Opening Statement of the Honorable Lee Terry
Subcommittee on Commerce, Manufacturing and Trade
Hearing on "The FTC at 100: Views from the Academic Experts"
February 28, 2014

(As Prepared for Delivery)

Welcome to our second hearing examining the Federal Trade Commission in its one-hundredth year. I want to thank all of the witnesses for coming today to share the academic perspective on how we can modernize the FTC.

When the FTC was established in 1914, American voters expected policymakers to "bust the trusts." Stung by the recent abuses of Standard Oil and American Tobacco, Americans wanted a new cop on the beat to take on the behemoths of business. The FTC was therefore established to fill this role.

Like many other federal agencies, the FTC finds itself in an era that doesn't necessarily fit its original design. Standard Oil and American Tobacco have been replaced by Apple and Google. Increasingly, the economy the FTC oversees crosses international borders — and is defined by a constant and ubiquitous interconnection over the Internet.

And it's not just people, but their devices that are connected. Five years ago, the number of "things" connected to the Internet surpassed the number of people. Some predictions say that by 2015, there will be 25 billion devices connected to the Internet - ranging from sensors in the soil that track growing conditions for farmers to chips in pills that notify a doctor when a patient has taken her medicine. This is the "Internet of Things," and it presents countless economic advantages, but also unique privacy concerns. Innovations like this underscore the difficulty the FTC faces in trying to apply its original principles.

The spirit of consumer protection was the fundamental driver in the creation of the FTC 100 years ago and that continues to be the case even though the activities it oversees have changed. The FTC certainly has a role to play in preventing business practices that harm consumers. But something that the subcommittee could explore today is whether the FTC's design already allows for greater flexibility to better protect consumers than other agencies within the federal government.

The FTC's Section 5 authority, for example, prohibits "unfair and deceptive acts" as well as "unfair methods of competition." These broadly defined standards allow for a fairly nimble agency to account for business practices as they evolve.

Nonetheless, there are dangers in this flexible approach. For example, there is little definition as to what constitutes "unfair methods of competition." The Supreme Court affirmed that the provision applies to activity that is not yet deemed illegal under antitrust law. As a result, businesses have a hard time figuring out exactly what an "unfair method of competition" really is.

The temptation for "mission creep" is difficult to resist for any federal agency, and I believe the FTC is no exception. I believe this could be remedied by having the commission focus its efforts on protecting consumers. Otherwise, the commission is an arbiter of business models — where it can pick one business model over another and I believe that government shouldn't be picking winners and losers.

As we start thinking about how to modernize the FTC, I believe there are a few important principles to keep in mind. First, we should aim to sharpen the commission's guidance to provide clearer signals as to what is a prohibited business practice. Second, we should maintain the commission's flexibility to update this guidance — which means maintaining broad overarching authority. Third, I believe the commission should re-commit itself to basing its decisions on consumer welfare effects — and those decisions should be supported by empirical evidence.

As we continue this series of hearings, I look forward to fleshing these out.

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