

“Acing Antitrust”
Remarks of FTC Chairman Jon Leibowitz
As Prepared for Delivery
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Thank you, Dean Treanor for that kind introduction, and thanks to everyone at the Georgetown Law Center for inviting me back to this event. And thanks also to the Law Center for allowing us to borrow two of your wonderful professors, Howard Shelanski who was a Deputy Director in the Bureau of Economics, and David Vladeck who is the Director of the Bureau of Consumer Protection.

A year ago on this stage, I delivered a report card that evaluated how well the Federal Trade Commission measured up to its mission of protecting consumers and promoting competition, and I invited the audience to share their thoughts about the FTC and our performance.

I started watching tennis in what I think of as the beginning of its modern era, the 1970s and 80s, when the first wave of truly professional players were pushed aside by stronger, younger competitors who played with innovative new strategies and an undisguised ferocity. For example, the comparatively genteel play of Rod Laver and Ken Rosewall gave way to the tantrums of John McEnroe, the grunts of Jimmy Connors, and the blistering two-handed backhand of Bjorn Borg.

Each new grand slam champion changed, and today still changes the game with a new stroke, new training regime, new serve speed. But what it takes to win at tennis stays essentially the same: the speed to get to the ball and the technical skill to make the shot.

6 J G (6 % O n a n d T u s d a y) can be seen in the same light. The legal and factual questions we face continue to change and become more complex in industries that move faster than ever. And we need to resolve these questions on time with an ever tightening set of resources. But we do believe, up to the task. As a bipartisan consensus-driven agency, neither a creature of Congress nor of any administration, our agenda is shaped by the issues we confront as well as the continuing dialog between the staff and the Commissioners. While each Chairman changes the game in subtle ways, we all learn from our colleagues and build on those who served before us.

And this past year, we have improved the fundamentals of the game. We are keeping our eye on the ball, focusing on the facts. We have developed technical expertise sometimes equal to or greater than those we face across the net. And we speed up our serve resolving litigation and investigations in a timely manner.

action cases are ~~re~~ about increasing choices and ~~ke~~eping costs down for real people with real problems.

As we noted in a statement concerning the merger¹⁰ during the investigation Apple acquired a large mobile ad network and emerged as a potentially strong mobile advertising network competitor. We also thought, given the developments in mobile platforms that competition between platforms was likely to become the dominant mechanism for competition generally in the mobile space.

Much has changed in the markets in that case, from the growth of Android and the possible entrance of Google as a manufacturer of Android devices in its proposed acquisition of Motorola Mobility. And of course the rapid advances of related platforms, principally the iPad is important as well.

So we will continue to look hard at this market to ensure that consumers are served and companies continue to remain free to develop new products and services.

III. Resolving Difficult Legal and Factual Issues In Time to Help Consumers

Anyone who has had more than a couple of tennis lessons or played on a team has heard the coach say, "The same principle applies: when there is anticompetitive conduct, all the history, bipartisanship, study, and technical expertise in the world is irrelevant if we cannot resolve cases before an anticompetitive industry or practice becomes too entrenched to dislodge."

That brings us to today and our current investigation of Google, which that company has acknowledged publicly. For those of you in the audience from the press are going to talk, not about where we are in the investigation or what we are finding out, but instead about the predilection of some of you to call this match before the end of the first set.

For example, in an otherwise thoughtful editorial by Bloomberg editorial board, it is assumed, it seems, that any Commission action would be comparable to the Department of Justice's long slog of an antitrust investigation of IBM.

Of course, the press has its own job to do, and, to the extent that some journalists predict that we are going to do a lousy job protecting consumers, it is up to us to prove them wrong. But there is an underlying notion in pieces like the Bloomberg editorial that is challenging the assumption that antitrust is too slow to have any role in protecting consumers in fast-moving, high technology industries.

It is true that older models of antitrust enforcement, which allowed for monopolies to exist for many years during investigation and trials. By the time a conclusion was reached in these cases, if there was a conclusion, the only remedy left was sweeping and structural or non-existent break up the company or drop the entire case and

¹⁰ FTC, Statement of the Commission Concerning Google/AdMob, FTC File No. 101-0031(2010) available at <http://www.ftc.gov/os/closings/100521googleadmobstmt.pdf>

move on. Often long before that decision the competitors had given up. The result? No one was helped. Not business and not American consumers.

At the Commission, we need to balance our mission to protect consumers with a need, on the part of both firms and consumers, to do it quickly. Consumers are entitled to competitive markets but they also deserve timely resolution of matters before the Commission. So do businesses.

The best, recent example of the need to move quickly in the high-tech area is our recent *Intel* case.¹¹ Our investigation of Intel started out very slowly and went on for quite some time, but once the Commission issued process and then a complaint, the litigation proceeded with alacrity and ended with a consent less than a year later.

We think the remedies in the consent do much to protect consumers while allowing Intel to innovate, develop, and sell new products. And I am proud of the relationship that we have been able to maintain with Intel since then. Still, we might have gained more for consumers

IV. Conclusion

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b e e n c o n d u c t i n g i n t e n s i v e d i a l o g u e s w i t h t h e m o n u n i l a t e r a l c o n d u c t p o l i c y a n d m e r g e r
r e v i e w p r a c t i c e s . A n d b y t h e w a y : d e s p i t e r u m o r s V Q V J G E Q P V T C T [Y G O T G I G V V H
w e l l w i t h o u r s i s t e r a g e n c y d o w n t h e s t r e e t .

Like my tennis heroes, the FTC has developed its antitrust game over time, working on consistency and bipartisanship.