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Hearings Start Thursday

FTC Hearings Called Potential Turning Point

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Growing data privacy concerns and FTC Chairman Joe Simons' decision to model hearings after pivotal events in 1995 suggest the agency is on the verge of a turning point, former officials and industry attorneys told us. It kicks off a series of public hearings on antitrust and consumer protection policy Thursday (see 1808240027).

Rational 360 Vice President Nat Wood, former Consumer and Business Education Division associate director, noted the format is reminiscent of the FTC's first series of such hearings in 1995. That year, the agency shifted policy to reflect new challenges associated with the "world wide web," namely online deception and fraud, and the agency became known informally as the Federal Technology Commission. Wood said another major strategic shift could be in the works, given renewed interest in digital platforms and data privacy.

Wiley Rein data privacy attorney Scott Delacourt noted the FTC is now the lead federal privacy regulator, which raises important questions about authority and whether it has appropriate regulatory tools. "It will be interesting to see if the commission -- and particularly the chairman -- articulates a positive agenda on data privacy and security through the hearings or whether it is a listening tour," Delacourt said.

Hinch Newman internet advertising and marketing compliance attorney Richard Newman agreed, saying the tea leaves suggest an inflection point: "Privacy and data use are at the forefront of the regulatory agenda, and the FTC has publically stated that it wants more resources to accomplish its mission." Policies regarding technological developments, privacy and data security and the overlap between competition and consumer protection will get the most scrutiny, he said.

The amount of public comment for these hearings suggests a high level of interest in the agency's direction, said Hunton Andrews consumer protection attorney Phyllis Marcus, former Advertising Practices Division chief of staff. Lawmakers and trade groups from the tech and telecom industries filed comments for the first round of public solicitation (see 1808210026). Marcus noted that not a lot of consumer protection items outside of privacy concerns are on the agency's agenda. That suggests other consumer protection issues aren't in need of deep inquiries, she said.

Expect scrutiny on forward-looking issues like artificial intelligence, Wood said. He anticipates debate about the consumer welfare standard, which guides U.S. antitrust

law. Progressives have argued regulators also should be considering systemic harm of market-dominant tech platforms, not just harm to consumers.

The agency last held a similar round of antitrust hearings in 2006, and since then, there's been a rapid shift with EU antitrust regulators taking a more active enforcement role, Marcus said. Computer & Communications Industry Association CEO Ed Black spoke against recent concerns of U.S. antitrust law being used as a political tool against industry (see 1809070042). "We look forward to the FTC hearings to focus on the facts and to help fine tune even more efficient mechanisms of enforcement," he said.

written by Karl Herchenroeder

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