

# **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**

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### **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, A

## **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

### **PANEL 3: APPLICATION OF SECTION 5 TO BUSINESS PRACTICES**

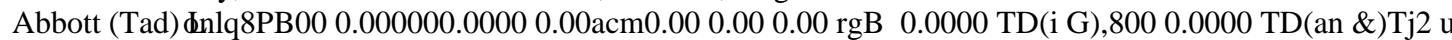
1:30 - 3:00

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) 

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?

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