

**Association of Corporate Counsel, Westchester/Southern Connecticut Chapter  
(WESFACCA)  
Lunchtime Keynote Talk  
March 16, 2011**

**“The Role of the Commissioner at the FTC”**

Good afternoon. Thank you for inviting me here and for that kind introduction. I’m very happy to be part of this outstanding program. I’m also very happy to be back in New England – though I suspect we may be beyond the borders of Red Sox Nation and deep into Yankee territory here in Darien, where I feel much more at home, as a lifelong Yankees fan.

You heard this morning from Len and others about how the FTC operates generally and some of the issues we have focused on recently through our Bureau of Consumer Protection. And you’ll hear later this afternoon from Rich Feinsein and others about some the Bureau of Competition’s activities. I’ll try to give you a sense of where my fellow Commissioners and I fit in to this process, by sharing some of what I’ve learned in during my first year as Commissioner of the FTC. And then I’ll be very happy to take any questions you may have.

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First, a bit more background about me: As you just heard, I cut my teeth on consumer protection and antitrust issues in the Vermont attorney general's office. I like to think of State Attorneys General as the “first responders” in our law enforcement system. They are constantly putting out fires of all sorts. On the consumer protection side, the State AGs work to get refunds to consumers who’ve been victimized by home repair scam artists, deceptive telemarketers, and mortgage servicers who engage in shady practices, to name just a few. On the antitrust side,

State AGs review mergers with localized effects, recover funds for state purchasers victimized by anticompetitive conduct, and provide on-the-ground antitrust advice to state entities.

In their role as first responders, State Attorneys General can hear about problems consumers are facing before the news hits the blogosphere, and often before we hear about them in Washington. This is the world I come from.

I'm frequently asked about the difference between working with State Attorneys General and being a Federal Trade Commissioner. Well, if the State Attorneys General are first responders, then the FTC is like an elite SWAT team.

At the FTC, we tackle some of the nation's most complex issues and difficult cases. On the consumer protection side, these issues include privacy, credit reporting, advertising substantiation, green marketing, telemarketing, negative option billing, and debt collection. On the competition side, we protect competition in fast-moving high-tech and health care industries and litigate complex merger cases.

I have been uniformly impressed with the capability of our staff to take on all of these matters. FTC staff are among the foremost national experts on many of the issues we handle. Staff in our Bureau of Consumer Protection, for example, have many years of experience with disclosure issues related to endorsements in advertising, and the FTC was one of the first regulatory agencies – in the U.S. or the world – to address the emerging use of endorsements in online social media such as Twitter or Facebook. Staff in our Bureau of Competition have a similar level of expertise in competition issues involving complex pharmaceutical and other health care markets. And in both Bureaus, and in the Office of the General Counsel, we have talented and dedicated litigators willing to match the big private firms in focus and effort – even though they are not matching private litigators in compensation.

So it has been a pleasure for me to interact with FTC staff on the important issues we deal with and a comfort to know that our cases are in good hands. My role at the Commission is not to litigate cases. You are not going to find me in federal court arguing the Commission's position – as much as I might like to.

Instead, Commissioners shape the overall enforcement agenda of the agency. We make the final determination on all matters going to court and all settlements. And we work with staff to ensure that our enforcement actions and settlements are appropriate in light of applicable law and policy.

We also shape our policy agenda. From Congressional testimony to policy reports – such as our recent, much discussed report on privacy – we are deeply involved in developing and advancing the agency's policy objectives on behalf of consumers.

So the Commissioners are a bit like a Board of Directors. Like a Board, Commissioners are responsible for setting the organization's course, exercising oversight of the work of our attorneys and other employees, and acting as final decision makers in all important actions.

There are differences, of course, between the Commissioners and a Board of Directors. For one, there are only five of us. We are nominated by the President and confirmed by the Senate. And by law no more than three of us can be from any one political party.

For another, being a Commissioner is a full-time job – and more – as I can assure you from personal experience.

And it's also probably the case that a much broader range of FTC activity must undergo Commission approval than corporate activity requiring Board approval. As just one of many examples, FTC staff cannot issue a subpoena in an investigation without approval from a designated Commissioner.

Finally, on a per-hour basis, I'm afraid the pay just isn't as good.

Another thing that I'm pleased to mention is that, although the Commissioners are from different political parties, we almost always operate in a bipartisan way. And that is how it should be. There is nothing partisan about pursuing scam artists who bilk millions of dollars from desperate job seekers by advertising fake jobs online – as the FTC did in a law enforcement sweep announced a couple of weeks ago. There is nothing partisan about analyzing the likely competitive effects of a high-profile merger in the complex world of online mobile advertising, as the Commission did last year when Google acquired AdMob. After much deliberation, the Commission unanimously decided to close its investigation. So despite the fact that we are 3 Democrats and 2 Republicans, we agree on the vast majority of what we do.

That is not to say that each Commissioner does not bring a unique perspective to the Commission. We do. In my case, that includes my background in state law enforcement and in consumer protection matters in particular. So it is a natural fit for me to continue to work with colleagues in the state enforcement community and engage on a number of evolving consumer protection issues. And given my background in working on enforcement efforts with multiple agencies, I may also have a unique perspective on how the FTC can best work with our federal and state counterparts, including the Department of Justice and the new Consumer Financial Protection Bureau.

One of my colleagues, Commissioner Kovacic, brings another valuable perspective – that of a legal scholar – to the Commission. He has thought, written and spoken for many years about a number of substantive antitrust issues as well as best practices for competition authorities, including from an international perspective. In fact, Commissioner Kovacic is

something of a “rock star” when it comes to international antitrust issues. I’m sure this informs his perspective as a Commissioner.

I could go on, but you get the point: Each of the five Commissioners brings his or her own background and insights to the work we do. I have found that applying these five unique perspectives to any particular case or issue improves our decision-making on behalf of American consumers.

I’d like to share with you a few things I have learned about effective advocacy before the Commission – at least before me as one of the five Commissioners. As I mentioned, the Commissioners are the final decision makers in any law enforcement action: No case is filed in federal court or in FTC administrative proceedings without approval of the Commission. It is fairly common for parties to come in to meet with each of the Commissioners before we vote on whether to file an enforcement action recommended by staff. We give the parties a chance to present their side of the case, to allow them the opportunity to persuade the final decision makers not to file against them.

One thing I find very helpful during these meetings is the opportunity to interact directly with business people. I certainly appreciate the fine work done by outside and inside counsel throughout the process, and I have very positive interactions with counsel. But interacting directly with the business men and women involved often gives me a clearer view of the real life, practical business implications of our contemplated action. This stems in part from my background as a litigator –wanting to hear it from the horse’s mouth – and in part from my focus on bottom line consumer and business impacts, rather than legal theory.

Something that probably will not help your case before me is if I hear that our staff has had difficulty in obtaining compliance with Commission-approved compulsory process requests for information during our investigation. We can certainly disagree on the substantive consumer protection or antitrust issues, and I am always happy to discuss these disagreements. But I am troubled when I hear that staff has not been able to obtain the information it needs to make an informed recommendation. Because that means I likely won't have the information I need to make an informed decision. I don't think anyone is well-served if the Commission is not able to carry out its investigative process.

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I'm often asked about my substantive priorities as a Federal Trade Commissioner. One of my top priorities is privacy. I have spent much of my career focusing on privacy, so I've been delighted to be at the Federal Trade Commission at a time when we are addressing new and constantly evolving privacy issues. Our preliminary staff report, "Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Business and Policymakers," has generated a lot of discussion about collection and use of data concerning consumer's online activities. In the few months since we've issued our report, industry players have come forward with some proposals to address the critical issues of how to provide consumers with some control over data collection and use. I am looking forward to seeing how these proposals are implemented in the very near future, so we can assess their effectiveness.

I also think it is critically important for the FTC to focus on scams and other activities aiming to take the last dollar from consumers who are still feeling the effects of the economic

downturn. Scams involving mortgage and foreclosure relief, debt settlement, and debt collection.

Some of my other priorities involve protecting consumers in fast-evolving technology-related markets, which includes the application of antitrust principles to high-tech industries in a way that promotes competition and innovation.

Finally, health care continues to be a priority both for me and I think the Commission as a whole. This includes antitrust issues involving hospitals and pharmaceuticals, including sweetheart deals between pharmaceutical companies that delay generics from coming to the market, costing Americans \$3.5 billion per year. And it also includes advertising issues surrounding food, particularly functional foods and dietary supplements.

Whether we are protecting consumer privacy, shutting down deceptive advertisers, or protecting competition in health care, the FTC strives to do our work with honesty and clarity. We know that you in the business community, and those of you who represent the business community, need clarity so you understand the rules and can fairly compete in the market.

Because at the FTC, we believe that – as long as the rules are fair and direct – as long as individuals' rights are respected – as long as bad actors and unscrupulous scammers are kept at bay – as long as we protect competition – then American markets work, American consumers benefit, and American businesses prosper.

Thank you for your attention. I'm happy to try to answer your questions.