



## FTC, DOJ should take more forceful approach on antitrust-IP nexus with emerging jurisdictions, Wright says

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### IN BRIEF

The new heads of the Federal Trade Commission and Department of Justice's antitrust division should be less equivocal in defending intellectual property rights in engagements with other competition authorities, a former adviser to the Trump administration's transition team said. The FTC should also carefully consider how and whether it wants to proceed in its case accusing Qualcomm of abusing its patents essential to industry standards, former FTC commissioner Joshua Wright said.

The new heads of the US Federal Trade Commission and the US Department of Justice's antitrust division should be less equivocal in defending intellectual property rights in engagements with other competition authorities, a former adviser to the Trump administration's transition team said.

The FTC should also carefully consider how and whether it wants to proceed in its case accusing Qualcomm of abusing its patents essential to industry standards in violation of US antitrust laws, former FTC commissioner Joshua Wright said.

"It is my belief that current antitrust-IP policy at the FTC and DOJ is off the tracks," Wright said, citing some of the agencies' cases and speeches related to standard essential patents. "US agencies have somewhere along the line ... lost the desire to communicate in unequivocal terms to international competition agencies about the critical role that IP rights play."

Other competition agencies pay close attention to statements by US antitrust agencies, Wright said, and the US needs to be more clear about its views on the importance of intellectual property.

"There will soon be permanent heads of both agencies. Those heads need to get on a plane and they need to go to Taipei, and they need to go to Beijing, and they need to go to Seoul," Wright said. "For the past 10 years, the overarching theme of the US message to international agencies has been it is difficult to come up with too much or too strong a limit on IP rights. ...Some of the role for each new agency head ... is going to frankly involve walking back positions that the agencies have taken in the past 10 years."

Wright's remarks came at an event in Washington sponsored by Ericsson, Qualcomm and Nokia, among others. A Republican FTC commissioner from 2013 to 2015, Wright was an adviser on antitrust to President Donald Trump's transition team and has been under consideration for a senior antitrust position in the administration (see here). In his remarks, Wright said he didn't know for sure, but has "a decent idea" about the Trump administration's views on antitrust.

Wright also suggested that when the US agencies offer views to developing agencies – such as through the FTC's Office of International Affairs – they offer more frequent and concrete guidance, saying that what is often conveyed now is "too equivocal to be useful."

The FTC's decision on the Qualcomm case, filed days before Trump took office and split the agency's Democratic and Republican commissioners – will likely be a strong indicator of the new administration's views on antitrust and IP, he said.

"These are choices the new administration has that are very important in terms of the message it is sending about its position on antitrust and IP," Wright said. "That will be a first inkling of where antitrust and IP" will go.

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