

ANTITRUST MODERNIZATION COMMISSION

MINUTES OF MEETING ON JANUARY 13, 2005

The Antitrust Modernization Commission convened its third FACA meeting on January 13, 2005, in the Federal Trade Commission Conference Center, 601 New Jersey Avenue, N.W., in Washington, D.C. This meeting was announced to the public in advance through publication of a notice in the *Federal Register*. See 69 Fed. Reg. 70,627 (Dec. 7, 2004). Andrew Heimert, the Executive Director & General Counsel, served as Designated Federal Officer for the meeting. The Chair called the meeting to order at 10:00 a.m. and noted a quorum. The meeting was transcribed. Approximately 75 people were in the public audience.

Participating:

Deborah Garza, Chair
Jonathan Yarowsky, Vice-Chair
Bobby R. Burchfield, Commissioner
W. Steven Cannon, Commissioner
Dennis Carlton, Commissioner
Jonathan Jacobson, Commissioner
Donald Kempf, Commissioner
Sanford Litvack, Commissioner
John Shenefield, Commissioner
Debra Valentine, Commissioner
John Warden, Commissioner

Andrew Heimert, Executive Director & General Counsel

Mr. Heimert served as the Designated Federal Officer (DFO) for the meeting.

Also present:

William Adkinson, Counsel
Todd Anderson, Counsel
Michael Klass, Economist
Hiram Andrews, Law Clerk
Sylvia Boone, Administrative Officer

I. Remarks of Chair

The Chair offered opening remarks for the Commission meeting, in which she welcomed the public to the meeting, briefly commented on the purpose of the meeting, and outlined the meeting agenda.

II. Discussion of Working Group Recommendations

The Commission discussed in turn the recommendations contained in the eight memoranda prepared by the Commission's working groups. (These memoranda were made available to the public in advance of the meeting on the Commission's website). The leader of each working group began discussion with a summary of the working group's recommendations. Following discussion, the Commission voted by show of hands whether it agreed with each recommendation to study (or not to study) an issue. A majority vote of Commissioners was required to approve an issue for study.

The Commission subsequently reviewed tables prepared by staff summarizing which issues it had selected for study, which issues it had decided not to study at this time, and which issues required further development. The Commission confirmed that the decision on each issue had been accurately recorded. The results of the voting are as follows.

RESOLVED: The Commission will study the following issues as recommended by the Commission Working Groups.

- International Working Group Issues 1, 2, and 3.
- Criminal Procedure Working Group Issues 1 and 2. Study of issue 2, however, is postponed to assess further developments in light of the Supreme Court's decisions in *United States v. Booker* and *United States v. Fanfan*, 125 S. Ct. 738 (2005). Issue 7 is referred for further consideration by an *ad hoc* working group on criminal and civil non-merger timetables, comprising Commissioners Jacobson, Litvack, and Shenefield, which is to report to the Commission at its next FACA meeting.
- Mergers Working Group Issues 1, 2, 3, 4, 5, and 6. Issue 6 is clarified to include the first part of Issue 7, relating to whether the *Horizontal Merger Guidelines* accurately reflect how the federal agencies analyze mergers. Issue 8 is referred for further consideration to an *ad hoc* working group on international procedural convergence, comprising Commissioners Delrahim, Garza, Valentine, and Yarowsky, which is to report to the Commission at its next FACA meeting.
- Civil Procedure Working Group Issues 1, 2, 3, and 7. Issue 6 was referred for further consideration to the *ad hoc* working group on criminal and civil timetables, which is to report to the Commission at its next FACA meeting.
- Intellectual Property Working Group Issues 1 and 2.
- Single-Firm Conduct Working Group Issues 1, 2, and 3.
- Immunities & Exemptions Working Group Issues 1, 2, and 3.

- Regulated Industries Working Group Issues 1, 2, and 3. Issue 2 was modified to clarify that the Commission will study implied immunity from antitrust laws in regulated industries along with the issue of antitrust savings clauses.

III. General Discussion

The Commission also discussed a proposal by R. Hewitt Pate, Assistant Attorney General for Antitrust, made in a letter to the Commission, that the Commission undertake or initiate an empirical study of the cost and benefits of antitrust law enforcement. The Commission agreed that such a study would be potentially quite useful and requested that Commissioners Burchfield, Carlton, Jacobson, and Valentine further consider the proposal and report a recommendation to the full Commission at its next meeting.

Finally, the Chair described the Commission's next steps. She explained that the Commission would re-form working groups to correspond with the issues selected for study and that those working groups would lead the Commission's study of their assigned issues for the remainder of the year. She also outlined a tentative schedule for Commission work through the issuance of its report in April 2007.

The meeting was adjourned at 4:40 p.m.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

Deborah A. Garza
Chair, Antitrust Modernization Commission