

International Antitrust Discussion Outline

Note: Italicized text is based on questions on which the Commission requested comment from the public.

1. Should the FTAIA be amended to clarify the circumstances in which the Sherman Act and FTC Act apply to extraterritorial anticompetitive conduct?

[1] Recommend no statutory change to the FTAIA; allow courts to continue to develop application of the Act.

[2] Recommend no statutory change to the FTAIA, but encourage courts to apply the D.C. Circuit's *Empagran* standard.

[3] Recommend replacing the current FTAIA with simpler language, *e.g.*, "The Sherman Act and the FTC Acts shall not apply to injury not occurring within the United States or U.S. territory."

2. *Are there technical amendments to the IAEAA that could enhance coordination between the United States and foreign antitrust enforcement authorities?*

[4] Recommend no statutory change to the IAEAA.

[5] Recommend that the IAEAA be amended to clarify that it does not require inclusion in an AMAA of a provision allowing for non-antitrust uses of information exchanged in accordance with the AMAA.

3. *Are there technical changes to the budget authority granted U.S. antitrust agencies that could further facilitate the provision of international antitrust technical assistance to foreign antitrust authorities?*

[6] Recommend no change to the budget authority of the U.S. antitrust agencies.

[7] Recommend that Congress provide budget authority, as well as appropriations, directly to FTC and/or DOJ to provide international antitrust technical assistance.

4. *Are there multilateral procedures that should be implemented, or other actions taken, to enhance international antitrust comity?*

[8] Recommend that the antitrust agencies continue to pursue additional comity agreements with foreign jurisdictions and make greater use of the existing agreements.

If so, those agreements should include the following:

[a] Recognition that inconsistent and/or conflicting enforcement impede trade, investment, and welfare.

[b] Presumptive deference to the jurisdiction with the "center of gravity" of the transaction, but provide other countries with a "voice" in the process.

[c] Presumptive deferral to other countries by any country upon which the allegedly anticompetitive conduct will not have a direct, predictable, and foreseeable effect.

[d] A mechanism to allow any respondent who can show multiple jurisdictions are conducting an investigation into their conduct to demand all investigating jurisdictions coordinate their investigations.

[e] Adoption of comity mechanisms used in other areas, such as bankruptcy, airline regulation, and product safety.

[9] Recommend that the antitrust agencies pursue development of an international, centralized, pre-merger notification system.

[10] Recommend that the antitrust agencies continue to pursue procedural and substantive convergence, to the extent possible, through existing organizations such as ICN and OECD.