

Privacy

White House Czar Urged for Global Antitrust Coordination

BNA Snapshot

- Report commissioned by US. Chamber of Commerce calls for new White House antitrust post
- House panel expected to hold hearing on report's recommendations



By Alexei Alexis

A bipartisan group of antitrust professionals is calling for a new position within the White House to monitor how other countries are enforcing their competition laws. The proposal is one of several that will be heard by the House Judiciary Committee in the coming weeks.

The idea for a White House antitrust position, part of a report commissioned by the U.S. Chamber of Commerce and published in March, is intended to highlight U.S. business community concerns that some countries are using antitrust probes to disadvantage American companies. The number of international jurisdictions with competition laws has rapidly expanded in recent decades, causing headaches for businesses with a global reach.

The Chamber organized the project, but it made no effort to the steer the authors' recommendations.

"There's a growing recognition that this is a problem," said Alden Abbott, who helped draft the report. Abbott, a senior research fellow at the right-leaning Heritage Foundation, is on the list to testify at the forthcoming hearing, which will be held by the House panel's Subcommittee on Regulatory Reform, Commercial and Antitrust Law.

The House hearing was initially set for May 19, but it was postponed due to a scheduling conflict. It will likely be rescheduled in coming weeks, a committee aide said.

Growing Pressure

The idea for a White House antitrust position is new, reflecting increased pressure from the business community and practitioners for a more coordinated U.S. response to burgeoning international enforcement. Proponents like Abbott say it would elevate international antitrust enforcement issues within the administration.

But there is a risk of compromising the independence of U.S. antitrust agencies, said Koren Wong-Ervin, a law professor at George Mason University, who is also slated to appear at the House hearing.

"I do see the potential benefits of creating this position, but implementation will be key. ...I just get nervous about making antitrust political," she told Bloomberg BNA.

The Federal Trade Commission, one of the independent agencies that reviews antitrust issues in the U.S., declined to comment on the recommendation. The Justice Department's antitrust division, the other independent U.S. enforcement entity, didn't respond to a request for comment.

Unfair Use of Competition Review

Wong-Ervin wasn't on the panel that wrote the report for the Chamber, but she agreed with the overall conclusion that certain foreign governments—the most talked about is China—appear to be using their competition laws in ways that unfairly harm

U.S. companies.

A high-profile example, she said, is China's 2015 decision to impose a nearly \$1 billion fine against smartphone chipmaker Qualcomm Inc. It required the company to calculate royalty fees at 65 percent of the wholesale price of phones sold in China, instead of the full price used previously.

The DOJ's antitrust division and FTC are working with foreign counterparts through organizations such as the International Competition Network to achieve some consensus on how competition laws are used. Makan Delrahim, President Donald Trump's pick to head the antitrust division, said this month at his confirmation hearing that he wants to make international antitrust enforcement a greater priority by having a deputy within the division focus on the issue.

During the ICN's annual meeting May 10-12 in Portugal, the group of international regulators adopted four new recommended practices for merger reviews, including the use of remedies like divestitures and analysis of the purported economic benefits of a merger. The document is used by authorities around the world to benchmark their practices.

Government-Wide Approach

These efforts might not be enough. Sean Heather, director of antitrust policy at the Chamber, told Bloomberg BNA that a government-wide approach is needed going forward.

The FTC and DOJ have taken positive steps to address global antitrust enforcement concerns, but "some of these things get beyond the enforcement lane of the antitrust agencies," he said.

The report commissioned by the Chamber said it has been difficult for antitrust agencies and international trade agencies to coordinate effectively in the past. It recommended that a White House antitrust working group focus on responding to the inappropriate use of foreign competition laws, such as "forced technology transfers." The group, chaired by an assistant to the president, would oversee a 90-day review of existing or potential trade tools that could help to address such problems.

The report also said the proposed working group isn't intended to displace or undermine the roles and responsibilities of the U.S. agencies that conduct antitrust and trade reviews.

Concern With Trade 'Remedies'

Abbott was primarily responsible for drafting the report after the authors reached consensus. The co-chairs in charge of putting it together were Deborah Garza, an antitrust attorney and former acting head of the antitrust division during the George W. Bush administration, and Andrew Shoyer, a former assistant general counsel for the U.S. Trade Representative.

Garza is also on the witness list for the forthcoming House hearing.

Eleanor Fox, a professor of trade regulation at the New York University School of Law, helped write the report and issued a separate statement saying that she agreed with it but had concerns with the recommendations like using trade remedies to "cure perceived discriminatory foreign applications of antitrust against American business."

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