United States of America

Federal Trade Commission

Opening Keynote

February 2, 2017
8:15 AM – 8:30 AM

ABA 2017 Consumer Protection Conference
Atlanta, GA

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[1] The views expressed in these remarks are my own and do not necessarily reflect the views of the Federal Trade Commission or any other Commissioner.

Thank you, Bill, for the nice introduction. It is wonderful to see so many new faces here in Atlanta, at the Consumer Protection Conference. Welcome to our state enforcement partners. Welcome, in-house counsel from a wide cross-section of industries. And welcome, consumer advocates from across the country. Bill asked me to kick off this event by discussing my major consumer protection priorities for the Federal Trade Commission.

James Q. Wilson, the preeminent scholar of federal administrative agencies, said that agency success depends on completing one critical but often ignored task. "Decide what it is we are trying to accomplish."[2] Sounds simple, right? It reminds me of a famous stoic maxim: "First say to yourself what you would be; and then do what you have to do." Wilson argued that when an agency establishes a clear, measurable mission, quote, "it has a fighting chance of coping with each of the many aspects of the bureaucracy problem."[3]

So, when it comes to consumer protection, what is the FTC trying to accomplish? At a fundamental level, we are seeking to ensure that consumers are better off. A successful FTC action makes current and future consumers better off than they would be had the FTC not acted. To properly judge success, we must acknowledge that the overwhelming majority of consumer benefits emerge from a free and honest market. Our job, then, is to address unfair and deceptive practices that harm the market process and harm consumers. And we must do so in a way that avoids hindering market-generated consumer benefits.

Thus, we must diligently analyze the costs and benefits of using our enforcement and other tools. And we must carefully consider the potential unintended consequences of our regulatory actions. In every case we litigate, settlement we enter, report we write, guidance we issue, blog entry we post, and tweet we … twitter, we need to answer two questions. How were

[2] James Q. Wilson, *The Bureaucracy Problem*, NATIONAL AFFAIRS, at 8, Winter 1967, http://www nationalaffairs.com/public_interest/detail/the-bureaucracy-problem.
[3] *Id.*

consumers harmed? And how does this action address that harm? This focus on consumer harm is part of our statutory mandate, but it is also good policy. Asking and answering these two questions will focus our limited resources where they can do the most good.

The appropriate depth of cost-benefit analysis might vary, depending on the situation. In cases of clear fraud by a single party, where there are no consumer benefits, the costs and benefits need not necessarily be detailed exhaustively. However, for practices that generate both costs and benefits, and where action could affect a wide range of parties, we need to be thorough. This means carefully evaluating the costs and benefits both of the practice at issue and of the contemplated regulatory action.

Having set out that high-level description of the FTC's consumer protection mission, let me turn to three reforms that I will be advancing over the next couple of months.

First, I will re-focus the agency on our bread-and-butter fraud enforcement mission. Stopping fraudulent schemes has long been the core of the FTC's consumer protection mission. Such enforcement obviously benefits consumers and is an excellent use of our limited resources. These cases may not forge new legal ground or prompt huge headlines, but such actions defend the consumer harmed by an unscrupulous con artist and assist the legitimate business owner who loses business to the cheat. These obvious benefits explain why such efforts have long had broad bipartisan support both at the FTC and in Congress. Unfortunately, such fraud is a perennial problem, and fraudsters are remarkably crafty at locating new and vulnerable victims. I'm particularly interested in frauds targeting military personnel and veterans and frauds targeting small businesses. I will be working closely with staff to strengthen our anti-fraud program, promote the distribution of the FTC's excellent educational resources on these topics, and ultimately, bring enforcement actions where appropriate.

Second, I will make sure our enforcement actions address concrete consumer injury. The FTC's statutory authority, our longstanding policy statements, and Congressional guidance are all clear: The FTC should focus enforcement on matters where consumers are actually injured or likely to be injured, or where companies don't keep their promises, to the consumer's detriment. The agency should focus on cases with objective, concrete harms such as monetary injury and unwarranted health and safety risks. The agency should not focus on speculative injury, or on subjective types of harm.

Of course, although monetary injury has been our primary focus, we have seen substantial injury arise from the exposure of more than just financial information. For example in our recent settlement with the infidelity-promoting website Ashley Madison, there was evidence that several people committed suicide after their names and other data was exposed.[4] And many of you may remember the Eli Lilly case under Chairman Muris, which involved the exposure of sensitive medical information.[5] Furthermore, misuse of ubiquitous data collection and big data technologies may create concrete privacy harms. I've consistently raised concerns that a notice-and-choice approach to privacy may not adequately protect consumers from misuse by companies that assemble bits of non-sensitive consumer information into a potentially sensitive mosaic of a consumer.[6] We ought to consider supplementing notice-and-choice with a harms-based approach to privacy.

By focusing on practices that are actually harming or likely to harm consumers, the FTC can best use its limited resources. In the past, this self-restraint has been important to the FTC's

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[4] *See* Operators of AshleyMadison.com Settle FTC, State Charges Resulting From 2015 Data Breach that Exposed 36 Million Users' Profile Information, Dec. 14, 2016, https://www ftc.gov/news-events/press-releases/2016/12/operators-ashleymadisoncom-settle-ftc-state-charges-resulting; Chris Baraniuk, *Ashley Madison: 'Suicides' over website hack*, BBC NEWS, Aug. 24, 2015, http://www.bbc.com/news/technology-34044506.

[5] *See* Eli Lilly Settles FTC Charges Concerning Security Breach, Jan. 18, 2002, https://www ftc.gov/news-events/press-releases/2002/01/eli-lilly-settles-ftc-charges-concerning-security-breach.

[6] *See, e.g.*, Separate Statement of Commissioner Maureen K. Ohlhausen, *Internet of Things Workshop Report*, Jan. 27, 2015, https://www ftc.gov/system/files/documents/public_statements/620691/150127iotmkostmt.pdf.

success in alleviating many different types of consumer harm without disrupting innovation. Conversely, when the FTC has strayed from a focus on actual harm, it has struggled, both in influence and in the courts.

We can see this struggle in some recent privacy and data security actions. For example, I dissented from the FTC's settlement with Nomi, a start-up that helps retail merchant clients understand how customers move through their stores.[7] Nomi went beyond its legal obligations by offering a working global "opt out" for consumers, but had a partially inaccurate privacy policy. I dissented because we lacked any evidence of consumer harm, and the decision discourages companies from doing any more than the bare minimum on privacy. Such disincentives will ultimately leave consumers worse off.

Similarly, our data security cases are on their strongest legal and policy footing when they address clear and concrete consumer injury. But the FTC has ventured onto less sure ground, and into areas where consumer injury is not as well understood. Consequently, one of my major priorities over the next few months will be to deepen the FTC's understanding of the economics of privacy. This includes studying consumer preferences and the relationship between access to consumer information and innovation.

Focusing on consumer injury is important when deciding what cases to bring. It is also important when determining what remedy to seek. In every consumer protection case we bring, we must ensure that we seek and obtain for consumers relief that is tied to consumer injury. Unfortunately, the FTC has deviated from this principle. In several recent cases, rather than seek to remedy consumer injury, the FTC has pursued disgorgement. That is, staff has sought a company's total revenues as monetary relief, even though the behavior at issue was not

[7] *In re* Nomi Technologies, Inc., Dissenting Statement of Commissioner Maureen K. Ohlhausen, Aug. 28, 2015, https://www ftc.gov/public-statements/2015/08/dissenting-statement-commissioner-maureen-k-ohlhausen-matter-nomi.

fraudulent. This departs from prior Commission practice. It has subjected parties to threats of huge payments that are disproportionate to any consumer harm. The latest example is the Uber settlement, from which I dissented.[8] As my dissent explains, the $20 million dollar monetary settlement was untethered from consumer harm. In fact, it was an order of magnitude higher than our best evidence of consumer harm. Such disproportionate settlements harm businesses without making consumers better off. Instead, remedies ought to be carefully calibrated to the harm consumers suffered.

We can find a different type of failure to link harm and remedy in some relatively recent advertising substantiation cases. In these cases, the FTC required substantiation standards more strict than necessary, thereby potentially banning truthful claims and thus harming consumers. For example, I opposed settlements involving two skin-blemish tracking smartphone apps.[9] The companies had made some unsubstantiated claims, but the settlements went too far. The orders required the mobile app developers to demonstrate through expensive drug-trial-like studies that their apps perform certain functions as well as a dermatologist. But the companies had never claimed such accuracy.

Similarly, I dissented in part from the FTC's decision against POM Wonderful.[10] I argued that by requiring two randomized controlled trials where one would suffice, the FTC

[8] *In re* Uber, Inc., Dissenting Statement of Commissioner Maureen K. Ohlhausen, Jan. 19, 2017, https://www ftc.gov/public-statements/2017/01/dissenting-statement-commissioner-maureen-k-ohlhausen-matter-uber-inc.
[9] *In re* Health Discovery Corporation, and FTC v. Avrom Boris Lasarow, et al., Dissenting Statement of Commissioner Maureen K. Ohlhausen, Feb. 23, 2015, https://www.ftc.gov/public-statements/2015/02/dissenting-statement-commissioner-maureen-k-ohlhausen-matter-health.
[10] *In re* POM Wonderful, Concurring Statement of Commissioner Maureen K. Ohlhausen, Jan. 10, 2013, https://www ftc.gov/public-statements/2013/01/concurring-statement-commissioner-maureen-k-ohlhausen-matter-pom-wonderful.

order would prohibit some truthful advertising.[11] The D.C. Circuit agreed with me, overturning the two-RCT requirement.

Such hawkish FTC advertising substantiation enforcement actions "overprotect" consumers by depriving them of useful information. Although well intentioned, this overreach ultimately harms consumers. By requiring appropriate levels of substantiation for advertising claims, the FTC can protect consumers from deceptive advertising, yet still ensure that consumers get the information they need to make purchasing decisions. Such an approach will maximize the free flow of truthful information vital to a free society and a free market.

Across the FTC's consumer protection mission, then, I will work to ensure that our enforcement actions target behaviors causing concrete consumer harm, and that our remedies are tied to consumer harm. That's the best way to improve the lives of consumers.

In addition to re-focusing on fraud enforcement and concentrating on consumer injury, I have a third near-term reform: I will work to reduce unnecessary regulatory burdens and provide additional transparency to businesses. Consumers benefit greatly from free and honest markets, and free and honest markets depend on entrepreneurs and their businesses. We can and should protect consumers while reducing burdens on legitimate business.

There are a number of ways to pursue this reform. One important way is to review and streamline our information requests. The ABA Antitrust Section's Presidential Transition Report highlighted a recent trend towards generic and overbroad document and other information requests.[12] Such requests impose large compliance costs on legitimate companies. The report

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[11] *In re* Pom Wonderful, Opinion of the Commission, By Commissioner Maureen K. Ohlhausen at n.36, Jan. 16, 2013, https://www.ftc.gov/public-statements/2013/01/opinion-commission-commissioner-maureen-k-ohlhausen-matter-pom-wonderful.

[12] American Bar Association, *Presidential Transition Report: The State of Antitrust Enforcement* at 28-29, (Jan. 2017), http://www.americanbar.org/content/dam/aba/publications/antitrust_law/state_of_antitrust_enforcement.authcheckdam.pdf.

also noted that certain order provisions could chill innovation and halt useful corporate practices.[13] Under my leadership, the FTC will take these concerns seriously. The FTC must remain able to collect the information we need to enforce the law, but I am certain that we can do this while reducing the burden on businesses, particularly third parties who are not under investigation.

Businesses would also benefit from increased transparency about our proceedings. In particular, I am thinking about our data security program. The FTC closes around two-thirds of the data security investigations we open because we find that the company's data security practices were reasonable. Yet the public only reads about the cases we pursue to settlement or litigation. Those cases provide instructive examples of what *not* to do. But we can do better. I will direct FTC staff to distill key lessons from closed data security investigations so that businesses have more information about what they *should* do.

In pursuing these three reforms, I will take advantage of all the tools in the FTC toolbox. Enforcement actions make headlines, but the FTC has many other tools including policy advocacy, business and consumer education, and research and convening functions. On my watch, all of these tools can and will be used to carry out the FTC's consumer protection and competition missions.

So, having heeded James Q. Wilson's advice, we have decided what it is we are trying to accomplish. We are seeking to ensure that consumers are better off. I've previewed three initial reforms to further that objective. And, with the tools we have, we will do what we must do. I look forward to working with all of you to protect consumers in the days and months ahead.

[13] *Id.* at 30-32.