
July 2, 2018

FTC Seeks Public Input in Advance of Hearings on the Future of Competition and Consumer Protection Enforcement

The United States Federal Trade Commission recently announced that it will hold a series of wide-ranging public hearings on a number of important competition- and consumer protection-related topics. These hearings have the potential to inform the FTC's approach to enforcement for years to come; and provide an important opportunity for the business community to share input, expertise, and ideas with the Commission.

In addition to the general topics of "the state of antitrust and consumer protection law and enforcement, and their development" and the FTC's "investigation, enforcement, and remedial processes," the Commission is accepting public comments on the following topics until August 20, 2018:

- competition and consumer protection issues in **communication, information, and media technology networks** – including the FTC's authority relating to the **broadband internet access service** business
- unique competition and consumer protection issues associated with **internet and online commerce**
- the identification and measurement of market power and entry barriers, and the evaluation of collusive, exclusionary, or predatory conduct or conduct that violates the consumer protection statutes enforced by the FTC, in **markets featuring "platform" businesses**
- the intersection between privacy, big data, and competition
- the Commission's remedial authority to deter unfair and deceptive conduct in **privacy and data security** matters
- evaluating the competitive effects of corporate **acquisitions and mergers** – including the economic and legal analysis of **vertical and conglomerate mergers** and acquisitions and holding **non-controlling ownership interests** in competing companies
- evidence and analysis of **monopsony power**, including but not limited to, in **labor markets** – including the use of **non-competition agreements**
- the role of **intellectual property** and competition policy in promoting innovation

- the consumer welfare implications associated with the use of **algorithmic decision tools, artificial intelligence, and predictive analytics** – including their relationships to consumer advertising and marketing campaigns; pricing and output decisions; and whether restrictions on the use of computer and machine learning and data analytics affect innovation or consumer rights and opportunities in existing or future markets, or in the development of new business models
- the interpretation and harmonization of state and federal statutes and regulations that prohibit unfair and deceptive acts and practices

The FTC expects to hold fifteen to twenty public hearings beginning in September 2018 and continuing through January 2019, and will invite additional relevant comments prior to those hearings as well. A further comment period will be opened at the conclusion of the hearings early next year.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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