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Federal Trade Commission

Before the  
United States House of Representatives  
Committee on the Judiciary  
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

“International Antitrust Enforcement: China and Beyond”

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Chairman Marino, Ranking Member Johnson, and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am Maureen Ohlhausen, Commissioner of the Federal Trade Commission. I am pleased to testify on behalf of the Commission and discuss the FTC's perspectives on international competition policy and enforcement.



discussed below, the “soft law” approach to developing and promoting best practices through multilateral organizations and bilateral engagements has led to some significant long-term successes.

Two of the principal multilateral organizations in which the FTC participates are the International Competition Network (ICN) and the Organization of Economic Cooperation and Development (OECD). In 2001, competition agencies from 13 jurisdictions established the ICN as a “virtual” network to discuss and exchange views and information on antitrust enforcement and policy issues and to promote cooperation and convergence of approach towards superior practices. The ICN has grown to include more than 130 enforcement agencies from nearly every jurisdiction with a competition law.<sup>2</sup> The OECD’s Competition Committee is a premier source of competition policy analysis and advice to governments, bringing together OECD member competition agencies as well as observers from member countries to participate in regular discussions and to develop studies, guidance and recommendations on competition issues. The OECD also holds in-depth peer reviews of national competition laws and policies.

The U.S. antitrust agencies have been actively engaged in developing both organizations and leading various initiatives. The FTC and DOJ are founding members of the ICN and have served on its steering committee since its inception. The FTC has led several ICN working groups that identified and promulgated among its membership internationally recognized best practices. The U.S. antitrust agencies also play leadership roles in the OECD’s Competition Committee and its two working parties. For example, the FTC introduced and helps lead the Committee’s ongoing work on competition issues involving disruptive innovation.<sup>3</sup>

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<sup>2</sup> The three Chinese enforcement agencies, described below, are notable exceptions.

<sup>3</sup> United States submissions to the OECD, as well as other FTC contributions to other international bodies, are available on the FTC’s website <https://www.ftc.gov/policy/reports/submissions-oecd-other-international>

The U.S. antitrust agencies also have pursued convergence through our extensive network of bilateral relations. For example,

Importantly, they also provide an avenue



Since the adoption of these recommendations between 2002 and 2006, the ICN and individual members, including the FTC, have promoted



provide a multilateral platform to continue work on minimizing differences in merger review process, analysis, and remedies.

On the heels of these efforts, the attention of the U.S. antitrust agencies has turned to addressing due process concerns. Transparency, meaningful engagement with parties, the right to counsel, and the protection of confidential information ensure fairness to parties, result in fully informed enforcement decisions and enhance the credibility of antitrust enforcement. Through bilateral engagement and multilateral efforts, the FTC and DOJ regularly promote the benefits of due process and advocate for sound procedural reforms. The FTC recently led a multi-year ICN project that culminated in the adoption of ICN Guidance on Investigative Procedures. The guidance sets out international best practice standards for procedural fairness in antitrust investigations and serves as a benchmark to promote convergence in this sensitive area. The FTC is now promoting implementation of the guidance through its technical assistance and International Fellows programs, through programs in other international fora, such as OECD, APEC and ASEAN workshops, through our staff comments on draft laws and regulations, as well as through the ICN itself. Since the adoption of the guidance, process improvements increasingly have become a point of emphasis for competition agency reforms. For example, competition agencies in Japan and Poland recently changed their rules to incorporate many of these best practices.

### III. Advancing Due Process and Competition-based Enforcement Around the World

While the FTC has helped to facilitate the implementation of antitrust enforcement best practices, room for improvement and broader implementation remains. When an antitrust enforcement agency in another jurisdiction may not be providing adequate due process

The FTC also may work with the Department of State and other U.S. government agencies

with other U.S. agencies through the interagency process to address these issues, including through appropriate government-to-government dialogues.

#### IV. China's Competition Policy and Enforcement

While such issues have been raised from time to time with regard to a number of jurisdictions, in recent years China's enforcement procedures and substantive approaches have received the most attention. Recognizing this, the FTC has engaged with the three Chinese antimonopoly agencies one of its highest international priorities. China began to enforce its newly enacted Antimonopoly Law (AML) eight years ago, as part of its efforts to move towards a more market-oriented economy. Well before the passage of the AML in 2007, the FTC and DOJ advocated consensus international good practices, such as those in ICN instruments, to Chinese officials drafting the law. China's AML ultimately evolved to resemble in many ways the competition laws of the United States and other leading trust jurisdictions, including provisions that address cartel conduct, monopolization (or abuse of dominance), and anticompetitive mergers. However, the law also contains provisions that do not have analogues under U.S. law, such as a prohibition of unfair high pricing and consideration of noncompetition factors like the effect of a merger on economic development. One of the AML's stated overall goals is "promoting the healthy development of the socialist market economy."

After the AML came into force, the FTC, along with DOJ, presented a series of workshops, funded by the U.S. Trade and Development Agency (USTDA), to share the experience of our enforcers in evaluating conduct and mergers with a focus on promoting consumer welfare and economic efficiency. We held multiple workshops for each of China's three AML enforcement agencies – the Ministry of Commerce (MOFCOM), which handles mergers, the National Development and Reform Commission (NDRC), which handles price

related conduct, and the State Administration for Industry and Commerce (SAIC), which handles non-price related conduct. The FTI along with DOJ, also led the United States engagement with China on draft substantive and procedural

merger assessments. As these discussions have progressed, we have observed that MOFCOM increasingly sets forth its economic analysis in published merger decisions.

Of course, our efforts with respect to China's three AML enforcement agencies relatively new agencies tasked with enforcing a relatively new competition law for one of the world's largest economies





to compete in a given market as well as provisions that would prohibit charging unfairly high IP royalties. Application of these provisions would have the potential to reduce incentives for innovation not only in China but also around the world, in light of the sizable market for innovative products in China. The FTC and DOJ continue to convey concerns to China's enforcement agencies about these provisions, as well as others in the draft guidelines that may have the unintended effect of chilling incentives to innovate and compete on the merits. We urge a cautious approach to enforcement under these provisions, to help ensure that incentives for innovation are not undermined. As the development of these guidelines continues, the FTC will continue to engage and advocate regarding these concerns and for other enforcement policies and approaches that promote innovation and competition.

## VI. Conclusion

In summary, international antitrust enforcement has come a long way in the past 25 years. We have accomplished much