



The Federal Trade Commission's International Antitrust Program

Deepening Cooperation, Promoting Convergence

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The Federal Trade Commission plays a lead role in fostering international cooperation and convergence toward sound antitrust policy. The FTC has long placed a high priority on its international antitrust program to ensure the fulfillment of the Commission's competition mission in a global economy. The Commission's international antitrust program:

- Serves as an expert resource to support the FTC's competition enforcement program by assisting with international aspects of investigations and litigation;
- Builds cooperative relations with foreign competition agencies;
- Promotes understanding and convergence of international antitrust policies toward best practice; and
- Contributes to formulating and implementing United States policy on international antitrust issues.

Its international work has taken on increasing significance during the COVID-19 crisis and enhanced prominence as competition agencies around the world grapple with issues such as the application of antitrust laws to the digital economy. This paper presents the background and organization of the FTC's international antitrust program and describes our main activities to further the program's goals internally, through bilateral relations, in multilateral fora, and within the United States government.¹

I. Organization of the Office of International Affairs (OIA)

The Office is headed by Director Randolph W. Tritell (202-326-3051; rtitell@ftc.gov). Deputy Director for International Antitrust Elizabeth Kraus (202-326-2649; ekraus@ftc.gov) oversees the office's antitrust work (Deputy Director for International Consumer Protection Hugh Stevenson oversees the office's work on consumer protection and data privacy). The Office has nine other antitrust positions, with seven attorneys currently covering the following primary portfolios:

¹ For further information, see the Office's antitrust webpage at <http://www.ftc.gov/policy/international/international-competition>. The Office handles similar functions with respect to the international aspects of consumer protection and data privacy enforcement as well as relations with foreign consumer protection and data privacy agencies and policy leadership in these areas. See <https://www.ftc.gov/policy/international/international-consumer-protection>.

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II. An Internal and External Resource on International Antitrust

The Office of International Affairs supports the Bureau of Competition on international issues that often arise in investigations and litigation. The Office works with staff on issues such as personal and subject matter jurisdiction, service of process, and obtaining evidence abroad, for example, when confronted with “blocking statutes” and data privacy constraints, and assists our case teams in understanding foreign laws and procedures and how they intersect with FTC and other U.S. laws and procedures. It also works with other U.S. agencies to ensure that broader U.S. policy and engagement reflects an understanding of complex international antitrust issues and principles of competition law, economics, policy, and procedure.

The Office regularly engages and welcomes interaction with businesses and practitioners concerning foreign implementation of antitrust law and policy, and provides information on the FTC's international approaches and activities. Guidance to business and practitioners on the agencies' international enforcement policies and investigative tools and cooperation with foreign agencies also can be found in the revised Antitrust Guidelines for International Enforcement and Cooperation, co-authored by the FTC.²

III. Bilateral Relationships

Building and maintaining strong bilateral relationships with foreign competition agencies is a critical element of the FTC's enforcement program. Given the many important FTC cases involving foreign parties, evidence located abroad, and parallel review with other agencies, effective cooperation with other agencies is a necessity. Cooperation enables the agencies to identify issues of common interest, streamline investigations, improve analyses, and avoid inconsistent outcomes.

The FTC cooperates with foreign competition agencies through formal and informal agreements and arrangements, though cooperation also takes place without such agreements.³ The Recommendation of the Organization for Economic Cooperation and Development ("OECD") on international competition cooperation is also an important non-binding cooperation instrument that covers the FTC's relations with OECD members as well as some non-member jurisdictions.⁴ The OECD Recommendation, bilateral agreements, and related

² Antitrust Guidelines for International Enforcement and Cooperation (International Antitrust Guidelines), https://www.ftc.gov/system/files/documents/public_statements/1049863/international_guidelines_2017.pdf. See also Maureen K. Ohlhausen, Guidelines for Global Antitrust: The Three Cs – Cooperation, Comity, and Constraints (Sept. 8, 2017), https://www.ftc.gov/system/files/documents/public_statements/1252733/iba_keynote_address-international_guidelines_2017.pdf.

³ The United States is a party to bilateral cooperation agreements with eleven jurisdictions: Germany (1976); Australia (1982 and a mutual assistance agreement in 1999); the European Communities (1991); Canada (1995); Brazil, Israel, and Japan (1999); Mexico (2000); and the competition enforcement agencies of Chile (2011), Colombia (2014), and Peru (2016). The FTC and the Department of Justice entered Memoranda of Understanding with the Russian Federal Antimonopoly Service in November 2009, with the three Chinese antitrust agencies (now consolidated) in July 2011, with the Indian competition authorities in September 2012, and with the Korea Fair Trade Commission in September 2015. See <http://www.ftc.gov/policy/international/international-cooperation-agreements> for the complete list.

⁴ OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings, <http://www.oecd.org/daf/competition/international-coop-competition-2014->

cooperation arrangements help promote practical enforcement cooperation through informal communications, and provide for confidentiality safeguards. While the early agreements were motivated primarily by a desire to reduce and manage conflicts that arose from extraterritorial enforcement of antitrust laws, modern agreements seek primarily to enhance enforcement cooperation. In addition to providing a legal framework for cooperation, the agreements have served as catalysts to facilitate closer working relationships with our partners.⁵ The OECD Recommendation and other arrangements also underscore the importance of investigative assistance, including through the sharing of non-confidential information, with appropriate safeguards.

In 1994, Congress enacted the International Antitrust Enforcement Assistance Act, which authorizes the United States, or the FTC and the Department of Justice in their own names, to enter into mutual assistance agreements that permit the agencies to share parties' confidential information and to use compulsory process to obtain evidence for the other jurisdiction's competition agency. Due to various legal and practical obstacles, the United States has entered into only one such agreement, with Australia.⁶ In September 2020, the FTC entered into the Multilateral Mutual Assistance and Cooperation Framework (MMAC) to promote enhanced case cooperation among the U.S. competition agencies and those of Australia, Canada, New Zealand, and the United Kingdom.⁷ The framework provides the basis for additional agreements that would permit sharing confidential information and investigative assistance between the parties. We are working with these partners and others to invigorate

[recommendation.htm](#). In addition, the ICN Framework for Merger Cooperation (2012) focuses on cooperation in merger review.

https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_FrameworkforMergerReviewCooperation.pdf. The OECD and the ICN have published a joint report on International Co-Operation in Competition Enforcement, which identifies the current state of cooperation and recommendations to overcome current limitations - <http://www.oecd.org/daf/competition/OECD-ICN-Report-on-International-Co-operation-in-Competition-Enforcement.pdf>.

⁵ The United States also entered into enhanced positive comity agreements with the EC (1998) and Canada (2004) that include a presumption of deference to the other jurisdiction to take the lead on antitrust enforcement in certain circumstances.

<http://www.ftc.gov/policy/international/international-cooperation-agreements>. These agreements have yet to be invoked, although some FTC matters have involved the use of "informal" positive comity.

⁶ <https://www.ftc.gov/policy/cooperation-agreements/usaaustralia-mutual-antitrust-enforcement-assistance-agreement> (1999).

⁷ <https://www.ftc.gov/news-events/press-releases/2020/09/ftc-chairman-simons-signs-antitrust-cooperation-framework>.

opportunities to enter into such agreements and to use the powers provided in the International Antitrust Enforcement Assistance Act to their full potential.

Pursuant to these arrangements, or often without, FTC staff cooperates with foreign agencies on individual cases and on developing competition policy. In fiscal year 2021, the FTC cooperated on 33 merger and anticompetitive conduct cases of mutual concern with counterpart agencies from 14 jurisdictions.⁸ This included 26 merger matters and 7 conduct investigations. Several of these matters involved cooperation with multiple agencies to achieve effective, sound, and consistent outcomes. For example, the FTC's cooperated closely in the investigation of the Nvidia/Arm transaction with the antitrust agencies of the European Union, the United Kingdom, Japan, and South Korea.⁹

When the FTC and a foreign agency review a matter that raises competition concerns in one or both jurisdictions, the agencies frequently exchange investigative information. This may include public information as well as “agency confidential” information, i.e., that the agency does not routinely disclose but on which there are no statutory disclosure prohibitions – for example, the identity of the investigation and investigated party, and staff's views on market definition, competitive effects, and remedies.

Parties to merger and conduct investigations routinely waive confidentiality protections to facilitate cooperation (but the decision is up to the parties with no negative consequences for declining). Waivers are particularly valuable to the agencies as they allow for deeper engagement, discussion, and analysis among the cooperating agencies, which can lead to more informed decisions. They also help minimize the risk of conflicting outcomes and expedite the merger review. Waivers can benefit parties by reducing information production burdens and avoiding incompatible remedies.¹⁰ In 2013, the FTC and the Department of Justice's Antitrust Division issued a joint model waiver of

⁸ See e.g., Federal Trade Commission Annual Performance Report For Fiscal Year 2020, https://www.ftc.gov/system/files/documents/reports/fy-2020-performance-report/fy20_annual_perf_report.pdf, discussion of Objective 2.3. For a more complete description of the U.S. agencies' international case cooperation, see the International Antitrust Guidelines, *supra* n. 2, Chapter 5.

⁹ <https://www.ftc.gov/news-events/press-releases/2022/02/statement-termination-of-nvidia-attempted-acquisition-of-arm-ltd>.

¹⁰ See ICN Recommended Practice on Interagency Coordination, https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/MWG_NPRecPractices2018.pdf at §D, and ICN Model Waiver and accompanying report on waivers, at https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_ModelWaiver.pdf.

confidentiality for use in merger and civil non-merger matters involving concurrent review by the US and non-U.S. competition authorities.¹¹ The model waiver is designed to streamline the waiver process to reduce the burden on individuals and parties as well as to reduce the agencies' time and resources involved in negotiating waivers. While most enforcement cooperation occurs in merger investigations, we cooperate on a significant number of non-merger enforcement matters, often aided by waivers provided by parties and third parties. The International Antitrust Guidelines include a chapter dedicated to international cooperation that includes provisions on the agencies' investigative tools, confidentiality safeguards, waivers of confidentiality, the types of information exchanged, and the legal basis for cooperation.¹²

The FTC also works with counterpart agencies to promote policy convergence. In the past year, the FTC engaged on policy issues of common interest and shared enforcement techniques and experience with officials from 34 competition agencies. This included high-level meetings with colleagues from numerous competition authorities,¹³ commenting on draft competition laws and agency guidance, and exchanging policy and enforcement experience bilaterally. The FTC also participates in working groups on discrete issues of common interest with key partners. For example, in December 2021, the FTC participated in the launch of the EU-US Joint Technology Competition Policy Dialogue, which includes high-level meetings as well as staff discussions focused on shared competition enforcement and policy issues arising in technology markets with the goal of promoting policy and enforcement coordination.¹⁴ In March 2021, the FTC launched the Multilateral Pharmaceutical Merger Task Force with the competition agencies of Canada, the EU, and the UK, the U.S. Department of Justice's Antitrust Division, and several Offices of State Attorneys General to identify actionable steps to review and update the analysis of pharmaceutical mergers.¹⁵

¹¹ The joint model waiver and accompanying FAQ are available at

<http://www.ftc.gov/policy/international/international-competition/international-waivers-confidentiality-ftc-antitrust>.

¹² International Antitrust Guidelines, *supra* n. 2, Chapter 5.

¹³ *E.g.*, <https://www.ftc.gov/news-events/press-releases/2021/12/joint-statement-ftc-doj-antitrust-division-uk-competition-markets>.

¹⁴ <https://www.ftc.gov/news-events/press-releases/2021/12/joint-statement-ftc-doj-antitrust-division-european-commission>.

¹⁵ <https://www.ftc.gov/news-events/press-releases/2021/03/ftc-announces-multilateral-working-group-build-new-approach> and <https://www.ftc.gov/news-events/press-releases/2021/05/multilateral-pharmaceutical-merger-task-force-seeks-public-input>. The U.S. agencies participated in prior working groups with the competition agencies of Canada, Japan, Korea, and Mexico on issues including intellectual property and conduct by dominant firms.

The FTC holds annual informal workshops with the Canadian and Mexican competition agencies to share merger and unilateral conduct enforcement techniques and experience. Prior working groups with the European Commission resulted in the issuance of Revised Best Practices for Coordinating Merger Reviews,¹⁶ which provide a framework for US-EC cooperation when our agencies review the same merger. Similarly, the FTC, DOJ, and the Canadian Competition Bureau issued best practices to increase transparency regarding how they cooperate and coordinate merger reviews.¹⁷

IV. Activities in Multilateral Competition Fora

With competition laws and agencies in over 130 jurisdictions, it is particularly important that agencies work to ensure that the global system of competition law and policy functions coherently. The U.S. agencies have played a lead role in promoting convergence towards best practices in competition policy and enforcement. Given differences in histories, cultures, legal systems, and levels of economic development, variations in the wording and application of competition laws and policies will inevitably persist. We believe, however, that learning from the experience of others in handling similar issues, including those involving institutional arrangements, procedures, and the substance of antitrust enforcement, can promote convergence toward better practices.

Several multilateral organizations facilitate dialogue and convergence toward sound competition policy and enforcement, particularly the International Competition Network (ICN) and the OECD, as well as the United Nations Conference on Trade and Development (UNCTAD) and regional organizations such as the Asia-Pacific Economic Cooperation (APEC). The FTC helped found the Inter-American Competition Alliance, which fosters enforcement cooperation in the Americas.

ICN. In October 2001, the FTC and 14 other antitrust agencies founded the ICN to provide a venue for competition agencies worldwide to work on competition issues of mutual interest. The ICN is unique in that it: has a broad membership – 140 agencies from 129 jurisdictions, *i.e.*, almost all of the world’s competition agencies;¹⁸ works exclusively on competition issues; focuses on

¹⁶ <https://www.ftc.gov/sites/default/files/attachments/international-antitrust-and-consumer-protection-cooperation-agreements/111014eumerger.pdf>.

¹⁷ <http://www.ftc.gov/news-events/press-releases/2014/03/us-canadian-antitrust-agencies-issue-best-practices-coordinating>.

¹⁸ But not including the Chinese Anti-Monopoly enforcement agency, SAMR, which, like its predecessor agencies, has not applied for membership.

discrete projects aimed at procedural and substantive convergence through the development of consensual, non-binding recommendations and reports; advocates for procompetitive policies across government; and provides a significant role for non-governmental advisors from the business, legal, economic, consumer, and academic communities as well as experts from other international organizations. Unlike in most international organizations, competition agency members organize and conduct the work directly rather than through a permanent Secretariat.

The ICN is organized into working groups comprised of agencies and non-governmental advisors. The current substantive working groups address agency effectiveness, cartels, competition advocacy, mergers, and unilateral conduct.¹⁹ The FTC co-chaired the ICN's Merger Working Group (2016-2019), the ICN's Agency Effectiveness Working Group (2012-2016), Unilateral Conduct Working Group (2006-2011), and Merger Notification and Procedures Subgroup (2001-2006). The FTC continues to participate in these and other ICN working groups, co-chairs the ICN's team of working group leaders who coordinate the network's substantive work, is an active member of the Steering Group, which sets the ICN's strategic direction, serves as a core member of the Special Project Group on International Enforcement Cooperation, and leads the network's Third Decade strategic review.

Based on an FTC proposal, the ICN launched an important project, which the FTC co-chairs, on the interface between competition, data privacy, and consumer protection enforcement and policies in light of emerging digital economy issues. The FTC also led the drafting of the ICN's advice to competition agencies on the challenges of the COVID-19 pandemic and its economic consequences.²⁰ In September 2020, the FTC co-hosted, with the DOJ's Antitrust Division, the ICN's annual conference, a four-day event broadcast on the internet with over 2,500 attendees.²¹ In 2021, the Commission led the organization of the ICN's most significant training event of the year, a virtual workshop series over four weeks for 200 case handlers from over 60 jurisdictions.

The ICN's Merger Working Group promotes the adoption of best practices to enhance the effectiveness of merger review processes, facilitate procedural and substantive convergence, and reduce the public and private time

¹⁹ <https://www.internationalcompetitionnetwork.org/>.

²⁰ <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2020/04/SG-Covid19Statement-April2020.pdf>.

²¹ The 2020 annual conference videos and materials are available at <https://www.internationalcompetitionnetwork.org/2020vac/>.

and cost of multi-jurisdictional merger reviews. Since the ICN's inception, the FTC has been a leader in drafting, updating, and promoting the implementation of the ICN's Recommended Practices on Merger Notification and Review Procedures and Recommended Practices on Merger Analysis. The FTC also helped lead projects resulting in practical guidance for merger enforcement cooperation. The Recommended Practices are ICN's highest profile and most influential work product, providing sound benchmarks for merger rules and procedures. As an initial co-chair of the ICN's Unilateral Conduct Working Group, the FTC led the drafting of Recommended Practices on Dominance/Substantial Market Power Analysis, developed a staff-level guide for investigators, and organized ICN's first unilateral conduct workshop.

Under the FTC's leadership, the Agency Effectiveness Working Group developed two pioneering initiatives to improve due process in competition investigations: Guiding Principles for Procedural Fairness in Competition Agency Enforcement²² and Recommended Practices for Investigative Process.²³ The Recommended Practices are the most comprehensive consensus best practices for competition agencies on providing due process in antitrust investigations. The FTC also was a key contributor to the related ICN Framework on Competition Agency Procedures, which seeks to advance procedural fairness principles in antitrust investigations, and that over 70 agencies have joined.²⁴

The FTC also co-chairs the ICN's Promotion and Implementation Network, which leads the ICN's efforts to promote awareness and implementation of ICN work product, especially its Recommended Practices.²⁵ The adoption by

²² <https://www.internationalcompetitionnetwork.org/portfolio/guiding-principles-for-procedural-fairness/>.

²³ <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2019/05/RPs-Investigative-Process.pdf>. See Paul O'Brien, *Procedural Fairness: Convergence in Process*, https://www.ftc.gov/system/files/attachments/key-speeches-presentations/obrien_-_procedural_fairness_convergence_in_process_cpi_11-18.pdf (Nov. 2018).

²⁴ https://www.internationalcompetitionnetwork.org/wp-content/uploads/2019/04/ICN_CAP.pdf; <https://www.internationalcompetitionnetwork.org/frameworks/competition-agency-procedures/>. For background on the CAP, see Paul O'Brien, "What does the CAP mean for the ICN today?," <https://www.competitionpolicyinternational.com/icns-framework-for-competition-agency-procedures-part-1-what-does-the-cap-mean-for-the-icn-today/>; (April 2019); Paul O'Brien, "What does the CAP mean for the ICN tomorrow?," <https://www.competitionpolicyinternational.com/icns-framework-for-competition-agency-procedures-part-2-what-does-the-cap-mean-for-the-icn-tomorrow/> (May 2019).

²⁵ ICN Recommendations can be found at <https://www.internationalcompetitionnetwork.org/working-groups/icn-operations/icn-recs/>. They address a broad range of competition issues, including those discussed above, the assessment of

many ICN members of key aspects of the Recommended Practices, such as merger thresholds that incorporate an appreciable nexus between the transaction and the jurisdiction, and objectively quantifiable notification thresholds, is widely viewed as a major accomplishment of the ICN that has made the merger review process more effective and efficient for both merging parties and competition agencies.

Implementation and the promotion of learning on competition law and practice also motivates the ICN’s Training on Demand Project, which the FTC founded and continues to lead. This multi-year project has resulted in a comprehensive and growing online curriculum of training materials on competition law and practice, featuring multimedia presentations by leading competition officials, scholars, and practitioners.²⁶

Looking to the future, the FTC is co-leading the ICN’s ongoing Third Decade review, a comprehensive review of the ICN’s substantive coverage and working methods in order to prepare recommendations for the network’s operations and work over the next ten years.²⁷

OECD. The FTC and DOJ represent the United States in the OECD’s Competition Committee. The OECD consists of thirty-eight economically developed countries, with participation by non-member observers. It aims to promote sound economic policies and economic growth. Its Competition Committee provides a forum for senior representatives of members’ competition agencies to exchange ideas and discuss policies of mutual interest.²⁸ It includes subcommittees (“working parties”) that focus on competition issues in regulated sectors and on international cooperation and enforcement.

The Competition Committee’s primary goals are to: (i) discuss developments and identify best practices in competition law, policy, and enforcement; (ii) foster convergence among national antitrust policies; and (iii) encourage increased cooperation among antitrust agencies. The Committee has

dominance/substantial market power, and the application of unilateral conduct rules to state-created monopolies.

²⁶ <https://www.internationalcompetitionnetwork.org/training/>. The modules – 32 and counting – cover a range of topics of particular interest to staff of young agencies.

²⁷ For more on the history and development of the ICN, see “(Nearly) a Century with the ICN,” Maria Coppola, Elizabeth Kraus, Cynthia Lagdameo, Paul O’Brien & Randolph Tritell, Competition Policy International (May 2020), <https://www.ftc.gov/system/files/attachments/key-speeches-presentations/icn-column-may-2020-full.pdf>.

²⁸ Information on the OECD’s competition policy work is available at <http://www.oecd.org/competition/>.

developed non-binding but important Recommendations, including on antitrust enforcement cooperation, combating hard-core cartels, merger review procedures, and transparency and procedural fairness in competition enforcement.²⁹ The Committee holds “roundtable” discussions to which the FTC contributes through United States submissions prepared with the Antitrust Division – for example, recently, on news media and digital platforms, and on potential competition, and in the upcoming meetings, on integrating behavioral insights in competition, and market power in the digital economy.³⁰ The Committee also holds “hearings” on topics of emerging interest such as blockchain and algorithms. In addition to one-off programs, the Committee has conducted multi-year projects, in which the FTC played a lead role, on competition in the digital economy, procedural fairness in antitrust investigations,³¹ and market studies. The FTC is collaborating with the OECD’s Secretariat on the Committee’s current long-term projects on international cooperation and the application of competition law to intellectual property rights. The Committee holds competition peer reviews, which are high-level examinations that culminate in OECD recommendations for reforms to laws and policies in the reviewed jurisdiction. The Competition Committee also holds an annual Global Forum on Competition, which brings together competition officials from over 100 authorities and organizations worldwide and outside experts to discuss competition issues relevant to developing countries and young

²⁹ <https://www.oecd.org/competition/recommendations.htm>.

³⁰ Electronic versions of U.S. submissions to Committee roundtables are available at <https://www.ftc.gov/policy/reports/us-submissions-oecd-2010-present>. Additional information on the roundtables is available at <http://www.oecd.org/daf/competition/roundtables.htm>.

³¹ The FTC has actively promoted due process in competition investigations to ensure fairness, well-informed decisions, and legitimacy of competition enforcement. *E.g.*, Maureen K. Ohlhausen, China’s Fair Competition Review: Insights from the U.S. Experience, 2016 China Competition Policy Annual Forum on Competition Policy and Supply-Side Structural Reform, Beijing, China (Oct. 27, 2016), https://www.ftc.gov/system/files/documents/public_statements/993533/ohlhausen_-_faircomp_speech_10-27-16.pdf; Edith Ramirez, Procedural Fairness, the Use of Non-Competition Factors in Competition Analysis, and the Application of Antitrust Law to Intellectual Property Rights, ABA Section of Antitrust Law, Antitrust in Asia, Beijing, China (May 22, 2014), http://www.ftc.gov/system/files/documents/public_statements/314151/140522abachinakeynote.pdf. We also have worked through the United States government’s interagency processes to ensure that competition-related issues that arise in connection with China’s Anti-Monopoly Law that implicate broader U.S. policy interests are addressed in a coordinated and effective manner. This work resulted in competition “Outcomes” in the Strategic & Economic Dialogue aimed at ensuring that China implements its competition law in a transparent and non-discriminatory manner, and in the U.S.-China Joint Commission on Commerce and Trade, which produced “Outcomes” on independence in decision-making, non-discrimination, transparency, confidentiality, and coherence of Anti-Monopoly Law and intellectual property rules. *E.g.*, joint U.S.-China fact sheet on the economic track of the 2015 U.S.-China Strategic and Economic Dialogue, <https://www.treasury.gov/press-center/press-releases/Pages/jl0092.aspx>.

agencies, and hosts regional programs through competition centers in Hungary, Korea, and Peru and the annual Latin American and Caribbean Competition Forum. The business community is represented at OECD through Business at OECD (formerly the Business and Industry Advisory Council – BIAC), which submits papers and is invited to participate in most sessions.

V. Competition Expertise Within the U.S. Government

The FTC works with agencies across the U.S. government to address, in a coordinated manner, competition issues that implicate broader U.S. policy interests, such as the application of competition law to the digital economy. Recently, the FTC worked with the Departments of Treasury, Justice, State, and others, to develop a G7 statement on competition in the digital economy.³² The statement affirms participants' intent to increase collaboration and cooperation with other governments to address the evolving challenges of policy and enforcement in digital markets. We have also worked within the U.S. interagency group to address international digital regulatory issues that implicate competition concerns, including through the US-EU Trade and Technology Council, as well as due process concerns raised by the enforcement of competition laws and issues at the intersection of trade and competition policy. The FTC and DOJ play an active role in U.S. delegations that negotiate competition chapters in proposed free trade agreements, such as the US-Mexico-Canada Agreement.³³ We also work with other U.S. government agencies to respond to issues at the intersection of these policies.³⁴

³² <https://www.g7uk.org/g7-shared-policy-objectives-for-competition-in-digital-markets/>. G7 and guest competition authorities also developed a compendium of approaches to improving competition in digital markets. <https://www.gov.uk/government/publications/compendium-of-approaches-to-improving-competition-in-digital-markets>. This work follows from the Common Understanding of G7 Competition Authorities on Competition and Digital Economy, issued in 2019. https://www.ftc.gov/system/files/attachments/press-releases/ftc-chairman-supports-common-understanding-g7-competition-authorities-competition-digital-economy/g7_common_understanding_7-5-19.pdf.

³³ The chapters typically include provisions on maintaining a competition law and agency, cooperation between the parties, and more recently, due process in antitrust investigations. These provisions are subject to consultation mechanisms rather than binding dispute settlement. The agreements also include disciplines that are subject to dispute settlement on certain issues involving state enterprises and designated monopolies.

³⁴ The FTC's involvement in U.S. government initiatives addressing such issues is longstanding. For example, the FTC co-chaired with the Office of the United States Trade Representative the U.S. delegation to the WTO Working Group on the Interaction between Trade and Competition Policy, which was active from 1997 through 2003.

VI. Technical Assistance

The FTC, often in conjunction with the DOJ Antitrust Division, is a leading provider of technical assistance to countries establishing new competition regimes and to young agencies.³⁵ The program began in Central and Eastern Europe in the early 1990s, supporting the transition to market economies, and has expanded around the world.

In the most recently completed fiscal year, despite international travel restrictions the FTC conducted 22 competition technical assistance programs, predominantly remotely, for staff of competition agencies in 13 jurisdictions, including, among others, India, Indonesia, Latvia, Peru, the Philippines, and Ukraine as well as regional programs for agencies of the Caribbean Community (CARICOM) and Eastern Europe. The program is implemented through experienced antitrust lawyers and economists who provide training in analytical and investigational skills, relying on actual and hypothetical cases to conduct simulated investigations involving issues that developing agencies typically encounter. It also integrates materials developed in the multilateral fora in which we participate.³⁶ We continually assess where to concentrate our efforts and whether they have been successful.

Many successful programs have been based on placing resident advisors with young competition agencies for several months. This has allowed FTC experts to provide on-the-job training in the context of the recipient agency's current cases. For example, this has included placing advisors, in the Antimonopoly Committee of Ukraine, with support from the US Agency for International Development.³⁷ In addition to working directly with competition agency staff, our advisors coordinated with other U.S. agencies and the European Union to promote competition policy as a means to combat corruption and dominance of the economy by oligarchs, and assisted in drafting amendments to the framework competition law. The Ukraine Parliament gave preliminary approval to many of these amendments, furthering important U.S. government objectives relating to the role of oligarchs in the economy.

³⁵ The FTC also provides technical assistance to consumer protection and data privacy agencies. <https://www.ftc.gov/system/files/attachments/international-technical-assistance-program/ftctechnicalcoop0716.pdf>.

³⁶ See, e.g., "Attorney-Client Privilege in Competition Law Proceedings: Primed for Convergence? An Example from Mexico," Russell Damtoft and Paul O'Brien, Competition Policy International (May 2020), <https://www.ftc.gov/system/files/attachments/key-speeches-presentations/damtoft-obrien-cpi/latinamericacolumn-december2019.pdf>.

³⁷ When pandemic conditions allowed and until January 2022.

The FTC also conducts an International Fellows program (paused during the pandemic), under which we host foreign competition, consumer protection, and data privacy agency officials for periods of several months to work alongside FTC staff. This provides foreign agency staff with valuable experience that enables them to improve the effectiveness of their work when they return, share their learning with colleagues, and facilitate cooperation with the FTC.³⁸ The FTC has hosted over 130 competition, consumer protection, and privacy lawyers, economists, investigators, and technical experts from over 40 jurisdictions. The FTC has also seconded attorneys and economists to the competition agencies of Canada, the EU, Mexico, and the UK. For example, the FTC recently detailed a staff member to the UK CMA to further our understanding of the CMA’s new enforcement powers and practices in order to deepen cooperation between our agencies, particularly following the UK’s departure from the European Union.

VII. Facing Future Challenges

The FTC’s international antitrust policy will continue to face new issues and challenges.³⁹ The FTC’s Office of International Affairs continually seeks to evaluate and improve its operations based on best practices at home and abroad. One example is the Office’s participation in the FTC’s series of hearings, “Competition and Consumer Protection in the 21st Century,”⁴⁰ in which OIA organized two days of hearings comprised of eight panels featuring 44 speakers from 17 jurisdictions on “The FTC’s Role in a Changing World.”⁴¹ The testimony and discussions at the hearing supported recommendations that the FTC:

- Pursue additional mechanisms for enhanced antitrust information sharing and investigative assistance and work to overcome foreign barriers to FTC enforcement;

³⁸ For further information on the program, see <http://www.ftc.gov/oia/safeweb.shtm>.

³⁹ See, e.g., remarks of Lina Khan, Chair, at Charles River Associates conference, “Competition & Regulation in Disrupted Times,” https://www.ftc.gov/system/files/ftc_gov/pdf/CRA%20speech.pdf (March 31, 2002).

⁴⁰ The Hearings on Competition and Consumer Protection in the 21st Century sought input through 14 hearing sessions spanning 23-days on whether broad-based changes in the economy, evolving business practices, new technologies, and international developments warrant adjustments to competition and consumer protection law and enforcement priorities. All transcripts, presentations questions, and comments are available at <https://www.ftc.gov/policy/hearings-competition-consumer-protection>.

⁴¹ All materials from the international hearing, organized by the Office of International Affairs and co-sponsored by the George Washington University Law School’s Competition Law Center, are available at <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-11-competition-consumer-protection-21st-century>.

- Continue to exercise international leadership, including in international policy organizations and enforcement networks, and leverage its expertise and cross-disciplinary synergies to address emerging issues;
- Expand its initiatives to build strong relations with counterparts, including through its International Technical Assistance and International Fellows programs; and
- Use its experience and expertise to inform U.S. government policies involving international issues that fall within the FTC’s mandate.⁴²

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OIA welcomes input from stakeholders on these and all issues within its mandate so that we can better advance the FTC’s missions and the interests of American consumers.

⁴² See <https://www.ftc.gov/system/files/documents/reports/commission-report-hearings-competition-consumer-protection-21st-century/p181201internationalhearingreport.pdf> (OIA Report); <https://www.ftc.gov/news-events/press-releases/2021/02/ftc-report-cites-benefits-international-cooperation-antitrust> (FTC press release).