



AAI's Priorities for Progressive Competition Enforcement and Policy

Diana L. Moss
President

10th Annual Private Enforcement Conference
November 9, 2016, Washington DC



Symptoms of Declining Competition



- Rising market concentration
 - Council of Economic Advisors (top 50), The Economist (4-firm ratio), WSJ (HHIs)
- Disproportionately high returns to the most profitable firms and slower rates of startups
 - “Durable” market power and barriers to entry to smaller firms
- Growing wealth and income inequality
 - Growing market power and shift in bargaining leverage to large buyers of labor



Priority #1: Facilitating more aggressive and consistent enforcement



- Give greater credence to the structural presumption and to stopping anticompetitive mergers in their incipiency
- Adopt appropriately critical view of efficiencies, make better use of direct evidence, challenge demonstrably harmful consummated mergers
- Presume that exclusionary conduct by monopolists that helps preserve, extend, or exploit monopoly power is anticompetitive
- Expand efforts to increase the transparency of agency decision-making



Priority #2: Ensure that the agencies have the resources to enforce the laws



- Recruit agency leaders and sector regulators that are committed professionally and ideologically to enforcement
- Pursue “litigation readiness” to aid in preparedness for federal merger challenges and other enforcement actions
- Continue and even step up FTC competition advocacy work
- Work toward ensuring that judges have tools and resources necessary to oversee complex antitrust litigation



Priority #3: Preserving the vital role of private antitrust enforcement

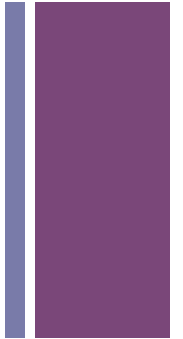


- Educate the courts, the public, and lawmakers about the virtues of vigorous private antitrust enforcement
- DOJ and FTC should use amicus briefs, competition advocacy, and speeches to help restore the vitality of private enforcement
- Develop a comprehensive and coherent approach to ensure the ability to bring indirect purchasers suits



Priority #4: Revitalizing the tools available to antitrust enforcers

- Revitalize Section 5 of the FTC Act to address anticompetitive conduct not reachable under the Sherman or Clayton Acts
- Reform and rejuvenate the Robinson-Patman Act
- Revise agency guidelines to provide more clarity and guidance on various types of mergers
- Promote antitrust and regulation as complementary tools



+ Priority #5: Recognizing new sources and abuses of market power

- Information and data
- Multichannel distribution
- Buyer and bargaining power
- Innovation and intellectual property
- Colluding on “rules”



+ Priority #6: Ramping up antitrust penalties and remedies

- Encourage companies to create a “culture of compliance” in combatting cartels
- Use public availability of cartel enforcement information as a tool for enhancing the deterrence of illegal conduct
- Seek structural relief, as opposed to conduct remedies, in all but the most exceptional merger cases





Priority #7: Promoting International Coordination



- In promoting cooperation, U.S. agencies should consider that other countries have different economic and political issues and that what might be a poor approach in the U.S. might be necessary elsewhere
- The agencies should continue to work with the ICN, the OECD, and other international organizations to help promote effective cartel and merger remedies
- The U.S. should bootstrap smaller and younger competition authorities and encourage more integration through regional alliances of smaller agencies to improve their effectiveness