

ANTITRUST MODERNIZATION COMMISSION

MINUTES OF MEETING ON MARCH 24, 2005

The Antitrust Modernization Commission convened its fourth FACA meeting on March 24, 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 70 Fed. Reg. 8568 (Feb. 22, 2005). Andrew Heimert, the Executive Director & General Counsel, served as Designated Federal Officer for the meeting. The Chair called the meeting to order at 10:14 a.m. and noted a quorum. The meeting was transcribed. Approximately 50 people were in the public audience.

Participating:

Deborah Garza, Chair
Jonathan Yarowsky, Vice-Chair
Bobby Burchfield, Commissioner
W. Steven Cannon, Commissioner
Jonathan Jacobson, Commissioner
Sanford Litvack, 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

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 Commission's meeting, and outlined the meeting agenda.

II. Discussion of *Ad Hoc* Group Recommendations

The Commission discussed the recommendations of two *ad hoc* groups formed to consider issues on which decision was deferred at the Commission's January 13 meeting. One *ad hoc* group was formed to consider whether the Commission should study the creation of timetables for criminal and civil non-merger investigations by the Federal Trade Commission and Department of Justice. A second *ad hoc* group was formed to consider a proposal by R.

Hewitt Pate, Assistant Attorney General for Antitrust, that the Commission undertake or design a comprehensive empirical examination of the costs and benefits of antitrust law enforcement. The recommendations were set forth in memoranda prepared by the *ad hoc* groups, which were made available to the public in advance of the meeting on the Commission's website. The discussion of each memorandum's recommendations was prefaced by a brief summary of the recommendation by one member of the *ad hoc* group. Commissioners were given an opportunity to ask questions about or otherwise present their views on the merits of each recommendation.

After discussion of each recommendation, the Commission voted unanimously by show of hands as follows.

RESOLVED: That the Commission will not undertake as a separate issue for study the implementation of statutory or regulatory timetables for criminal and civil non-merger antitrust investigations by the Department of Justice or the Federal Trade Commission, but will address the issue in its final report. The Commission will consider setting out its views prior to issuance of its final report in a letter to the Chairman and Ranking Member of the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights.

RESOLVED: That the Commission recognizes it could be of substantial value periodically to assess the effectiveness of antitrust enforcement through empirical study and that the Commission may benefit from such empirical analysis in assessing some of the issues it has selected for study. Given the limited resources of the Commission, however, and the number of issued already adopted for study, it will not undertake to design a comprehensive empirical study of the effectiveness of antitrust enforcement. Instead, the Commission will undertake more limited empirical studies where appropriate as part of its consideration of issues selected for further study and identify areas in which further empirical research could be useful.

The meeting was adjourned at 10:39 a.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