



United States of America
Federal Trade Commission

**Supplemental Materials of
Maureen K. Ohlhausen¹
Commissioner, Federal Trade Commission**

**Before the U.S. House of Representatives
Energy & Commerce Committee
Commerce, Manufacturing, and Trade Subcommittee**

**Concerning
“The FTC at 100: Where Do We Go from Here?”**

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I. Introduction

Chairman Terry, Ranking Member Schakowsky, and members of the Subcommittee, thank you for the opportunity to appear before you today. I am Maureen Ohlhausen. I have been a Commissioner at the FTC since April 4, 2012.

My statement will briefly address the FTC’s ongoing efforts to remain nimble in the face of technological change, evolving markets, and increasing globalization, as well as the agency’s important international activities.

II. FTC Efforts in the Technology and Other Evolving Areas

A. Our Many Information-Gathering Tools

I would like first to highlight some of our recent efforts to stay abreast of competition and consumer protection issues in high-tech and other rapidly evolving areas. Since 2010, we have had a Chief Technologist on staff to advise the Commission on evolving technology and policy

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

issues. Our first Chief Technologist was Ed Felton (of Princeton University), followed by Steve Bellovin (from Columbia University). Latanya Sweeney (from Harvard University) will serve in that role at the agency starting in January 2014.

Next, although the Commission is primarily a law enforcement agency, it has many non-enforcement tools that it can use to inform itself in quickly developing areas. For example, using our authority under Section 6(b) of the FTC Act,² we can obtain information under compulsory process from market participants and pursue a study of a particular competition or consumer protection issue. As we announced in September of this year, the FTC plans to perform such a study of the impact of patent assertion entity, or PAE, activity on competition and innovation.³ This study should provide us with a better understanding of the activity of PAEs and its various costs and benefits.

Short of conducting a 6(b) study, the Commission also may form an internal task force to educate itself on, for example, the competition or consumer protection implications raised by a particular policy proposal. The FTC did this in 2007 when former Chairman Majoras formed the Internet Access Task Force, which I had the honor of heading. The Task Force drew on resources across the agency to issue a set of recommendations regarding network neutrality proposals that were being debated at the time and which continue to be debated today.⁴

Finally, one of the FTC's most effective means of obtaining the information we need to pursue our mission is holding public workshops. The FTC has held numerous workshops and other outreach events on emerging technologies and related policy issues. These workshops are

² 15 U.S.C. § 46(b).

³ See Press Release, Fed. Trade Comm'n, FTC Seeks to Examine Patent Assertion Entities and Their Impact on Innovation, Competition (Sept. 27, 2013), available at <http://www.ftc.gov/opa/2013/09/paestudy.shtm>.

⁴ See Fed. Trade Comm'n Staff, *Broadband Connectivity Competition Policy* (June 2007), available at <http://www.ftc.gov/reports/broadband/v070000report.pdf>.

instrumental to our ability to stay ahead of the curve on issues of importance to consumers. For example, the FTC held a workshop on the Internet of Things on November 19 to get a better understanding of how to achieve the benefits of this next phase of Internet development while reducing risks to consumers' privacy.⁵

For those of you not familiar with the Internet of Things, it involves the connecting of devices and other physical objects—from cars to appliances to medical devices—to the Internet through wired and wireless networks, without the active role of a live person, so that they can collect and communicate information on their own and, in many instances, take action based on the information they send and receive. This technology has the potential to revolutionize many fields, including manufacturing and logistics, medicine, transportation, and energy, just to name a few. The ability to collect large amounts of information and, in some cases, to act on that information, however, also raises important consumer privacy and data security issues, which we explored at last month's workshop.

B. FTC Efforts in the Mobile Space

Perhaps the most disruptive new technology of the past decade has been the mobile phone, and the Commission is devoting significant resources to addressing the mobile phenomenon. The FTC has a Mobile Technology Unit, which conducts research, follows the various platforms, app stores, and applications available to consumers, trains FTC staff on mobile technology issues, and develops law enforcement cases involving mobile technologies. Through this Unit, the Commission is ensuring that it has the necessary technical expertise, understanding of the marketplace, and tools to identify, investigate, and, if necessary, prosecute deceptive and unfair practices in the mobile area.

⁵ The workshop agenda, public comments filed in connection with the workshop, and other related materials are available at <http://www.ftc.gov/bcp/workshops/internet-of-things/>.

The FTC also has held workshops on various consumer protection issues implicated in the mobile space, including mobile privacy disclosures⁶ and mobile cramming.⁷ Last June, the FTC hosted a public forum entitled *Mobile Security: Potential Threats and Solutions*, which brought together researchers, technologists, and industry participants from across the mobile ecosystem to discuss a variety of mobile security issues, including the threat posed by the rise of mobile malware.⁸ In 2012, the Commission issued two studies of the privacy disclosures and practices for children’s mobile apps.⁹ We also have conducted research and developed extensive consumer and business education materials in the mobile space.

C. Repeal of the Common Carrier Exemption

Before concluding my comments on the FTC’s efforts in the high-tech space, I would like briefly to discuss an area in which expanding our existing statutory authority would be in the public interest. Although the FTC has nearly a century of experience protecting consumers across many industries, the exemption from our jurisdiction for communications common carriers frustrates effective consumer protection with respect to a wide variety of activities—including privacy, data security, and billing practices—in the increasingly important telecommunications industry. With the convergence of telecom, broadband, and other technologies, I urge Congress seriously to consider removing this antiquated limitation on our jurisdiction and putting these competing technologies on an equal footing. The Commission has

⁶ Materials related to the mobile privacy disclosures workshop are available at <http://www.ftc.gov/bcp/workshops/inshort/index.shtml>.

⁷ Materials related to the mobile cramming workshop are available at <http://www.ftc.gov/bcp/workshops/mobilecramming/>.

⁸ Materials related to the mobile security workshop are available at <http://www.ftc.gov/bcp/workshops/mobile-security/>.

⁹ See Fed. Trade Comm’n Staff, *Mobile Apps for Kids: Current Privacy Disclosures Are Disappointing* (Feb. 2012), available at http://www.ftc.gov/os/2012/02/120216mobile_apps_kids.pdf; Fed. Trade Comm’n Staff, *Mobile Apps for Kids: Disclosures Still Not Making the Grade* (Dec. 2012), available at <http://www.ftc.gov/os/2012/12/121210mobilekidsappreport.pdf>.

testified in favor of repealing the communications common carrier exemption several times in the past,¹⁰ and I would like to take this opportunity to express my support for such repeal.

III. The FTC's Important International Activities

Another key change for consumers and competition is our increasingly global economy. Thus, the FTC's international efforts are critical to the agency's competition and consumer protection missions. The FTC builds strong bilateral relationships with foreign counterparts to further cooperation on enforcement matters, takes a lead role in multilateral fora to promote convergence toward sound competition and consumer protection policies, and provides technical assistance to help foreign agencies apply their laws to support free markets.¹¹

A. Bilateral Efforts

The FTC works bilaterally with a large and growing number of jurisdictions on case cooperation and assistance. Inter-agency cooperation is critical given the increasingly global scope of transactions subject to premerger review (on the competition side) and fraudulent conduct (on the consumer protection side). In the short time that I have here today, I would like to highlight two important areas of focus in our bilateral efforts: our use of the U.S. SAFE WEB Act¹² and our interactions with the Chinese competition agencies.

¹⁰ See, e.g., Prepared Statement of the Federal Trade Commission on Consumer Privacy before the Committee on Commerce, Science, and Transportation, U.S. Senate, at 24-26 (July 27, 2010), *available at* <http://www.ftc.gov/os/testimony/100727consumerprivacy.pdf>; Prepared Statement of the Federal Trade Commission on Prepaid Calling Cards before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, U.S. House of Representatives, at 9-11 (Dec. 3, 2009), *available at* <http://www.ftc.gov/os/2009/12/P074406prepaidcc.pdf>; Prepared Statement of the Federal Trade Commission on FTC Jurisdiction over Broadband Internet Access Services before the Committee on the Judiciary, U.S. Senate, at 9-11 (June 14, 2006), *available at* <http://www.ftc.gov/os/2006/06/P052103CommissionTestimonyReBroadbandInternetAccessServices06142006Senate.pdf>.

¹¹ In fiscal 2013, the FTC performed 37 foreign technical assistance missions in 21 countries. In addition, through its innovative International Fellows and SAFE WEB Interns program, the FTC hosted 10 consumer protection and competition officials from 9 countries.

¹² Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers beyond Borders Act, Pub. L. No. 109-455, 120 Stat. 3372 (2006), *amended by* Pub. L. No. 112-203, 126 Stat. 1484 (2012) (extending sunset until 2020).

Recognizing the continuing challenge of cross-border fraud and the FTC's ongoing efforts to combat it, Congress reauthorized the U.S. SAFE WEB Act in November 2012. The Act, which enables the agency both to share information with foreign law enforcement agencies and to obtain information on their behalf, is vital to strengthening the culture of mutual assistance that enables law enforcers to achieve greater results working together than they could alone. One example of this cooperation is the six cases the FTC filed last year against mostly foreign-based operators of a massive tech support scam. The FTC used its U.S. SAFE WEB Act tools to work with law enforcers in Australia, Canada, and the United Kingdom, among other countries who provided invaluable assistance to the FTC.¹³ I applaud Congress's decision to reauthorize this important law enforcement tool.

On the competition side, the FTC has an increasingly important bilateral relationship with China and its three competition agencies, MOFCOM, SAIC, and NDRC.¹⁴ In July 2011, the FTC and the Department of Justice (DOJ) signed a memorandum of understanding (MOU) with the three Chinese agencies, and since then, we have met on multiple occasions to discuss enforcement and policy issues. Even before the signing of the MOU, the FTC, along with the DOJ Antitrust Division, had devoted considerable resources to working with Chinese officials on developing the China Anti-Monopoly Law (AML), which went into effect in 2008.¹⁵ In addition to many informal exchanges, the two U.S. agencies submitted numerous written comments on draft implementing rules and guidelines. The Chinese government welcomed our views on the AML as it proceeded through several rounds of drafting. More recently, the FTC had the

¹³ See Press Release, Fed. Trade Comm'n, FTC Halts Massive Tech Support Scams (Oct. 3, 2012), *available at* <http://ftc.gov/opa/2012/10/pecon.shtm>.

¹⁴ The three Chinese competition agencies include the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC), and the State Administration for Industry and Commerce (SAIC).

¹⁵ For a discussion of the five-year anniversary of the AML, see Maureen K. Ohlhausen, *Illuminating the Story of China's Anti-monopoly Law*, ANTITRUST SOURCE, Oct. 2013, *available at* <http://www.ftc.gov/speeches/ohlhausen/1310amlstory.pdf>.

opportunity, in the hard disk drive matter,¹⁶ to cooperate with MOFCOM in a merger investigation. I look forward to building a strong, cooperative relationship with China and its competition agencies as they continue to develop and implement the AML. Our efforts to convince the Chinese agencies to pursue sound competition policies will ultimately benefit U.S. businesses and consumers.

B. Multilateral Efforts

One of the top priorities of the FTC's international program is its work with multilateral fora, including in particular the International Competition Network (ICN), in developing best practices for the world's competition agencies. Started by the FTC, DOJ, and fourteen other agencies in 2001, the ICN now includes 127 competition authorities. The ICN has achieved consensus on recommended practices in several areas, including merger review procedures, substantive merger analysis, and the criteria for assessing abuse of dominance. Currently, the FTC serves on the ICN's Steering Group and co-chairs the ICN's Agency Effectiveness Working Group. We are co-leading with the European Commission a new project on "investigative process," which focuses on the ways in which sound investigative practices and procedures can improve agency decision-making and protect procedural fairness. We are also leading the ICN's "Curriculum Project," in which we and others around the world are creating online video training modules for use either by personnel at relatively new agencies or for new staff at all competition agencies.

Through the ICN and other international fora, such as the OECD Competition Committee and the Asia-Pacific Economic Cooperation forum, the FTC – often in conjunction with the DOJ Antitrust Division – has played a leading role in promoting convergence toward substantive

¹⁶ See Fed. Trade Comm'n, Statement of the Federal Trade Commission Concerning Western Digital Corporation/Viviti Technologies Ltd. and Seagate Technology LLC/Hard Disk Drive Assets of Samsung Electronics Co. Ltd, at 2 (Mar. 5, 2012), available at <http://www.ftc.gov/os/caselist/1110122/120305westerndigitalstmt.pdf>.

competition norms, procedural standards, and operational techniques. Our goal is to convince other competition authorities to embrace sound competition policies, which are grounded in economic analysis, respectful of intellectual property rights, and fair and transparent to affected persons and businesses. From the U.S. perspective, sound competition analysis, consistent outcomes, and convergence toward best practices benefits U.S. consumers and ensures that U.S. businesses receive fair and equal treatment from competition regimes around the world. Our efforts both on a multilateral and bilateral basis are bearing fruit. We are harmonizing the thinking of enforcers around well-established substantive and procedural norms and are working together with dozens of agencies to handle specific cases in tandem. This valuable work improves the predictability, transparency, and economic efficiency of antitrust enforcement and should remain a top priority for the agency.

IV. Conclusion

To conclude, I look forward to working with my colleagues on the Commission in addressing the many interesting opportunities and challenges our agency will face as we enter our second century.

I ask that this statement be included in the record. I look forward to answering any questions you may have.