

## UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION WASHINGTON, DC 20580

## Prepared Remarks of Chairman Joseph Simons<sup>1</sup> Georgetown Law Global Antitrust Enforcement Symposium September 25, 2018

Good afternoon. It is a pleasure to be back at Georgetown and to participate in such a wonderful program today.

Competition and Consumer Protection in the 21<sup>st</sup> Century. Georgetown did a great job with those proceedings, and I would like to thank Howard Shelanski and Steve Salop again for helping to make them a success.

Naturally, the antitrust bar and antitrust stakeholders, more generally are interested in how a new Chairman of the FTC thinks about antitrust issues. Today, I will try to put some color on that. In my case, past is likely to be prologue.

Many of us are a product of our upbringing. That is arguably true of my own upbringing as it relates to my legal career. I was initially trained by four world class antitrusters, roughly in order from left to right Bob Pitofsky, Steve Salop, Tom Krattenmaker, and Warren Schwartz all faculty members at the Georgetown University Law Center. It was an incredible pool of antitrust talent, all in one place. Most law schools offer one or maybe two antitrust related courses. I took fifteen credits of antitrust courses while at the Law Center. In addition, these four mentors represented a wide span of the antitrust political spectrum, providing me with

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<sup>&</sup>lt;sup>1</sup> These remarks reflect my own views. They do not necessarily reflect the views of the Commission or any other individual Commissioner.

an education covering a broad range of antitrust viewpoints. And they had all worked at the FTC at one time or another, in one capacity or another, so they had government experience as well.<sup>2</sup>

I was in law school from 1980 to 1983. Of course, one of the most significant developments in antitrust methodology occurred during this time: the introduction of the 1982 DOJ Merger Guidelines.<sup>3</sup> Professors Pitofsky and Krattenmaker put together a brilliant course on the Guidelines, which is where I got my first real exposure to merger analysis. My merger education was then augmented with some extracurricular work with Professor Salop, writing a

Professor Salop was also working on his (RRC) article with Dave Scheffman at this time, and Steve taught a course, along with Professor Schwartz, that included this new theory. For those of you who did not have the pleasure of knowing Warren, he trained at Chicago and covered wonderfully the Chicago School side of the spectrum. So he and Steve were an amazing combination.

The help from my mentors did not stop at the classroom door. Professor Krattenmaker agreed to co-author a book on antitrust and mergers with some lawyers from a very well respected law firm at the time, and he brought me along as a part-time law clerk.

One day, while I was still a law clerk, someone gave a presentation at lunch about a new matter and asked for suggestions on how to handle it. Having j the basic issue was RRC, and I encouraged the firm to hire both Steve and Tom as consultants, which it did. Ultimately, this work led Steve and Tom to collaborate on what became their

https://www.justice.gov/archives/atr/1982-

merger-guidelines.

<sup>&</sup>lt;sup>2</sup> My initial interest in antitrust was triggered during college at Cornell. I was an economics major and took an industrial organization class taught by former DOJ economist Rob Masson, with a guest appearance by George Hay (a former chief economist at the Antitrust Division).

famous RRC article in the Yale Law Review.<sup>4</sup> So needless to say, I have been a big believer in

agency in a more bipartisan way, keeps staff morale high, and sustains greater credibility with all of stakeholders.

The last time I was at the FTC, vigorous enforcement was our mantra. We brought more non-merger enforcement actions in 2002-2003 than during any time 20 years before or since, and generally a lot more. And with respect to mergers, we were active there as well, especially if you take into account the relatively low level of merger activity in the economy at the time. My intention is to try to follow a similar path this time around.

When I was sworn in on May 1st, the Bureau of Competition had fourteen active cases in

More is needed. Specifically, the breach, fraud or deception must also contribute to the acquisition or maintenance of monopoly power in a prop

Back in the 1950s and 1960s, the economic literature (including substantial empirical work) supported the view that mergers produced anticompetitive results at moderate levels of concentration, and perhaps even relatively low levels. The framework of the DOJ 1968 Merger Guidelines was consistent with this literature. But just about when the Guidelines were issued, that support dissipated as the earlier economic work was discredited.

The next major development was issuance of the 1982 DOJ Merger Guidelines. These Guidelines were revolutionary in their introduction of a rigorous way of doing market definition tied to a well-articulated goal of merger enforcement: to prohibit mergers that create or enhance market power. The 1982 Guidelines switched from using CR4s and market shares (as had been the case in the 1968 Guidelines) to using HHIs, but at least some reports suggest that the HHI thresholds were selected by trying to replicate the CR4s and market share thresholds of the 1968 Guidelines. In other words, the thresholds dishan other other words, the dishaa-89[r1 (shar)5 (3)]

New empirical work calls these changes into question. Merger retrospectives by FTC economists

our Competition and Consumer Protection Hearings an opportunity to review and refresh our thinking on these issues.