protection policies we enforce continue to be relevant in the modern economy. These hearings are not designed as a wholesale review of those policies. On the contrary, we assume that the core aspects of these enforcement regimes - hostility to cartels and unreasonable exploitation of monopoly power, protection of consumers from overreaching and abuse through fraud and deception - have served the country well. Our premise is that the best way for American firms to succeed in global markets is to be required by law to compete vigorously and fairly in domestic markets. These hearings therefore will not address the question of the fundamental validity of antitrust and

consumer protection efforts, but rather whether there are adjustments that need to be made, in substantive law enforcement and in procedure, to take into account the vast changes that have occurred in commercial markets in the second half of the 20th Century.

It is particularly appropriate that these hearings be undertaken at the Federal Trade Commission. When established in 1914, its sponsors asserted that one purpose of this agency would be to gather for the use of Congress accurate and complete information about industry sectors and the nature of competition. [2] Some of the FTC's most constructive efforts over the years derive from this investigative function. A study of the radio broadcasting industry led to passage of the Radio Act of 1927 which later was converted to the Federal Communications Act of 1934. The Commission's investigation of the public utility industry influenced the Public Utility Holding Company Act of 1935. Its investigation of securities abuses in the electric and gas utility holding company field established a need for securities industry regulation and led to the Securities Act of 1933. Finally, the Commission hearings on merger activity after World War II were relied upon by Congress in enacting an amendment to Section 7 of the Clayton Act, imposing far more stringent limitations on mergers. [3]

In recent decades, the FTC's investigative and reporting function has not been as vigorously pursued. These hearings are designed to restore the tradition of linking law enforcement with a continuing review of economic conditions to ensure that the laws make sense in light of contemporary competitive conditions.

We do not initiate these hearings with pre-established conclusions in mind. Our goal is to solicit the opinions of a wide variety of witnesses from government, the business world and academia on the issues of global competition and innovation. We seek opinions on the following questions among many others.

1. To what extent (and how) does antitrust affect important business decisions?
2. Has antitrust or consumer protection enforcement impeded the ability of American firms to compete vigorously in global competition or to achieve success in innovation markets?
3. What is the appropriate way to measure market power when competition is worldwide or focuses upon innovation rather than price?
4. Has American antitrust enforcement paid sufficient attention to claims of efficiency?
5. Has American antitrust enforcement appropriately taken into account claims of "failing company" or "distressed industry" - especially when the claim is that firms were weakened as a result of import competition?
6. Are there forms of collaboration designed to improve firms' abilities to compete abroad or R&D innovation that are needlessly inhibited in competition enforcement?

7. Are consumers in need of different types or levels of government enforcement against fraud and deception where new marketing techniques are involved - especially marketing by telephone, over television, or on the Internet?

We look forward to an opportunity to discuss, to analyze and to learn. In the end, we intend to draft a report to the public and Congress on the status of United States' competition and consumer protection enforcement policies on the eve of the 21st Century.

FOOTNOTES:

[1] For example, the Supreme Court has taken no antitrust or consumer protection cases in the last two years and relatively few in the last 10 years. Lower courts are more active but not to the extent they were involved 20 and 30 years ago.

[2] 51 Cong. Rec. 14927, 14941.

[3] See Scherer, Sunlight and Sunset at the Federal Trade Commission, 42 Administrative Law L.Rev. 461, 468 (1990).