

**Core Competition Agency Principles: Lessons Learned at the FTC  
Keynote Address by FTC Chairwoman Edith Ramirez  
Antitrust in Asia Conference  
ABA Section of Antitrust Law and Expert Advisory Committee of the  
Anti-Monopoly Commission of the State Council  
Beijing, China  
May 22, 2014**

Fei chang gao xing neng gou zai ci gen da jia jian mian. I would like to thank the ABA's Antitrust Section and the Expert Advisory Committee of the State Council Anti-Monopoly Commission once again for inviting me to be here. I appreciate the opportunity to share my thoughts with you.

This year my agency, the U.S. Federal Trade Commission, is celebrating its centennial. While our goals over the past century have remained largely unchanged – ensuring the best results for U.S. consumers by promoting competition – the FTC has engaged in considerable self-assessment, resulting in many improvements to our agency process along the way. As a result, we have learned something about what it takes to have effective antitrust enforcement. This morning I want to share my views on some of the features that we at the FTC have come to recognize are key to an effective competition enforcement regime.

First, I will explain how fair and transparent investigative procedures provide substantial benefits to agencies, including allowing them to reach duly informed decisions. Next, I will discuss how consumers are best served when competition

## **I. The Importance of Ensuring Fair and Transparent Procedures**

Let me begin with the issue of procedural fairness. Much of the discussion of international competition issues is devoted to the substantive competition analysis of business

facilitating direct and meaningful engagement between the parties and the investigative staff and decision-makers; and

ensuring internal checks and balances on decision-making within the agency.

All of these features are fundamental to competition investigations in the United States. Our rules allow for both local and international counsel to participate in meetings with and before the agencies. This enables us to hear the parties' side of the story from the legal representatives that have the greatest familiarity with the matter under investigation.

Additionally, we notify parties of the legal and factual bases of investigations through frequent written and oral communications. Parties are then encouraged to engage in a continuing dialogue with the attorneys and economists responsible for investigating the matter and to submit written materials containing their view of the facts, legal and economic evidence, defenses, and case theories. The dialogue between investigative staff and parties continues throughout the course of an investigation.

Agency staff and parties also meet frequently in person, affording each side an opportunity to discuss face-to-face the various factual and legal issues raised by the investigation. Then, as an investigation moves close to a decision about whether to bring an enforcement action, meetings are also available, upon request, with senior managers, including the Assistant Attorney General at the Justice Department and the Commissioners at the FTC.

Finally, at the FTC, when cases are pursued internally through the agency's administrative litigation system, often following an injunction granted by a federal district court, detailed procedures ensure the separation of the investigative and adjudicatory aspects of cases. These procedures provide internal checks and balances on decision-making and ensure that the Commission fully considers the parties' arguments before rendering a decision. Moreover, final

Commission decisions following an administrative trial can be appealed to a federal court of appeals.

parties' counterarguments when assessing whether to move forward with a case so that the agency fully understands the obstacles it will face in order to prevail. I have experienced how listening to parties enables me to make better, more informed decisions, and this applies equally to FTC staff and managers who routinely engage with parties throughout their investigations.

Third, regardless of the outcome of an investigation, concerns about process create the impression that substantive results are flawed, undermining the perceived legitimacy of the case. fi toTw 12 -0 C

confidence in the agency's decision-making and also to facilitate the agency's efficiency and quality control.

With respect to resources, it is critical, particularly for younger agencies, to understand that transparency, as I previously discussed, can result in increased efficiencies by allowing the agency and the parties to focus resources on key issues and by promoting an environment where parties are willing to provide information to the agency. In addition to short-term efficiencies, there are also long-term efficiencies from greater transparency, including increased compliance and deterrence. Transparent and predictable decisions provide parties with guidance, facilitating their ability to determine in advance whether their actual or proposed conduct may violate the antitrust laws.

Finally, confidentiality protections need not pose an impediment to fair and transparent procedures. In the United States, we strictly protect agency and third party confidentiality while still providing the parties with the necessary information to understand the conduct under investigation and the basis for our concerns. A number of measures can be employed to balance transparency with confidentiality. These include providing access to confidential information subject to a protective order; providing meaningful, detailed summaries of the confidential information; and disclosing confidential information only to a limited set of individuals, such as outside counsel subject to an agreement not to share the information with individuals within the company where it might raise competitive concerns.

## **II. The Importance of Focusing Competition Enforcement on Competition Factors**

Another core feature that we have learned leads to sound competition enforcement is a focus on competition factors alone, rather than on consideration of other economic and social policies.



employment levels, for instance, ignores the jobs that may be created as resources are re-deployed and efficiencies result from the transaction.

Second, public interest issues typically involve equity concerns that may undermine consumer welfare considerations. For example, merger approval conditioned on the merged entity maintaining specified employment levels or requiring local procurement may raise the merged firm's costs. While this may protect domestic jobs and producers for the short term, it often comes at a cost in terms of higher prices for consumers and a less efficient economy over the long run.

Third, from a policy perspective, it is important to consider the potential impact of implementing a test that attempts to reconcile a wide range of factors. Mixing social and political objectives within competition analysis may undermine the clarity and predictability of competition law and its enforcement, which is likely to deter investment.

Fourth, competition agencies are designed to be experts in competition law and are generally ill-equipped to undertake an analysis of non-competition public interest factors. Accordingly, to the extent that governments seek to advance other objectives through their competition enforcement, that is best done by agencies with the relevant expertise acting through appropriate regulatory mechanisms. This allows those policies to be implemented by agencies with expertise in the relevant field and allows the competition agency to focus on a clear objective without trying to balance a multitude of other policies.

Finally, to the extent that a competition agency nonetheless considers non-competition factors, the other factors it takes into account and the way in which an agency weighs the competition and non-competition considerations should be made transparent to the parties and the public.







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We look forward to continuing to work with our colleagues in Asia and around the world to share our experience and, through international dialogue, strengthen all of our abilities to achieve the best outcomes for consumers.

I appreciate the opportunity to speak with you today and look forward to the remainder of the conference and the opportunity for continued discussion on these and other important topics.

Thank you.