

Supplemental Civil Remedies-Government Discussion Outline

Note: Italicized text is based on the Commission's questions for public comment. Possible recommendations have been narrowed to those that appeared to receive substantial support from four or more Commissioners during the deliberation meeting on May 8, 2006, or on which additional discussion was sought. Indications of support for particular recommendations are based on AMC Staff's recording of discussions during and the transcripts of the deliberation meeting on May 8. No Commissioner is bound by the indications reflected in this document, and it is understood that Commissioners may change their positions from those tentatively indicated in initial deliberations.

I. *Should the DOJ and/or the FTC have statutory authority to impose civil fines for substantive antitrust violations? If so, in what circumstances and what types of cases should such fines be available? If DOJ and/or the FTC are given such authority, how, if at all, should it affect the availability of damages awarded to private plaintiffs?*

[1] No additional authority should be given to either DOJ or the FTC to obtain civil fines for substantive antitrust violations.

[10 Commissioners tentatively favored: BB, SC, DC, MD, DG, JJ, DK, SL, JW, JY]

II. *Should Congress clarify, expand, or limit the FTC's authority to seek monetary relief under 15 U.S.C. § 53(b)?*

[2] Recommend statutory change to bar FTC from seeking monetary equitable remedies in competition cases pursuant to Section 13(b).

[6 Commissioners tentatively favored: BB, DC, MD, DK, JS, JW]

[3] No change to Section 13(b) is appropriate, and the Commission should endorse the FTC's current policy governing the circumstances in which it will seek monetary equitable relief.

[12 Commissioners tentatively favored, but also requested further consideration of possible limitations]

[4] No change to Section 13(b) is appropriate, and the Commission recommends that the FTC limit its use of monetary equitable remedies in competition cases to the following types of matters [to be identified during deliberations].

[12 Commissioners tentatively favored further consideration of possible limitations]