



The Federal Trade Commission's International Antitrust Program

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October 2019



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The Federal Trade Commission plays a lead role in fostering international cooperation and convergence toward sound antitrust policy and procedure. The FTC has long placed a high priority on its international antitrust program to ensure the fulfillment of the Commission's competition mission in a global economy. The Commission's international antitrust program (i) serves as an expert resource to support the FTC's competition enforcement program by assisting with international aspects of investigations and litigation and guiding broader U.S. policy and engagement in international antitrust issues; (ii) builds cooperative relations with foreign competition agencies and (iii) promotes convergence of international antitrust policies toward best practice. This paper presents the background and organization of the FTC's international antitrust program and describes our main activities to further the program's goals internally, through bilateral relations, and in multilateral fora.¹

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II. An Internal and External Resource on International Antitrust

The Office of International Affairs supports the Bureau of Competition on international issues that arise in investigations and litigation. The Office works with staff on issues such as personal and subject matter jurisdiction, service of process, and obtaining evidence abroad, and assists case teams in understanding foreign laws and procedures and how they intersect with FTC and other laws. (e)4 3)2 (nd (i)3)2 (ng)re f 1he (4.)Tjg)re f 1 (i)3)2 (m)2

Recommendation of the Organization for Economic Cooperation and Development (“OECD”) on international competition cooperations also an important informal cooperation instrument that covers the FTC’s relations with OECD members as well as some nonmember jurisdictions. The OECD Recommendation, bilateral agreements and related cooperation arrangements help promote practical enforcement cooperation through informal communications, underscore the importance of investigative assistance, including through the sharing of nonconfidential information, and provide for confidentiality safeguards. While the early agreements were motivated primarily by a desire to reduce and manage conflicts that

Canada, Japan, Korea, and Mexico on issues including intellectual property and conduct by dominant firms

The FTC has placed a high priority on working with the Chinese and Indian competition agencies. We share experience and learning with officials who are involved in developing the law, regulations, and enforcement institutions and practices, with the aim of encouraging legal frameworks and practices based on sound competition principles and international good practice.¹⁴ In 2019, the FTC engaged with counterparts in China on procedural fairness, enforcement of monopolization laws, and the antitrust treatment of the exercise of intellectual property rights. We also work through the United States government's interagency processes to ensure that competition issues that arise in connection with China's Anti-Monopoly Law that implicate broader U.S. policy interests are addressed in a coordinated and effective manner.¹⁵

IV. Activities in Multilateral Competition Fora

With competition laws and agencies in approximately 130 jurisdictions, it is particularly important that agencies work to ensure that the global system of competition law and policy functions coherently. The U.S. agencies have played a lead role in promoting convergence towards best practices in competition policy and enforcement. Given differences in histories, cultures, legal systems, and levels of economic development, it is inevitable that differences in the wording and application of competition laws and policies will persist. We believe, however, that learning from the experience of others in handling similar issues, including those involving institutional arrangements, procedures, and the substance of antitrust enforcement can promote convergence toward better practices

Several multilateral organizations facilitate dialogue and convergence toward sound competition policy and enforcement, particularly the International Competition Network (ICN) and the OECD, and also the United Nations Conference on Trade and Development (UNCTAD), and regional organizations such as the Asia-Pacific Economic Cooperation (APEC). The FTC helped found the Inter-American Competition Alliance, which fosters enforcement cooperation in the Americas through regular conference calls on matters of mutual interest.

ICN. In October 2001, the FTC and 14 other antitrust agencies founded the ICN to provide a venue for competition agencies worldwide to work on competition issues of mutual interest. The ICN is unique in that it: has a broad membership – 139 agencies from 126 jurisdictions; i.e., almost all of the world's competition agencies works exclusively on competition issues; focuses on discrete projects aimed at procedural and substantive convergence through the development of consensual, non-binding recommendations and reports and provides a significant role for governmental advisors from the business, legal, economic, consumer, and academic communities, as well as experts from other international organizations. Unlike in most international organizations, competition agency members organize and conduct the work directly rather than through a permanent Secretariat.

The ICN is organized into working groups composed of agencies and non-governmental advisors. The current substantive working groups address agency effectiveness, cartels, competition advocacy, mergers, and unilateral conduct. The FTC co-chaired the ICN's Merger Working Group (2016-2019) and previously co-chaired the ICN's Agency Effectiveness Working Group (2014-2016), Unilateral Conduct Working Group (2006-2011), and Merger Notification and Procedures Subgroup (2001-2006). The FTC continues to participate in these and other ICN working groups, and is an active member of the ICN's Steering Group, w97i-Tno8hes[0 Td ()Tj [(t)-2 (he)4 ()-10 (I23 (C)-110 (t1 ([--2 (s)-1

framework with over 70 adherents to date is intended to advance basic procedural fairness principles.²⁰

The FTC also co-chairs the ICN's Advocacy and Implementation Network, which leads the ICN's efforts to promote implementation of ICN work product, especially Recommended Practices such as on the assessment of dominance/substantial market power and on the application of unilateral conduct rules.

Division – for example, recently on the antitrust analysis of intellectual property licensing, vertical mergers in the technology, media and telecom sectors, quality considerations in the zero-price economy, the treatment of legally privileged information in competition proceedings, and the standard of review by courts in competition cases. It also conducted multi-

VI. Technical Assistance

The FTC is a leading provider of technical assistance to countries establishing new competition regimes and to young agencies²⁸

As part of the FTC's series of hearings on Competition and Consumer Protection in the 21st Century,³⁰ OIA organized two days of hearings comprised of eight panels featuring 44 speakers from 17 jurisdictions on "The FTC's Role in a Changing World."³¹ The panels explored the FTC's international role in light of globalization, technological change, and the increasing number of competition, consumer protection, and privacy laws and enforcement around the world. The competition-related panels focused on building enforcement cooperation for the 21st century, international engagement and emerging technologies, implications of different legal traditions and regimes for international cooperation, promoting sound policies for the next decade, and the FTC's role in a changing world. Panelists and commentators addressed: the effectiveness of the FTC's enforcement cooperation tools and approaches in light of new challenges; the effectiveness of the FTC's approaches to promoting international policy coordination and best practice development; and strategies for international enforcement and policy engagement in the global marketplace. The testimony and discussions at the hearing supported staff recommendations that the FTC

- x Pursue additional mechanisms for enhanced antitrust information sharing and investigative assistance and work to overcome foreign barriers to FTC enforcement;
- x Continue to exercise international leadership, including in international policy organizations and enforcement networks, and leverage expertise and cross disciplinary synergies to address emerging issues;
- x Expand its initiatives to build strong relations with counterparts, including through