

**ABA Section of Antitrust Law May 2018 Interview
of the Federal Trade Commissions' General Counsel Alden Abbott**

1. Can you tell us something about your background?

I'm delighted to be back at the Commission for my third stint, having previously served as a Deputy Director in the Office of International Affairs from 2009-2012 and an Assistant then Associate Director in the Bureau of Competition from 2001-2008. I've served in a variety of senior government positions, including Acting General Counsel for the Department of Commerce, Senior Counsel in the Office of Legal Counsel, Department of Justice (DOJ), and Special Assistant to the Assistant Attorney General of the DOJ's Antitrust Division.

Most recently, I was the Rumpel Senior Legal Fellow and Deputy Director of the Meese Center for Legal and Judicial Studies at The Heritage Foundation. I have also served as the ABA Section of Antitrust Law's International Editor of the *Antitrust Law Journal* from 2011-2014 (after having been an associate editor of the *Antitrust Law Journal* for 10 years) and was a non-governmental advisor to the International Competition Network (ICN).

2. What are your primarily responsibilities as General Counsel for the Commission and what are your initial priorities or agenda?

Pursuant to 16 CFR Section 0.11, the General Counsel is the Commission's chief legal adviser who renders necessary legal services to the Commission; represents the Commission in federal and state courts; advises the Commission and other agency officials

I should also note that OGC in recent years has played a pivotal role in working with the Commissioners to help draft their opinions in Part III matters, which helps ensure timeliness and consistency in opinions subject to tight deadlines under Commission rules. Obviously, OGC's drafting efforts reflect the views of the Commission, not the personal predilections of OGC attorneys.

As to my agenda, I don't have a personal one; rather, the policy agenda is set by the Chairman,
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Wright, current FTC Bureau of Economics Director Bruce Kobayashi, and former FTC Counsel for IP and International Antitrust Koren Wong-Ervin have written extensively on these issues, emphasizing the availability of non-antitrust remedies to SEP controversies.¹ On the other side of the debate, stressing the benefits of antitrust remedies, is a large body of literature from antitrust experts such as former FTC Chairman Tim Muris and former DOJ Chief Economist Carl Shapiro.² I commend to you the study of this legal and economic scholarship.

- 5. As GC you sign the FTC's briefs in the Supreme Court. (You signed the brief in the Apple v. Pepper case on Illinois Brick issues that the SG filed on May 8). Can you tell us about the appellate advocacy process at the FTC? What is the FTC's role versus the SG's? Should parties talk to you and not just the SG when the Court calls for the views of the United States? Itates a[t5 (t)-1 (a)-4 (t)-1 (es(?)4 4 (l)-6 -1 (h)4 (n M**

In other words, there's no hard and fast rule of which I am aware. You should expect, however, that staff from both agencies will find it fruitful to exchange notes on what they have heard.

As to issues of particular interest, the scope of the state action and Noerr-Pennington petitioning exemptions remains a hot topic—see, for our example, our *Apple v. Pepper* brief as to Noerr. Cases that address novel or unsettled antitrust doctrinal questions are also grist for our mill.

6. As GC you are responsible for the FTC's Rules of Practice. Are there any thoughts about changes relating to adjudicative proceedings with the new team at the FTC?

I don't have specific thoughts on the adjudicative rules, or on the rules in general, but I will consult on this topic with the new leadership of the Bureaus, and, of course, with the Commission. If you have specific suggestions or ideas, please let me know, my door is open.

7. The FTC has long been a leader in international antitrust, particularly on issues such as due process. What are your thoughts on the state of T4 1 Tf ()Tmce3nr5d (t)7 (ha)4 (t)

been said, we recognize that promoting strong due process protections is vital to strengthening the rule of law and ensuring fair and effective competition enforcement regimes, and that this is a long-term, continuing project. We welcome the bar's input on the topic in general and on specific problems that practitioners become aware of.

8. Extraterritorial remedies and comity are important international antitrust topics in today's global economy. Do you have specific thoughts on these questions?

I agree and applaud the Commission's 2017 paper to the OECD (written in conjunction with DOJ and on behalf of the USG as a whole).⁴ In short, that paper sets forth the approach taken in the joint DOJ-FTC *International Guidelines*, which were updated in 2017.⁵ With respect to matters involving I0acec.17 T to-3 (n 2017PT1C /P <</[tpl)-1.17 T-1.15tieu(r)5 .17 T-1int Ds