

WILSON RESIGNATION

WILSON WAS THE CHIEF OF STAFF FOR FORMER FTC-COMMISSIONER TIM MURIS, WHO WAS KNOWN FOR HIS AGGRESSIVE PURSUIT OF ANTITRUST VIOLATIONS AND HAD ACTED MUCH LIKE KHAN

MURIS HAD A LOOSE APPROACH TO CONFLICT-OF-INTEREST CONCERNS FOR HIS FTC APPOINTMENTS – INCLUDING HIMSELF AND SIMILARLY TRIED TO SUBVERT CONGRESS

- ***Muris and Wilson served between 2001 – 2004.*** Muris was sworn in as FTC Chairman in June 2001 and served until August 2004. Wilson served as Muris' Chief of Staff during his time at the FTC.
- ***On numerous fronts, Muris' appointments and his previous professional work could've constituted conflicts-of-interest.*** Before joining the FTC, Muris had argued on behalf of a credit rating agency that the Fair Credit Reporting Act was constitutional, an argument that was rejected by the U.S. Court of Appeals in Washington. The FTC enforced the Fair Credit Reporting Act. Muris also appointed individuals with potential conflicts of interest to senior posts at the FTC. Muris' appointment for the FTC's General Counsel, William Kovacic, had previously said in an interview that two of the sitting commissioners were a "national embarrassment" for not knowing enough about antitrust law. Muris' choice for the head of the FTC's Consumer Protection Bureau, J. Howard Beales, had asserted in academic papers that there was no link between cigarette ads and smoking among teenagers. Muris' choice for the FTC's Bureau of Economics, David Scheffman, had worked for the Tobacco industry and argued in court on its behalf. Scheffman had testified on behalf of the tobacco industry that cigarette makers never conspired to suppress the development of healthier products. In 2004, the FTC approved R.J. Reynolds purchase of Brown & Williamson Tobacco. Muris had planned to have his commissioners vote on his appointments, but backtracked after fearing they wouldn't get a unanimous vote like most appointments at the FTC did. Muris was also said to have tried to fire "activist" staff members at the FTC.
- ***Muris subverted congressional approval for his actions at the FTC, like trying to divide merger reviews between the FTC and the DOJ and creating a do-not-call list.*** When coming into the FTC, Muris said he planned to beef up the FTC's enforcement budget by 50%, despite later efforts to divide the industries it focused on between the FTC and the DOJ. In 2002, the FTC was set to sign a 12-page agreement with the DOJ that would've given the FTC authority over industries like health care, oil, natural gas, electric power, computer hardware and biotech companies. The agreement was aimed at streamlining the clearance process under which the rival regulatory agencies competed against one another to oversee particular merger proposals. Muris and the DOJ worked on their agreement "quietly" according to the Associated Press. The agreement was scuttled after lawmakers complained that they had only learned about it from the press. Responding to the agreement, Senate Commerce Committee Chairman Ernest Hollings (D -S.C.) said he had "strong concerns why the authorizing and appropriating committees were never consulted." Democratic FTC commissioner, Mozelle Thompson, opposed the agreement, saying it amounted to "horse trading" among the agencies that could "deprive consumers of the Commission's independence, expertise and knowledge." Muris had not asked commissioners to vote on the agreement, with Thompson saying she had only learned about it just days before it was supposed to be signed and said "such an important change demand[ed] careful consideration by each of the five commissioners.
- ***Muris created a do-not-call registry to address telemarketers constant calls, even though Republicans resisted it and a federal judge blocked it.*** The Wall Street Journal reported that Muris had pushed for the do-not-call registry "despite resistance from his own party in Congress." A federal judge blocked Muris' do-not-call registry, saying the FTC had overstepped its authority. The judge said Congress had not given the FTC specific authority to develop and implement the list. The judge said that the "administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress." Responding to the ruling, Muris said the decision was "clearly incorrect" and promised that the FTC would "seek every recourse to give American consumers a choice to stop unwanted telemarketing calls." The do-not-call registry was created under a new agency theory that telemarketers' actions constituted "abusive" conduct, rather than using the deception or unfairness theory of harm. Former FTC officials, including Kovacic, said the skills used to create the do-not-call registry should be emulated in future regulations of Big Tech.
- ***Muris said the FTC "help[ed] provide and enforce the rules" of competition in the market to protect consumers.*** Muris said "the rationality of our antitrust system require[d] continuing efforts to make this process of adaptation well-informed by refinements in economic theory and empirical research." On the topic of online scammers, Muris said no legislation would be a magic bullet to address the issue. In October 2001, House Majority Leader Richard Arney (R-TX) applauded the FTC's privacy agenda, saying Congress was "often unable

to keep up with the fast-changing online world.” During his Chairmanship, the FTC went after state and federal rules used by businesses to reduce competition.

MURIS WAS AN “AGGRESSIVE” ANTITRUST ENFORCER WHO WAS CALLED ONE OF THE “MOST ACTIVIST” REGULATORS OF THE BUSH ADMINISTRATION

- ***Muris surprised critics by being “aggressive” with antitrust enforcement and had spurred the FTC “to greater action.”*** In 2004, The Washington Post reported that Muris had “surprised many critics by turning out to be an aggressive regulator willing to step on the toes of a number of powerful industries.” The Post said Muris had shown that it was “still possible for a smart and determined regulator to ignore special interests, avoid the partisan swamp and actually do some good for the American consumer.” In 2003, The Wall Street Journal said Muris was “one of the most activist Bush Administration regulators. That same year, Cox News Service said Muris had “spurred the FTC to greater action.”
- ***Muris believed antitrust enforcement was one of the most effective ways to encourage competition and called for strengthening competition policy.*** Muris said one of the most effective ways to encourage greater competition in the market was through antitrust enforcement. Muris argued that “competition policy must become more aggressive in competing with other forms of regulation. He further called for “constant vigilance and continuing efforts” of competition policy and advocacy.” Muris recognized that competition policy was “a complex and difficult process, and outright victories [were] relatively rare.” Muris also said a “relevant consideration” for antitrust enforcement was “whether there [was] an opportunity to improve the state of antitrust legal doctrines.” He said the FTC had “a special responsibility to pursue improvements in the process and institutional arrangements through which competition policy [was] formulated at home and abroad.” Muris: “shaping a rational antitrust program require[d] identifying the practices that should receive the greatest scrutiny.” Muris also said he had “emphasized the need for antitrust agencies to devote adequate resources to competition policy ‘research and development.’”
- ***Muris’ aggressive agenda included going after drug companies that tried to suppress generic competition, investigating hospital mergers and blocking anti-competitive patents.*** The Antitrust Bulletin said Muris came into the FTC with “an activist pro-consumer agenda’ and used its enforcement tools “to challenge abuses, especially in the important health care and high-tech industries.” The Antitrust Bulletin also noted that Muris had “pursued the most vigorous nonmerger agenda in almost a quarter century” during his time as FTC chairman. Under Muris, the FTC launched a nationwide investigation into the wave of hospital mergers. Muris also went after drug companies that used patent laws to delay the introduction of generic competition. Muris further went after a big oil company that used a patent on a clean-fuel formula to drive up gas prices in California.
- ***Muris’ FTC had one of “the most exhaustive” examinations of merger proposals and represented “the greatest hurdle” for businesses.*** The Wall Street Journal said Muris had “challenged mergers from Ice Cream to pickles.” In March 2002, the Miami Herald reported that antitrust experts said the FTC’s examination of merger proposals were “the most exhaustive of all regulatory reviews and represent[ed], by far, the greatest hurdle.”
- ***Muris’ FTC took major actions against companies that reduced competition on numerous occasions.*** The FTC filed the agency’s first complaint against a hospital merger in seven years, saying the January 2000 merger by Chicago’s Evanston Northwestern Healthcare to acquire Highland Park Hospital “resulted in significantly higher prices.” The FTC hadn’t filed a challenge of a hospital merger since 1997. Muris’ FTC blocked a merger between two coal companies over concerns that it would harm competition among coal producers in Wyoming’s Southern Powder River Basin. The FTC said at the time that the acquisition would result in the top three competitors controlling 86% of the River Basin and “substantially increase the possibility of, and harm from, coordinated interaction.” In 2002, Muris’ FTC levied a \$215 million fine against Citigroup, which was the largest protection settlement by the agency at the time. The FTC alleged that a company that Citigroup acquired had manipulated people into buying overpriced mortgages and credit insurance. Muris blocked a merger between Nestle and Dreyer’s ice cream over concerns that it would the combined companies would lead to nearly two-thirds of the market for the richest and most expensive ice cream. Muris’ FTC also settled with Microsoft over claims that it had failed to protect consumer data. The FTC said Microsoft had failed to take adequate steps to protect consumer data and required the company to beef up security of its ‘passport’ service that gave over 200 million users a single log-in for numerous websites. The settlement required Microsoft to submit an independent audit to the FTC every two years.

IN FEBRUARY 2023, FTC COMMISSIONER CHRISTINE WILSON ANNOUNCED SHE WOULD “SOON RESIGN” FROM HER POST, COMPLAINING FTC CHAIR KHAN ABUSED HER POWER

IN HER RESIGNATION, WILSON SAID SHE REFUSED TO GIVE KHAN “LEGITIMACY BY REMAINING” AND RESIGNED BECAUSE KHAN HAD A “DISREGARD” FOR THE RULE OF LAW

- ***In February 2023, Wilson wrote an op-ed in the Wall Street Journal announcing she planned to “soon resign,” saying she had “failed repeatedly to persuade” Khan and her “enablers” to “do the right thing.”*** Wilson said she was resigning because she “refuse[d] to give their endeavor any further hint of legitimacy by remaining.” Wilson said Khan’s actions amounted to “continuing lawlessness” as Khan attempted to pursue her agenda. Wilson said Khan had a “disregard for the rule of law and due process” and was resigning “in the face of continuing lawlessness” by the FTC. Wilson said she “refuse[d] to give Khan and senior FTC officials “any further hint of legitimacy by remaining” Commissioner. Wilson further claimed that staff at the FTC had “discomfort” with Khan’s means of pursuing her agenda, “which involve[d] dishonesty and subterfuge.”
- ***Wilson said Khan had a “disregard” for Congressional limits on the FTC’s jurisdiction in her attempts to “achieve desired outcomes.”*** Wilson’s “fundamental concern” with Khan’s leadership was her “willful disregard of Congressionally imposed limits on agency’s jurisdiction, her defiance of legal precedent, and her abuse of power to achieve desired outcomes.” Wilson citing Khan’s effort to put a moratorium on mergers “by fiat” after progressives failed to enact legislation to do so. Wilson claimed an “abuse of regulatory authority now substitute[d] for unfulfilled legislative desires.”
- ***Wilson said senior FTC officials had “enable[d]” Khan while the agency’s staff morale declined.*** Wilson noted that the FTC staff’s feelings that senior agency officials had maintained high standards of honesty and integrity had dropped from 87% to 49% since 2020. In Jan. 2020, Wilson lamented the “resource constraints” of the FTC budget in the face of a growing economy and consumer base. Wilson said the resource constraints forced FTC staff to “work long days, nights, and weekends to get the job done,” all while the agencies budget “remain[ed] essentially constant.” However, in March 2022, Wilson argued that the FTC did not need a budget increase because “under current leadership, the enforcement productivity of the agency ha[d] declined substantially.”

WILSON ARGUED THAT KHAN HAD REJECTED CONCERNS OF A CONFLICT OF INTEREST WITH THE META-WITHIN CASE AND WAS “SPURNING DUE-PROCESS CONSIDERATIONS”

- ***Wilson noted that Khan had previously argued that Meta should be blocked from making any future acquisitions before becoming Chair, believing it disqualified her from overseeing any suit on that topic.*** Wilson complained that before coming to the FTC, Khan had “argued that Meta should be blocked from making any future acquisitions,” but as Chairwoman Khan would sit “as a purportedly impartial judge and decide whether Meta [could] acquire Within.” Wilson: “spurning due-process considerations and federal ethics obligations, my Democratic colleagues on the commission affirmed Ms. Khan’s decision not to recuse herself.” Wilson said her dissent was based on “due-process grounds, which require[d] those sitting in a judicial capacity to avoid even the appearance of unfairness.” Wilson believed “the law [was] clear” on due process, saying the courts had ruled an FTC chair “couldn’t adjudicate a case after making statements suggesting they prejudged the outcome.” Based on that premise, Wilson said “Ms. Khan’s participation would deny the merging parties their due process rights.” Previously, a federal judge had rejected Facebook’s argument that Khan should recuse herself from participating in the FTC’s decision to refile their antitrust lawsuit regarding its purchase of rival messaging platforms. In the Meta-Within case, the judge overseeing it found the FTC’s novel legal approach as plausible, even if its factual assertions were weak.
- ***Wilson claimed the FTC’s Democratic commissioners had helped Khan suppress one of Wilson’s dissents by redacting portions of it even though it didn’t contain confidential business information.*** Wilson claimed Commissioners Slaughter and Bedoya “imposed heavy redactions” on her dissent despite redactions being used “to prevent disclosure of confidential business information. Wilson claimed her dissent “contained no such information” and “the redactions served no purpose but to protect Ms. Khan from embarrassment.” Wilson said Khan had made it “increasingly difficult” to uncover abuses of power because she had “consolidated power within the office of the Chairman.”
- ***Wilson said Khan’s abuse of her powers had broken “decades of bipartisan precedent” and undermined “the commission structure that Congress wrote into law.”*** Wilson said a November 2022 policy statement by the FTC asserted “that the FTC could ignore decades of court rulings and condemn essentially any business conduct that three unelected commissioners [found] distasteful.” Wilson said the new policy adopted “an ‘I know it

when I see it' approach despite due process demanding "that the lines between lawful and unlawful conduct be clearly drawn." Similarly, Wilson believed that under Biden, the FTC leadership "abused the merger review process to impose a tax on all mergers" instead of ones that "hinder[ed] competition." Wilson also believed that the FTC's rulemaking for non-compete clauses went against SCOTUS precedent.

THE FTC AND ITS CHAIRS WERE NO STRANGER TO CRITICISM AND HAD FACED MANY OF WILSON'S COMPLAINTS IN THE PAST

THE FTC FACED INTERNAL DIVISIONS, OUTSIDE CONDEMNATION AND CONFLICT-OF-INTEREST CONCERNS LONG BEFORE KHAN'S ARRIVAL

- ***Attacks on FTC Chairs and their policies had occurred in the past both by outside and internal critics.*** In 2020, the Wall Street Journal reported that FTC Chairman Joseph Simons had "been under fire" since he began his term. Former FTC Commissioner Joshua Wright made a habit of being a frequent dissenter to antitrust enforcement actions brought under Democratic leadership. Wright was an internal critic, complaining in 2015 that the agency was not transparent about what kind of activities could get businesses in trouble. Wright said "such uncertainty inevitably result[ed] in the chilling of some legitimate business conduct that would otherwise have enhanced consumer welfare but for the firm's fear that the Commission might intervene." He also attacked FTC Chairwoman Edith Ramirez for failing to consider the potential benefits to consumers of certain practices it found unfair, saying the unfairness standard "place[d] the burden on the Commission to show the harms of those decisions outweighed the benefits."
- ***Major votes at the FTC had fallen on party lines in the past, including the antitrust suit against Facebook for buying up and shutting out rivals.*** When the FTC considered joining 46 other states in an antitrust lawsuit against Facebook for buying up rivals, the vote was 3-2, with Republican Chairman Simons siding with Democrats. Wilson herself voted against the lawsuit. Simons further struggled to win support for a nearly \$5 billion settlement with Facebook, facing the FTC's two Democrats who worried the settlement wouldn't be tough enough. A 2019 attempt to block a merger between Staples and office-supply wholesaler Essendant Inc fell on a partisan 3-2 vote. In 2008, an approval for Comcast-Time Warner to buy Adelphia Communications fell on a 3-2 vote. When the FTC was considering how to penalize Facebook over privacy mishaps, it considered billions in penalties, but the GOP led agency abandoned the idea in the face of opposition from the platform. The three Republican Commissioners, including Wilson, said it was "highly unlikely" that the FTC could've obtained as big of a settlement if they proceeded with litigation. The FTC's Democratic Commissioners argued that the agency could've gone farther and erred in not trying to extract more from the platform.
- ***Former FTC Chairs and Commissioners had conflicts of interest on matters ranging from net neutrality to journalism in the digital age.*** Trump's acting FTC Chairwoman, Maureen Ohlhausen, was said to be a "noted critic of government regulation" by the Washington Post. The Post reported that Ohlhausen frequently used the phrase "regulatory humility" to describe her philosophy on federal policy making. She was also an open critic of the FCC's open internet order (net neutrality) and said excessive regulation could make large companies "suffer." While she was acting Chairwoman, Ohlhausen oversaw the FTC when it sued AT&T for throttling customers mobile data. In 2009, Commissioner Thomas Rosch did not recuse himself from an FTC review of Intel despite being the company's chief antitrust defender before becoming Commissioner. Intel had tried to disqualify Rosch from reviewing a case accusing Intel of abusing its power over the microchip market. In 2009, FTC Chairman Jon Leibowitz conducted an FTC workshop on journalism in the digital age, despite being married to an editorial writer at the Washington Post. After the workshop, Leibowitz said the FTC could make recommendations to lawmakers on changes in policies, ranging from taxation of news organizations to copyright issues.
- ***The FTC created new rules and worked to expand its power plenty of times before Khan.*** In August 2015, the FTC declared "unfair methods of competition in or affecting commerce" unlawful. The FTC noted that Congress had not "define[d] the specific acts and practices that constitute[d] unfair methods of competition" and practices that "contravene[d] the spirit of antitrust laws." The FTC approved those policies in a closed door meeting. The Washington Post reported that the FTC "did not feel compelled to deliver guidelines before because it [did] not use its powers in that arena often." FTC Chairman Leibowitz sought to expand the agency's powers by reviving a long dormant part of Section 5 so that the FTC could target unfair and deceptive practices beyond the scope of antitrust law.
- ***The FTC was previously dogged for inaction and slowly deliberating.*** In 2018, the New York Times said that many in Washington saw the FTC as "a watchdog that rarely bites" and that in more than 40 interviews, "former and Current FTC officials, lawmakers, Capitol Hill staffers and consumer advocates said that while evidence of abuses ha[d] piled up against tech companies, the FTC ha[d] been too cautious. In December 2020, the Wall Street Journal said the FTC was "dogged by a reputation for caution and slow-paced deliberations," adding that

the FTC had been accused of “doing too little to police the nation’s biggest companies for competition violations, especially in the tech space.”

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MURIS HAD A LOOSE APPROACH TO CONFLICT-OF-INTEREST CONCERNS FOR HIS FTC APPOINTMENTS – INCLUDING HIMSELF

Wilson Served As Chief Of Staff For The FTC’s Then-Chairman Tim Muris While He Was Chairman. “Christine S. Wilson was sworn in on September 26, 2018 as a Commissioner of the Federal Trade Commission. President Donald J. Trump named Wilson to a term that expires on Sept. 25, 2025. Wilson previously served at the FTC as Chairman Tim Muris’ Chief of Staff during the George W. Bush Administration, and as a law clerk in the Bureau of Competition while attending Georgetown University Law Center. In between her periods of service at the FTC, Wilson has practiced competition and consumer protection law both at law firms and as in-house counsel.” [FTC.gov, Accessed [2/20/23](#)]

Muris Was Sworn In As Chairman On June 4th, 2001 And Served Until August 2004. “Timothy J. Muris was sworn in June 4, 2001 as Chairman of the Federal Trade Commission. President George W. Bush named Muris, a Republican, on April 26, 2001 and he was confirmed by the Senate on May 25, 2001. He left the Commission in August 2004.” [FTC.gov, Accessed [2/20/23](#)]

MURIS HAD REPRESENTED A CREDIT RATING AGENCY CHALLENGING THE CONSTITUTIONALITY OF THE FAIR CREDIT REPORTING ACT...

Before Joining The FTC, Muris Had Argued On Behalf Of A Credit Rating Agency That The Fair Credit Reporting Act Was Unconstitutional, A View That Was Rejected By The U.S. Court Of Appeals In Washington. “Under Pitofsky, the commission asked Congress for a law giving the agency more authority to police violations of privacy, Muris says he needs more time to study the issue. And shortly before joining the agency, he argued on behalf of a credit rating agency that the fair credit reporting act, which has been used by the trade commission to challenge agencies for selling confidential information for marketing purposes, is unconstitutional, a view rejected two months ago by the U.S. Court of Appeals in Washington. Muris’ initial decisions have raised concerns inside the agency and among consumer and other groups that he will return the ideological direction of the agency to an earlier era.” [Tampa Bay Times, 6/17/01]

...EVEN THOUGH THE FTC ENFORCED THE FAIR CREDIT REPORTING ACT

The FTC Protected Consumers By Enforcing Laws Such As The Fair Credit Reporting Act. “The FTC is a modest-size agency, with an annual budget of about \$192 million and 1,000 employees. Its mission is to stop deceptive business practices, to ensure competition by enforcing antitrust laws, and to protect consumers by enforcing laws such as the federal Truth in Lending and Fair Credit Reporting Acts. It’s the front line of defense against anticompetitive practices, including mergers. Under Muris, the agency has been paying particular attention to the drug industry, where consolidation raises concerns about domination by a few large players. Last year, the agency created a task force to review hospital mergers.” [Cox News Service, [8/31/03](#)]

MURIS APPOINTED INDIVIDUALS WITH POTENTIAL CONFLICTS OF INTEREST TO SENIOR POSTS AT THE FTC

MURIS’ CHOICE FOR THE FTC’S GENERAL COUNSEL HAD ASSAILED TWO THEN-COMMISSIONERS AS A “NATIONAL EMBARRASSMENT”

Muris’ Appointment For The FTC’s General Counsel, William Kovacic, Had Previously Said In An Interview That He Two Of The Sitting Commissioners As A “National Embarrassment” For Not Knowing Enough About Antitrust Law. “The Democratic commissioners also were described by officials as being troubled that Muris had selected William Kovacic as general counsel. Kovacic, a law professor from George Washington University, said in an interview in 1998 with Bloomberg News Service that he viewed three commissioners appointed by President Clinton – Anthony Thompson and Orson Swindle II, who fills one of the Republican positions on the panel – as a ‘national embarrassment’ for not

knowing enough about antitrust law and for being “three smart people who are learning on the job.” [[Tampa Bay Times, [6/17/01](#)]

MURIS’ CHOICE FOR THE FTC’S CONSUMER PROTECTION BUREAU HAD PREVIOUSLY ARGUED THAT CIGARETTE ADS HAD NO IMPACT ON TEEN SMOKING RATES

Muris Appointment To Head The Consumer Protection Bureau, J. Howard Beales, Had Asserted In Academic Papers That There Was No Link Between Cigarette Ads And Smoking Among Teenagers. “The fears among consumer advocates and some longtime staff members have been stoked in part by the senior staff assembled by Muris. The new head of the consumer protection bureau, for instance, is J. Howard Beales III, an economist who has asserted in academic papers that there is no link between cigarette advertisements and smoking among teenagers. Officials said they thought that Beales would be the first non-lawyer to head the consumer protection bureau and that his background would bring a more market-oriented approach to the job.” [Tampa Bay Times, 6/17/01]

MURIS’ CHOICE TO LEAD THE FTC’S BUREAU OF ECONOMICS HAD REPRESENTED THE TOBACCO INDUSTRY IN COURT

Muris Appointed An Economist, David Scheffman, That Had Worked For The Tobacco Industry And Argued In Court On Behalf Of The Tobacco Industry To Lead The Agency’s Bureau Of Economics. “David Scheffman, a second economist who has worked for the tobacco industry, has been appointed to head the agency’s Bureau Of Economics. Scheffman has testified on behalf of the tobacco industry that cigarette makers never conspired to suppress the development of healthier products. Internal turmoil over the changing of the guard surfaced in a memorandum circulating two weeks ago that was written by the agency’s two Democratic commissioners, Sheila Anthony and Mozelle Thompson.” [Tampa Bay Times, 6/17/01]

- **The Economist, David Scheffman, Testified On Behalf Of The Tobacco Industry That Cigarette Makers Never Conspired To Suppress The Development Of Healthier Products.** “David Scheffman, a second economist who has worked for the tobacco industry, has been appointed to head the agency’s Bureau Of Economics. Scheffman has testified on behalf of the tobacco industry that cigarette makers never conspired to suppress the development of healthier products. Internal turmoil over the changing of the guard surfaced in a memorandum circulating two weeks ago that was written by the agency’s two Democratic commissioners, Sheila Anthony and Mozelle Thompson.” [Tampa Bay Times, [6/17/01](#)]

THE CLINTON ADMINISTRATION HAD GONE AFTER THE TOBACCO INDUSTRY PRIOR TO MURIS’ APPOINTMENT

While Commissioner, Muris Gave Top Positions In The FTC To Two Former Economists Who Worked For The Tobacco Industry When It Came Under Legal Attack During The Clinton Administration. “‘People may read things and see a shift and bring dumb mergers. And if they do that, we’ll stop them.’ But in his first days in office, Muris has been criticized for giving top positions to two former economists who worked for the tobacco industry as it came under legal attack during the Clinton administration. In addition, Muris has appointed as general counsel a law professor who once said that the three current commissioners were a ‘national embarrassment.’ He has changed the agency’s direction on online privacy.” [Tampa Bay Times, 6/17/01]

MURIS’ FTC APPROVED A MERGER BETWEEN R.J. REYNOLDS TOBACCO AND BROWN & WILLIAMSON TOBACCO

2004: The FTC Approved R.J. Reynolds Tobacco’s Purchase Of Brown & Williamson Tobacco. “The Federal Trade Commission yesterday cleared R.J. Reynolds Tobacco’s purchase of Louisville’s Brown & Williamson Tobacco, and the two companies said they planned to complete the deal by the end of July. Since the companies announced plans to merge last October, the approval of federal antitrust regulators was seen as one of the biggest hurdles to completing the deal. The FTC didn’t order the companies to change the deal by selling competing brands such as Kool and Salem.” [The Courier-Journal, [6/23/04](#)]

MURIS PUT OFF HAVING FTC COMMISSIONERS VOTE ON HIS NEW APPOINTMENTS, FEARING THEY WOULDN’T GET A UNANIMOUS VOTE LIKE MOST APPOINTMENTS DO

Muris Had Planned To Have The Commission Vote On The New Appointments But Put It Off After Being Concerned He Wouldn’t Get A Unanimous Vote – The Typical Outcome Of Appointment Votes. “Internal turmoil

over the changing of the guard surfaced in a memorandum circulating two weeks ago that was written by the agency's two Democratic commissioners, Sheila Anthony and Mozelle Thompson. Muris had planned to have the five-member commission vote on the new appointments. But he put it off after becoming concerned that the vote would be 3-2, an inauspicious beginning since staff appointments typically are approved without dissent. A close vote, officials said, might be viewed suspiciously by Sen. Ernest Hollings of South Carolina, the New Democratic chairman of the Senate Commerce Committee." [Tampa Bay Times, [6/17/01](#)]

MURIS TRIED TO FIRE "ACTIVIST" STAFF MEMBERS WHILE CHAIRMAN OF THE FTC

While He Worked At The FTC, Muris "Tried To Fire Activist Staff Members." "He sat out the George H.W. Bush and Clinton years in academia, at Virginia's George Mason University, teaching law and economics. In his previous tenure at the FTC, Muris tried to fire activist staff members and even pressed Congress to curb the agency's powers. Now, he has few policy disagreements with his Democratic predecessor, Robert Pitofsky, a Georgetown University law professor." [Wall Street Journal, [4/6/03](#)]

MURIS SUBVERTED CONGRESSIONAL APPROVAL FOR HIS ACTIONS, LIKE TRYING TO DIVIDE MERGER REVIEWS WITH THE DOJ AND CREATING THE DO-NOT-CALL LIST

MURIS HOPED TO BEEF UP THE FTC'S ENFORCEMENT BUDGET BY 50% EVEN THOUGH HE LATER WORKED TO DIVIDE MERGER REVIEWS WITH THE DOJ

Muris Planned To Beef Up The FTC's Enforcement Budget By 50%. "In a long-awaited speech Thursday at a privacy conference in Cleveland, Muris said the FTC will beef up the agency's enforcement budget by 50 percent and dedicate itself to cracking down on spamming, telemarketing fraud, identity theft and gaining personal information under false pretenses. The decision comes after much buildup surrounding the issue since President Bush said he would be a champion of laws that would empower customers to know how their personal information is being used and collected." [CBS Market Watch, [10/5/01](#)]

In 2002, The FTC Was Set To Sign A 12 Page Agreement With The DOJ That Would Give It Authority Over Industries Like Health Care, Oil, Natural Gas, Electric Power, Computer Hardware And Biotech Companies. "Chairman Timothy Muris and Assistant U.S. Attorney General Charles James were prepared to formally sign a 12-page agreement. But Justice Department officials called Mr. James inside Mr. Muris' fourth-floor FTC office and instructed him not to sign, said one person in the room, speaking on condition of anonymity. The agreement, worked out quietly at the highest levels of the agencies over recent weeks, would make the Justice Department permanently responsible for reviewing all mergers involving Internet, software, telecommunications and entertainment companies. The FTC would have authority over other industries, such as health care, oil, natural gas, electric power, computer hardware and biotechnology companies." [Associated Press, [1/18/02](#)]

- **The Agreement Was Aimed At Streamlining The Clearance Process Under Which The Rival Regulatory Agencies Sometimes Compete Against One Another To Oversee Particular Merger Proposals.** "Mr. James said the agreement 'allows the department to investigate more efficiently possible anticompetitive conduct affecting consumers and will provide greater certainty to the business community.' The agreement was aimed at streamlining the "clearance" process under which the rival regulatory agencies sometimes compete against one another to oversee particular merger proposals." [Associated Press, [1/18/02](#)]

MURIS AND THE DOJ WORKED ON THEIR AGREEMENT "QUIETLY" AND DID NOT CONSULT LAWMAKERS ON THE MOVE...

The FTC And DOJ Worked On Their Agreement "Quietly At The Highest Levels Of The Agencies." "But Justice Department officials called James inside Muris' fourth-floor FTC office and instructed him not to sign, said one person in the room, speaking on condition of anonymity. The agreement, worked out quietly at the highest levels of the agencies over recent weeks, would make the Justice Department permanently responsible for reviewing all mergers involving Internet, software, telecommunications and entertainment companies." [Associated Press, [1/20/02](#)]

The Agreement Was Scuttled After Lawmakers Complained That They Had Only Learned About The Agreement From Press Accounts. "The arrangement also would give Justice responsibility for these businesses: cable, publishing, toys, games, television, radio, newspapers, movies, advertising and music. Lawmakers criticize process But the agreement was scuttled - at least temporarily - after some angry lawmakers and their staffs called Justice and FTC officials to complain that they had learned about the agreement reading press accounts in Thursday's newspapers. Sen.

Ernest 'Fritz' Hollings, D-S.C., expressed 'strong concerns why the authorizing and appropriating committees were never consulted,' spokesman Andy Davis said." [Associated Press, [1/18/02](#)]

...LEADING TO "STRONG CONCERNS" BY ONE SENATOR

Under Muris, The FTC Moved Ahead With A Plan For Dividing Merger Reviews With The DOJ Despite Objections From Senate Commerce Committee Chairman Ernest Hollings (D – S.C.) "Antitrust enforcers at the Justice Department and Federal Trade Commission moved ahead Tuesday with their new plan for dividing merger reviews over the angry objections of Senate Commerce Committee Chairman Ernest F. Hollings (D – S.C.). The Justice Department would get authority over all deals in the media and entertainment business as part of the deal, which the agencies said was aimed at speeding up reviews. Originally planned for January, the initiative got sidetracked by criticism from Democrats at the FTC and in Congress. The department and the FTC said they had been engaged in extensive consultation with lawmakers, but Hollings said that dialogue had not finished and hinted that he could wield his funding power over the agency." [Los Angeles Times, [3/6/02](#)]

Sen. Ernest Hollings' Spokesman Said Hollings Had "Strong Concerns Why The Authorizing And Appropriating Committees Were Never Consulted." "The arrangement also would give Justice responsibility for these businesses: cable, publishing, toys, games, television, radio, newspapers, movies, advertising and music. Lawmakers criticize process But the agreement was scuttled - at least temporarily - after some angry lawmakers and their staffs called Justice and FTC officials to complain that they had learned about the agreement reading press accounts in Thursday's newspapers. Sen. Ernest 'Fritz' Hollings, D-S.C., expressed 'strong concerns why the authorizing and appropriating committees were never consulted,' spokesman Andy Davis said." [Associated Press, [1/18/02](#)]

A DEMOCRATIC COMMISSIONER DISAGREED WITH MURIS' EFFORT TO DIVIDE RESPONSIBILITY, LAMENTING THAT SHE ONLY HEARD OF IT DAYS BEFORE IT WAS SUPPOSED TO BE SIGNED

COMMISSIONER THOMPSON SAID THE AGREEMENT AMOUNTED TO "HORSE TRADING" AND SUCH A CHANGE "DEMAND[ED] CAREFUL CONSIDERATION"

FTC Commissioner Mozelle Thompson Disagreed With The Agreement, Saying It Amounted To "Horse Trading" Among The Agencies That Could "Deprive Consumers Of The Commission's Independence, Expertise And Knowledge." "Mr. Muris did not ask the commission to vote on the agreement, and Mr. Thompson said he learned of it Monday, just days before it was to be signed. 'Such an important change demands careful consideration by each of the five commissioners,' Mr. Thompson said. Justice officials declined to comment Thursday." [Associated Press, [1/18/02](#)]

- **Muris Did Not Ask The Commission To Vote On The Agreement And Thompson Said She Learned About It Just Days Before It Was Supposed To Be Signed.** "Mr. Muris did not ask the commission to vote on the agreement, and Mr. Thompson said he learned of it Monday, just days before it was to be signed. 'Such an important change demands careful consideration by each of the five commissioners,' Mr. Thompson said. Justice officials declined to comment Thursday." [Associated Press, [1/18/02](#)]
- **Thompson Said "Such An Important Change Demand[ed] Careful Consideration By Each Of The Five Commissioners."** "Mr. Muris did not ask the commission to vote on the agreement, and Mr. Thompson said he learned of it Monday, just days before it was to be signed. 'Such an important change demands careful consideration by each of the five commissioners,' Mr. Thompson said. Justice officials declined to comment Thursday." [Associated Press, [1/18/02](#)]

MURIS CREATED A DO-NOT-CALL LIST TO ADDRESS TELEMARKETERS, EVEN THOUGH REPUBLICANS RESISTED IT AND A FEDERAL JUDGE BLOCKED IT

MURIS PUSHED FOR THE DO-NOT-CALL REGISTRY "DESPITE RESISTANCE FROM HIS OWN PARTY"

Wall Street Journal: Muris Pushed For The Do-Not-Call Registry "Despite Resistance From His Own Party In Congress." "Muris' most visible public legacy may be a federal "do not call system to protect Americans from telemarketers, which he pushed through despite resistance from his own party in Congress. The system could be in operation as soon as this summer, allowing consumers an easy way to shield themselves from dinnertime calls from telemarketers. What happened to Tim Muris, the foot soldier in the Reagan revolt? Now 53, Muris no longer sees government as the enemy." [Wall Street Journal, [4/6/03](#)]

A FEDERAL JUDGE BLOCKED THE DO-NOT-CALL LIST, SAYING MURIS AND THE FTC HAD OVERSTEPPED ITS AUTHORITY

Muris' Do Not Call Registry For Telemarketers Was Halted By A Federal Was Blocked By A Federal Judge Who Said Muris And The FTC Had Overstepped Its Authority. "A government plan to allow millions of Americans to block telemarketing calls to their homes beginning next week was stalled Wednesday by a federal judge who said the Federal Trade Commission had overstepped its authority. The decision by U.S. District Judge Lee West in Oklahoma City caught government officials by surprise and drew a large question. mark over the national do-not-call registry. Consumers have posted more than 50 million phone numbers on the anti-telemarketing list by using the Internet or a toll-free telephone number. Beginning Oct. 1 marketers would have risked a \$11,000 fine each time they called a numbers on the list." [Washington Post, [9/25/03](#)]

- **The Judge Said Congress Had Not Given The FTC Specific Authority To Developed And Implement The List.** "A government plan to allow millions of Americans to block telemarketing calls to their homes beginning next week was stalled Wednesday by a federal judge who said the Federal Trade Commission had overstepped its authority. The decision by U.S. District Judge Lee West in Oklahoma City caught government officials by surprise and drew a large question. mark over the national do-not-call registry. Consumers have posted more than 50 million phone numbers on the anti-telemarketing list by using the Internet or a toll-free telephone number. Beginning Oct. 1 marketers would have risked a \$11,000 fine each time they called a numbers on the list." [Washington Post, [9/25/03](#)]
- **The Judge Said The "An Administrative Agency's Power To Regulate In The Public Interest Must Always Be Grounded In A Valid Grant Of Authority From Congress."** "Although the direct marketers challenged the do-not call list on First Amendment issues, the Oklahoma City judge said the key issue was rather 'whether the FTC had the authority to promulgate the national do-not-call registry. The court finds it did not.' West said: 'The elimination of telemarketing fraud and the prohibition against deceptive and abusive telemarketing acts or practices are significant public concerns; however, an administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress.'" [Washington Post, [9/25/03](#)]

MURIS CALLED THE RULING "CLEARLY INCORRECT" AND PLEDGED TO "SEEK EVERY RESOURCE" TO IMPLEMENT IT

Muris Said The "Decision [Was] Clearly Incorrect." "'This decision is clearly incorrect,' agency Chairman Tim Muris said in a statement. 'We will seek every recourse to give American consumers a choice to stop unwanted telemarketing calls.' 'There will be fireworks,' said Rep. WJ. "Billy" Tauzin, R-La., chairman of the House energy and commerce committee." [Washington Post, [9/25/03](#)]

Responding To A Judge Blocking The Do-Not-Call List, Muris Said The FTC Would "Seek Every Recourse To Give American Consumers A Choice To Stop Unwanted Telemarketing Calls." "FCC Chairman Michael Powell said Wednesday in a television interview that West was "wrong in the bottom line" and expressed confidence the government would find a way to proceed with the do-not-call list as planned. 'This decision is clearly incorrect,' FTC Chairman Tim Muris said. 'We will seek every recourse to give American consumers a choice to stop unwanted telemarketing calls.'" [Washington Post, [9/25/03](#)]

THE DO-NOT-CALL LIST WAS CREATED USING A NEW THEORY THAT TELEMARETERS' ACTIONS CONSTITUTED "ABUSIVE" CONDUCT

MURIS' FTC TOOK A NOVEL APPROACH WHEN ARGUING THE BASIS FOR A DO-NOT-CALL LIST...

When The FTC Created The Do Not Call List, The Agency Used A New Theory That Telemarketers Actions Constituted "Abusive" Conduct, Rather Than Using The Deception Or Unfairness As A Theory Of Harm In Pursuing It. "Kovacic and Hyman, who were both high-ranking attorneys at the FTC when the agency created the Do Not Call Registry, contend that the FTC's success in regulating the telemarketing industry was not assured. The industry's deep pockets and powerful political connections allowed it to challenge regulatory efforts [...] Beyond staffing decisions, Kovacic and Hyman identify a creative—but risky—key decision made by the FTC at the outset of its do-not-call effort. In past initiatives, the FTC had limited itself to citing deception or unfairness as the theory of harm for their case for pursuing regulatory action. Neither theory aligned well, however, with the effects of telemarketers' conduct. Instead of relying on these weaker but well-tested lines of argument, the FTC decided to use a new theory that telemarketer's actions

constituted “abusive” conduct. Kovacic and Hyman observe that prospective Big Tech regulators face a similar decision, as the domains they hope to regulate, such as privacy, fall outside of traditional antitrust doctrines.” [The Regulatory Review, [2/7/23](#)]

...AN APPROACH HIS FORMER STAFFERS SAID MURIS’ APPROACH SHOULD BE EMULATED IN FUTURE REGULATIONS OF BIG TECH

William Kovacic And David Hyman, FTC Officials Who Worked At The FTC When Muris Created The Do Not Call Registry Said The Skills Used Then Should Be Emulated In Future Regulations Of Big Tech. “The scholars, William Kovacic of the George Washington University Law School and David Hyman of Georgetown Law explain that the FTC’s success with the National Do Not Call Registry hinged on learning from past mistakes, collaborating with other agencies, and adapting in a swift manner as new challenges arose. They argue that these are all skills that regulators should seek to emulate in future regulations of Big Tech. Kovacic and Hyman, who were both high-ranking attorneys at the FTC when the agency created the Do Not Call Registry, contend that the FTC’s success in regulating the telemarketing industry was not assured. The industry’s deep pockets and powerful political connections allowed it to challenge regulatory efforts.” [The Regulatory Review, [2/7/23](#)]

MURIS ARGUED THE FTC’S WORK PROVIDED AND ENFORCED COMPETITION RULES AND DID NOT SEE LEGISLATION AS A “MAGIC BULLET” FOR THE FTC’S PROCESS

Muris Said The “FTC Help[ed] Provide And Enforce The Rules” Of Competition In The Market To Protect Consumers. “Twenty years ago, there was a lot of controversy’ about what harmed consumers, Muris said. ‘Now there is a real bipartisan vision of what the FTC should do.’ That vision focuses on fostering competition and catching cheaters, he said. ‘People at the FTC think that the market and competition are the best forms of protecting consumers, but that we need rules of the game,’ Muris said. ‘So the FTC helps provide and enforce the rules of the game.’ Muris said one of his chief concerns is protecting consumers’ privacy.” [Cox News Service, [8/31/03](#)]

Muris Said “The Rationality Of Our Antitrust System Require[d] Continuing Efforts To Make This Process Of Adaptation Well-Informed By Refinements In Economic Theory And Empirical Research.” “In passing the federal antitrust laws, Congress adopted an evolutionary scheme in which courts would alter doctrine by ‘recognizing and adapting to changed circumstances and the lessons of accumulated experience.’ The rationality of our antitrust system requires continuing efforts to make this process of adaptation well-informed by refinements in economic theory and empirical research. Too often in our antitrust history, sound understanding of business behavior has lagged behind, not accompanied, the formulation and application of legal rules.” [FTC.gov, [1/15/03](#)]

Muris Said No Legislation Would Be A Magic Bullet For Spammers. “The FTC did not endorse any of the several bills that have been introduced, though Swindle said many of the agency’s recommendations are contained in a bill by senators Conrad Burns, a Montana Republican, and Ron Wyden, an Oregon Democrat. ‘We’re losing the battle,’ Muris said in an interview, adding that no legislation will be a magic bullet. Spammers increasingly have moved their operations offshore, to further cloak their identities and evade prosecution.” [Washington Post, [6/12/03](#)]

IN 2001, THE HOUSE MAJORITY LEADER SAID AGREED WITH MURIS, SAYING CONGRESS COULD NOT KEEP UP WITH THE “FAST-CHANGING” ONLINE WORLD

2001: House Majority Leader Richard Armey (R-TX) Applauded The FTC’s Privacy Agenda, Saying “Congress [Was] Often Unable To Keep Up With The Fast-Changing Online World.” “This year’s lawmakers introduced 23 bills addressing privacy, according to the Center for Democracy & Technology. Congress can’t keep up House Majority Leader Richard Armey, an outspoken critic of new privacy legislation, applauded the FTC’S new privacy agenda. ‘The chairman rightly recognizes Congress is often unable to keep up with the fast-changing online world,’ the Texas Republican said. The move to heighten enforcement and not support new privacy laws drew the praise of technology trade groups.” [CBS Market Watch, [10/5/01](#)]

DURING HIS TIME AT THE FTC, MURIS WENT AFTER STATE AND FEDERAL RULES THAT BUSINESS USED TO REDUCE COMPETITION

Under Muris, The FTC Went After State And Federal Rules Used By Businesses To Reduce Competition. “On antitrust issues, Muris’ instinctive distrust of government regulation ironically led him to open up a rich new realm for the FTC, going after state and federal rules used by businesses to reduce competition. His competition bureau went after big drug companies that used patent laws to delay the introduction of generic competition and a big oil company that used a patent on a clean-fuel formula to drive up gasoline prices in California. His economists issued reports showing how bans

on Internet sales needlessly increased the price of wine and contact lenses, and how patents on fairly ordinary ideas and concepts were being used to stifle competition and creativity in high technology.” [Washington Post, [9/25/03](#)]

MURIS WAS AN “AGGRESSIVE” ANTITRUST ENFORCER AND WAS CALLED “ONE OF THE MOST ACTIVIST” REGULARS OF THE BUSH ADMINISTRATION

MURIS SURPRISED CRITICS BY BEING WITH “AGGRESSIVE” ANTITRUST ENFORCEMENT AND HAD SPURRED THE FTC “TO GREATER ACTION”

Washington Post: Muris Had “Surprised Many Critics By Turning Out To Be An Aggressive Regulator Willing To Step On The Toes Of A Number Of Powerful Industries.” “Tim Muris, who steps down this week as chairman of the Federal Trade Commission, has avoided those pitfalls. Although he is a “law and economics” conservative who met frequently with friends at the Bush White House, Muris surprised many critics by turning out to be an aggressive regulator willing to step on the toes of a number of powerful industries. He’s been so careful to build on the work of his predecessors that, even as his pictures were taken down from the walls yesterday, he was describing his tenure and that of Democratic predecessor Robert Pitofsky as one seamless period marked by bipartisan consensus. And, get this: Pitofsky and many of those who served with him feel the same way.” [Washington Post, [8/13/04](#)]

Washington Post: Muris Had Shown That It Was “Still Possible For A Smart And Determined Regulator To Ignore Special Interests, Avoid The Partisan Swamp And Actually Do Some Good For The American Consumer.” Muris’s defense of high gas prices is that they simply reflect the fluctuating world market price for oil -- an explanation that conveniently ignores that the ‘market’ price is manipulated by the price-fixing OPEC cartel, which counts on the major oil companies as partners, customers and collaborators. That said, Tim Muris heads back to George Mason University having showed that it is still possible for a smart and determined regulator to ignore special interests, avoid the partisan swamp and actually do some good for the American consumer.” [Washington Post, [8/13/04](#)]

Wall Street Journal: Muris Was “One Of The Most Activist Bush Administration Regulators.” “After a decade in academic exile, Muris now runs the Federal Trade Commission - and is one of the most activist Bush administration regulators. Indeed, of the few federal regulatory agencies that really matter, his stands out because it’s functioning vigorously: The Federal Communications Commission is nearly paralyzed, with board members in open revolt against the chairman.” [Wall Street Journal, [4/6/03](#)]

Wall Street Journal: Muris Had “Become An Aggressive Enforcer.” “Muris, unexpectedly, has become an aggressive enforcer. He’s filed lawsuits against drug makers for cutting cozy deals with rivals and moved to promote competition where it is lacking in the health-care business, by investigating hospital mergers and alleged price fixing by doctors’ groups. He has clipped attorneys’ fees in class-action cases and told lawyers they aren’t needed to close real-estate transactions.” [Wall Street Journal, [4/6/03](#)]

Cox News Service: Muris Had Spurred The FTC “To Greater Action.” “Mark Cooper, research director of Consumer Federation of America, praises Muris as ‘a fair and open regulator (who) seems willing to listen to both sides, even when he is likely to disagree.’ As FTC chairman, Muris has been spurring the agency to greater action. For example, it spent a year preparing the do-not-call registry, which became an instant hit when it opened June 27. But the registry might not have come together if Muris had not fought for its funding.” [Cox News Service, [8/31/03](#)]

MURIS BELIEVED ANTITRUST ENFORCEMENT WAS ONE OF THE MOST EFFECTIVE WAYS TO ENCOURAGE COMPETITION AND CALLED FOR STRENGTHENING COMPETITION POLICY

MURIS SAID COMPETITION POLICY SHOULD BE “MORE AGGRESSIVE IN COMPETING WITH OTHER FORMS OF REGULATION”

Muris Said One Of The Most Effective Ways To Encourage Greater Competition In The Market Was Through Antitrust Enforcement. “Legislators more frequently are turning to competition policy, rather than to more burdensome forms of regulation, to create a well functioning marketplace. The question before us today is: What are the most effective ways to encourage greater competition? Of course, enforcement is an important tool. The FTC remains committed to aggressive enforcement of the competition and consumer protection laws. But enforcement is not our only tool, and others may be better or more effective, especially when governments are making major policy changes that fundamentally will reshape the competitive landscape.” [FTC.Gov, [9/28/02](#)]

Muris Argued “Competition Policy Must Become More Aggressive In Competing With Other Forms Of Regulation.” “Competition policy is more than enforcement - it is a way of organizing our economy. In this sense, competition policy is a form of regulation that competes with other regulatory structures, many of which are hostile to free markets. For this reason, competition policy must become more aggressive in competing with other forms of regulation. As competition advocates, we should support the philosophy of competition policy at every opportunity and in every forum. In executive councils, before national and local legislatures, and through public opinion, we should increase our efforts to produce the evidence and rhetoric necessary to defend the marketplace.” [FTC.Gov, [9/28/02](#)]

Muris Called For “Constant Vigilance And Continuing Efforts” Of Competition Policy And Advocacy. “These few examples drawn from the U.S. experience underscore what all of us already know: competition advocacy is a complex and difficult process, and outright victories are relatively rare. Constant vigilance and continuing efforts are necessary because there will always be pressures from the private sector, and often its government allies, to maintain old anticompetitive constructs or to create new ones. The very valuable work of this Group only confirms these conclusions.” [FTC.Gov, [9/28/02](#)]

MURIS RECOGNIZED COMPETITION POLICY WAS “COMPLEX AND DIFFICULT” AND IT WAS “RELATIVELY RARE” TO OBTAIN “OUTRIGHT VICTORIES” UNDER IT

Muris Said Competition Policy Was “A Complex And Difficult Process, And Outright Victories [Were] Relatively Rare.” “These few examples drawn from the U.S. experience underscore what all of us already know: competition advocacy is a complex and difficult process, and outright victories are relatively rare. Constant vigilance and continuing efforts are necessary because there will always be pressures from the private sector, and often its government allies, to maintain old anticompetitive constructs or to create new ones. The very valuable work of this Group only confirms these conclusions.” [FTC.Gov, [9/28/02](#)]

MURIS BELIEVED THERE SHOULD BE “RELEVANT CONSIDERATION” FOR WHETHER THERE WERE OPPORTUNITIES TO IMPROVE THE STATE OF ANTITRUST DOCTRINES

Muris Said A “Relevant Consideration” For Antitrust Enforcement Was “Whether There [Was] An Opportunity To Improve The State Of Antitrust Legal Doctrines.” “The Commission’s enforcement program focuses on the transactions and kinds of practices that pose the greatest threat of substantial consumer injury. The agency considers the deterrent effect of enforcement action as well as the amount of immediate consumer injury. Another relevant consideration is whether there is an opportunity to improve the state of antitrust legal doctrines. Such cases can have a substantial and long-lasting impact on the development of antitrust law, even if the amount of consumer injury is small in the immediate case.” [FTC.gov, [1/15/03](#)]

- **Muris: “The Commission Has A Special Responsibility To Pursue Improvements In The Processes And Institutional Arrangements Through Which Competition Policy Is Formulated At Home And Abroad.”** “IV. Improving Competition Policy Institutions and Processes The Commission has a special responsibility to pursue improvements in the processes and institutional arrangements through which competition policy is formulated at home and abroad. Matters of procedural and institutional design can affect substantive outputs significantly. The policymaking environment today is considerably more decentralized and fragmented than it was when I left the FTC in 1985.” [FTC.gov, [1/15/03](#)]

Muris Said “Shaping A Rational Antitrust Program Require[d] Identifying The Practices That Should Receive The Greatest Scrutiny.” “B. Targeting Enforcement 1. General Criteria Shaping a rational antitrust program requires identifying the practices that should receive the greatest scrutiny. The critical guideposts are economic efficiency and consumer welfare. We are guided by both economic theory and firm empirical evidence in selecting and conducting investigations. The Commission’s enforcement program focuses on the transactions and kinds of practices that pose the greatest threat of substantial consumer injury.” [FTC.gov, [1/15/03](#)]

MURIS CALLED FOR DEVOTING “ADEQUATE RESOURCES” TO COMPETITION POLICY R&D

As Chairman, Muris Said He “Emphasized The Need For Antitrust Agencies to Devote Adequate Resources To Competition Policy ‘Research And Development.’” “The FTC’s Research Agenda As Chairman, I have emphasized the need for the antitrust agencies to devote adequate resources to competition policy “research and development.”(70) Over the past nineteen months, the FTC has embarked on several initiatives to improve and enhance its use of empirical economic analysis. The starting point for these initiatives was an Empirical Industrial Organization Roundtable, one of the first major events I convened on my return to the FTC.” [FTC.gov, [1/15/03](#)]

MURIS' AGGRESSIVE AGENDA INCLUDED GOING AFTER DRUG COMPANIES SUPPRESSING GENERIC COMPETITION, INVESTIGATING HOSPITAL MERGERS AND BLOCKING PATENTS

The Antitrust Bulletin: Muris Came Into The FTC With “An Activist Pro-Consumer Agenda” And Used Its Enforcement Tools “To Challenge Abuses, Especially In The Important Health Care And High-Tech Industries.” Based on over 3-years-experience, it is clear that Chairman Muris came in with an activist pro-consumer agenda, and the Commission has very quickly acted upon it. The Commission has followed this clearly and specifically articulated agenda, particularly in nonmerger antitrust enforcement. It has used its various enforcement and policy tools to challenge abuses, especially in the important health care and high-tech industries.” [The Antitrust Bulletin, [Fall 2004](#)]

The Antitrust Bulletin: Muris Had “Pursued The Most Vigorous Nonmerger Agenda In Almost A Quarter Century” While Chairman Of The FTC. “This article focuses on the nonmerger agenda, and demonstrates a very aggressive pro-consumer enforcement program that has, in a short period of time, borne much fruit in terms of enforcement actions, amicus briefs, studies, and hearings. By the numbers alone, the FTC under Chairman Muris has pursued the most vigorous nonmerger agenda in almost a quarter century. In fiscal year 2001, the FTC opened 56 new nonmerger investigations, and it opened another 59 nonmerger investigations in 2002.” [The Antitrust Bulletin, [Fall 2004](#)]

Under Muris, The FTC Launched A Nationwide Investigation Into The Wave Of Hospital Mergers. The FTC challenge is the agency's first of a hospital merger since 1997. It is also the first formal action of its kind filed since current FTC Chairman Timothy Muris two years ago launched a nationwide investigation into the wave of hospital mergers during the past decade. The FTC issues a complaint when it has ‘reason to believe’ that the law has been or is being violated. It is the first step in a process that brings the allegations before an administrative law judge.” [Chicago Tribune, [2/11/04](#)]

Muris Went After Drug Companies That Used Patent Laws To Delay The Introduction Of Generic Competition. “On antitrust issues, Muris's instinctive distrust of government regulation ironically led him to open up a rich new realm for the FTC, going after state and federal rules used by businesses to reduce competition. His competition bureau went after big drug companies that used patent laws to delay the introduction of generic competition and a big oil company that used a patent on a clean-fuel formula to drive up gas prices in California. His economists issued reports showing how bans on Internet sales needlessly increased the price of wine and contact lenses, and how patents on fairly ordinary ideas and concepts were being used to stifle competition and creativity in high technology.” [Washington Post, [8/13/04](#)]

Muris Went After A Big Oil Company That Used A Patent On A Clean-Fuel Formula To Drive Up Gas Prices In California. “On antitrust issues, Muris's instinctive distrust of government regulation ironically led him to open up a rich new realm for the FTC, going after state and federal rules used by businesses to reduce competition. His competition bureau went after big drug companies that used patent laws to delay the introduction of generic competition and a big oil company that used a patent on a clean-fuel formula to drive up gas prices in California. His economists issued reports showing how bans on Internet sales needlessly increased the price of wine and contact lenses, and how patents on fairly ordinary ideas and concepts were being used to stifle competition and creativity in high technology.” [Washington Post, [8/13/04](#)]

MURIS' FTC HAD ONE OF “THE MOST EXHAUSTIVE” EXAMINATION OF MERGER PROPOSALS AND REPRESENTED “THE GREATEST HURDLE” FOR BUSINESSES

The Wall Street Journal Reported That Muris Had “Challenged Mergers In Markets From Ice Cream To Pickles.” “He has clipped attorneys' fees in class-action cases and told lawyers they aren't needed to close real-estate transactions. He has scolded funeral directors for banning online casket sales and targeted state rules used to restrict the sale of wine on the Internet. He has forced Microsoft to drop plans to harvest consumer data from its software, and in antitrust - despite predictions that he'd be a soft touch for business – he has challenged mergers in markets from ice cream to pickles.” [Wall Street Journal, [4/6/03](#)]

Miami Herald, March 2002: Antitrust Experts Said The FTC's Examination Of Merger Proposals Were “The Most Exhaustive Of All Regulatory Reviews And Represent[ed], By Far, The Greatest Hurdle.” “Regulators all look at merger proposals with a critical eye, but each has a different perspective and method. Here are the views from Washington, Brussels and Lon-den: FEDERAL TRADE COMMISSION Antitrust experts say the FIC'S examination is the most exhaustive of all the regulatory reviews and represents, by far, the greatest hurdle. At its core, experts say, the ETC decision will come down to how the companies set their pricing - whether they focus on other cruise lines or include hotels and resort destinations in their analyses; and how a change in pricing will affect customers.” [Miami Herald, [3/24/02](#)]

MURIS' FTC FILED A COMPLAINT AGAINST A HOSPITAL MERGER IN THE CHICAGO - THE FTC'S FIRST CHALLENGE TO A HOSPITAL MERGER SINCE 1997

The FTC Filed A Complaint Against Chicago's Evanston North-Western Healthcare, Saying Its Jan. 2000 Acquisition Of Highland Park Hospital "Resulted In Significantly Higher Prices." "Stepping up its probe into rising health-care costs, the U.S. government said Tuesday the merger of two hospital operators in Chicago's affluent north suburbs led to anti-com-petitive price increases and violated antitrust laws. In a rare move, the Federal Trade Commission filed a complaint against Evanston Northwestern Healthcare, alleging that its January 2000 acquisition of Highland Park Hospital 'resulted in significantly higher prices charged to health insurers and therefore in higher costs to purchasers of insurance and consumers of hospital services.' The FTC challenge is the agency's first of a hospital merger since 1997." [Chicago Tribune, [2/11/04](#)]

- **The Move Was The FTC's First Challenge Of A Hospital Merger Since 1997.** "Stepping up its probe into rising health-care costs, the U.S. government said Tuesday the merger of two hospital operators in Chicago's affluent north suburbs led to anti-com-petitive price increases and violated antitrust laws. In a rare move, the Federal Trade Commission filed a complaint against Evanston Northwestern Healthcare, alleging that its January 2000 acquisition of Highland Park Hospital 'resulted in significantly higher prices charged to health insurers and therefore in higher costs to purchasers of insurance and consumers of hospital services.' The FTC challenge is the agency's first of a hospital merger since 1997." [Chicago Tribune, [2/11/04](#)]

2004: MURIS' FTC BLOCKED A MERGER BETWEEN TWO COAL COMPANIES OVER CONCERNS THAT IT WOULD HARM COMPETITION AND HAND 86% OF MARKET CONTROL TO THREE COMPANIES

The FTC Blocked The Merger Between Arch Coal And Triton Coal, Saying The Deal Would Harm Competition Among Coal Producers In Wyoming's Southern Powder River Basin. "Federal antitrust authorities expect to seek a court order blocking Arch Coal Inc's planned purchase of rival Triton Coal Co.'s assets for \$364 million, citing antitrust concerns despite Arch's efforts to allay regulatory worries. The Federal Trade Commission announced plans for the preliminary injunction Tuesday, arguing the deal between St. Louis-based Arch - the nation's sixth-largest coal producer - and Triton would harm competition among coal producers in Wyoming's key Southern Powder River Basin." [Associated Press, [4/1/04](#)]

- **The FTC Said The Acquisition Would Result In The Top Three Competitors Controlling 86% Of The Southern Powder River Basin And "Substantially Increase The Possible Of, And Harm From Coordinated Interaction."** "Federal antitrust authorities expect to seek a court order blocking Arch Coal Inc's planned purchase of rival Triton Coal Co.'s assets for \$364 million, citing antitrust concerns despite Arch's efforts to allay regulatory worries. [...] 'The acquisition would result in the top three competitors controlling 86 percent of 2003 coal production in the SPRB and would substantially increase the possibility of, and harm from, coordinated interaction by these major players,' Susan Creighton, chief of the FTC's Bureau of Competition, said in a statement." [Associated Press, [4/1/04](#)]

2002: MURIS' FTC LEVIED A \$215 MILLION FINE AGAINST CITIGROUP, THE LARGEST CONSUMER PROTECTION SETTLEMENT BY THE AGENCY AT THE TIME

In 2002, The FTC Ordered Citigroup To Repay Customers \$215 Million To Settle Federal Charges That A Company It Acquired Manipulated People Into Buying Overpriced Mortgages And Credit Insurance. "In the largest consumer protection settlement ever by the Federal Trade Commission, the world's top financial services company, Citigroup Inc., has agreed to repay customers \$215 million to settle federal charges that a company it acquired manipulated people into buying overpriced mortgages and credit insurance. Citigroup also agreed to pay \$25 million to settle a class action lawsuit, the FTC said Thursday." [Miami Herald, [9/20/02](#)]

- **The Settlement Was The Largest Consumer Protection Settlement Ever By The FTC.** "In the largest consumer protection settlement ever by the Federal Trade Commission, the world's top financial services company, Citigroup Inc., has agreed to repay customers \$215 million to settle federal charges that a company it acquired manipulated people into buying overpriced mortgages and credit insurance. Citigroup also agreed to pay \$25 million to settle a class action lawsuit, the FTC said Thursday." [Miami Herald, [9/20/02](#)]

MURIS BLOCKED A MERGER BETWEEN NESTLE AND DREYER'S ICE CREAM OVER CONCERNS IT WOULD LEAD TO ONE COMPANY CONTROL TWO-THIRDS OF EXPENSIVE ICE CREAM MARKET

The FTC Blocked A Merger Between Nestle Holdings And Dreyer's Ice Cream, Saying The Combining Companies Would Control Nearly Two-Thirds Of The Market For The Richest And Most Expensive Ice Cream. "Federal

regulators have iced a proposed merger that could have frozen the competition between Haagen Dazs and its rivals in the ice cream case, brands like Dreamery, Godiva and Starbucks. The \$2.8 billion merger of Nestle Holdings Inc. and Dreyer's Grand Ice Cream Inc. would have created a combination that would control nearly two-thirds of the market for the richest and most expensive ice cream. The Federal Trade Commission on Tuesday authorized its staff to seek an injunction blocking the deal on grounds it would eliminate competition and raise prices." [Associated Press, [3/5/03](#)]

MURIS' FTC SETTLED WITH MICROSOFT OVER CLAIMS IT FAILED TO PROTECT CONSUMER DATA, WHICH INCLUDED AN INDEPENDENT AUDIT EVERY TWO YEARS

The FTC Settled With Microsoft Over Claims That It Failed To Take Adequate Steps To Protect Consumer Data And Required The Company To Beef Up Security Of It's 'Passport' Service That Gave Over 200 Million Users A Single Log-In For Numerous Websites. "Accused ID of tracking customers' Web browsing, Microsoft agreed to beef up security of its online identification service and to subject itself to government oversight for the next 20 years under a settlement reached Thursday with federal regulators. Passport, used by more than 200 million people, allows consumers to visit various Web sites using a single logon. [...] The Federal Trade Commission alleged that Microsoft failed to take adequate steps to protect consumers' personal data, including credit-card information and Social Security numbers. The company also was accused of failing to notify users that it tracks their visits to Passport-affiliated Web sites and keeps the information, sometimes for months." [Fort Worth Star-Telegram, [8/9/02](#)]

- **Under The Settlement, Microsoft Agreed To Submit An Independent Audit Of To The FTC Every Two Years.** "A rival online authentication service offered by a group of Microsoft's top competitors, the Liberty Alliance, could also face scrutiny over similar security promises. "If I were them, I'd read the order carefully," Muris said. As part of Microsoft's settlement agreement, it agreed to improve its security, provide details in its privacy-policy statement on how it's using customer information and submit to an independent audit every two years for the next 20 years. The company was not fined, but if it violates the agreement, it is subject to an \$11,000-a-day fine per violation." [Fort Worth Star-Telegram, [8/9/02](#)]

IN FEBRUARY 2023, COMMISSIONER WILSON ANNOUNCED SHE WAS RESIGNING FROM HER POST OVER COMPLAINTS THAT FTC CHAIR LINA KHAN HAD ABUSED HER POWER

WILSON SAID SHE WOULD RESIGN BECAUSE KHAN HAD A "DISREGARD" FOR THE LAW AND DUE PROCESS AND REFUSED TO GIVE HER "LEGITIMACY BY REMAINING"

Wilson Announced She Would "Soon Resign As An FTC Commissioner" In The Face Of "Disregard For The Rule Of Law And Due Process And The Way Senior FTC Officials Enable[d] Her." "Much ink has been spilled about Lina Khan's attempts to remake federal antitrust law as chairman of the Federal Trade Commission. Less has been said about her disregard for the rule of law and due process and the way senior FTC officials enable her. I have failed repeatedly to persuade Ms. Khan and her enablers to do the right thing, and I refuse to give their endeavor any further hint of legitimacy by remaining. Accordingly, I will soon resign as an FTC commissioner. Since Ms. Khan's confirmation in 2021, my staff and I have spent countless hours seeking to uncover her abuses of government power." [WSJ, Wilson Op-Ed, [2/14/23](#)]

- **Wilson Said She Had "Failed Repeatedly To Persuade Ms. Khan And Her Enablers To Do The Right Thing" And "Refuse[d] To Give Their Endeavor Any Further Hint Of Legitimacy By Remaining.** "Much ink has been spilled about Lina Khan's attempts to remake federal antitrust law as chairman of the Federal Trade Commission. Less has been said about her disregard for the rule of law and due process and the way senior FTC officials enable her. I have failed repeatedly to persuade Ms. Khan and her enablers to do the right thing, and I refuse to give their endeavor any further hint of legitimacy by remaining. Accordingly, I will soon resign as an FTC commissioner. Since Ms. Khan's confirmation in 2021, my staff and I have spent countless hours seeking to uncover her abuses of government power." [WSJ, Wilson Op-Ed, [2/14/23](#)]

WILSON SAID KHAN'S ACTIONS AMOUNTED TO "CONTINUING LAWLESSNESS" AS KHAN ATTEMPTED TO PURSUE HER AGENDA

FTC Commissioner Christine Wilson Said She Was Resigning As An FTC Commissioner Because Chairwoman Khan Had A "Disregard For The Rule Of Law And Due Process." "Much ink has been spilled about Lina Khan's attempts to remake federal antitrust law as chairman of the Federal Trade Commission. Less has been said about her disregard for the rule of law and due process and the way senior FTC officials enable her. I have failed repeatedly to persuade Ms. Khan and her enablers to do the right thing, and I refuse to give their endeavor any further hint of legitimacy by remaining. Accordingly, I will soon resign as an FTC commissioner." [WSJ, Wilson Op-Ed, [2/14/23](#)]

- **Wilson Said She Was Resigning “In The Face Of Continuing Lawlessness” By The FTC.** “As an antitrust lawyer, I counseled clients to avoid trouble by knowing when to object and how to exit. When my clients attended trade association gatherings, I advised them to leave quickly if discussions with competitors took a wrong turn and raised alarm bells about price fixing or other illegal activity. Make a noisy exit—say, spill a pitcher of water—so that attendees remember that you objected and that you left. Although serving as an FTC commissioner has been the highest honor of my professional career, I must follow my own advice and resign in the face of continuing lawlessness. Consider this my noisy exit.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

Wilson “Refuse[d]” To Give Khan And Senior FTC Officials “Any Further Hint Of Legitimacy By Remaining” As An FTC Commissioner. “Much ink has been spilled about Lina Khan’s attempts to remake federal antitrust law as chairman of the Federal Trade Commission. Less has been said about her disregard for the rule of law and due process and the way senior FTC officials enable her. I have failed repeatedly to persuade Ms. Khan and her enablers to do the right thing, and I refuse to give their endeavor any further hint of legitimacy by remaining. Accordingly, I will soon resign as an FTC commissioner.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

Wilson Claimed Staff At The FTC Had “Discomfort” With Khan’s “Means” Of Pursuing Her Agenda, “Which Involve[d] Dishonesty And Subterfuge.” “Many FTC staffers agree with Ms. Khan on antitrust policy, so these survey results don’t necessarily reflect disagreement with her ends. Instead, the data convey the staffers’ discomfort with her means, which involve dishonesty and subterfuge to pursue her agenda. I disagree with Ms. Khan’s policy goals but understand that elections have consequences. My fundamental concern with her leadership of the commission pertains to her willful disregard of congressionally imposed limits on agency jurisdiction, her defiance of legal precedent, and her abuse of power to achieve desired outcomes.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

WILSON BELIEVED KHAN HAD A “DISREGARD” FOR CONGRESSIONAL LIMITS ON THE FTC’S JURISDICTION TO “ACHIEVE DESIRED OUTCOMES”

WILSON SAID KHAN HAD ABUSED HER POWERS “TO ACHIEVE DESIRED OUTCOMES”

Wilson’s “Fundamental Concern” With Khan’s Leadership Was “Her Willful Disregard Of Congressionally Imposed Limits On Agency Jurisdiction, Her Defiance Of Legal Precedent, And Her Abuse Of Power To Achieve Desired Outcomes.” “I disagree with Ms. Khan’s policy goals but understand that elections have consequences. My fundamental concern with her leadership of the commission pertains to her willful disregard of congressionally imposed limits on agency jurisdiction, her defiance of legal precedent, and her abuse of power to achieve desired outcomes. Three additional examples are illustrative. In November 2022, the commission issued an antitrust enforcement policy statement asserting that the FTC could ignore decades of court rulings and condemn essentially any business conduct that three unelected commissioners find distasteful.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

Wilson Said Khan Tried To Put A “Moratorium On Mergers [...] By Fiat” After Progressives Failed To Enact Legislation To Do So. “Under President Biden, FTC leadership has abused the merger review process to impose a tax on all mergers, not only those that hinder competition. Progressives tried but failed to enact a legislative moratorium on mergers in early 2020 and to pass other restrictions since. Ms. Khan now does so by fiat. Abuse of regulatory authority now substitutes for unfulfilled legislative desires.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

- **Wilson: “Abuse Of Regulatory Authority Now Substitutes For Unfulfilled Legislative Desires.”** “Under President Biden, FTC leadership has abused the merger review process to impose a tax on all mergers, not only those that hinder competition. Progressives tried but failed to enact a legislative moratorium on mergers in early 2020 and to pass other restrictions since. Ms. Khan now does so by fiat. Abuse of regulatory authority now substitutes for unfulfilled legislative desires.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

WILSON SAID SENIOR FTC OFFICIALS ENABLED KHAN WHILE FTC STAFF MORALE DECLINED

Wilson Claimed “Senior FTC Officials Enable[d]” Khan. “Much ink has been spilled about Lina Khan’s attempts to remake federal antitrust law as chairman of the Federal Trade Commission. Less has been said about her disregard for the rule of law and due process and the way senior FTC officials enable her. I have failed repeatedly to persuade Ms. Khan and her enablers to do the right thing, and I refuse to give their endeavor any further hint of legitimacy by remaining. Accordingly, I will soon resign as an FTC commissioner.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

Wilson Noted That FTC Staff's Feelings That The Senior Agency Officials Maintained High Standards Of Honesty And Integrity Had Dropped From 87% To 49% Since 2020. "I am not alone in harboring concerns about the honesty and integrity of Ms. Khan and her senior FTC leadership. Hundreds of FTC employees respond annually to the Federal Employee Viewpoint Survey. In 2020, the last year under Trump appointees, 87% of surveyed FTC employees agreed that senior agency officials maintain high standards of honesty and integrity. Today that share stands at 49%. Many FTC staffers agree with Ms. Khan on antitrust policy, so these survey results don't necessarily reflect disagreement with her ends." [WSJ, Wilson Op-Ed, [2/14/23](#)]

January 2022: Wilson Lamented "Resource Constraints" Of FTC Budget In Face Of Growing Economy And Consumer Base, Forcing FTC Staff To "Work Long Days, Nights, And Weekends To Get The Job Done." "First, the FTC faces resource constraints. One analysis that studied FTC funding from 2010 to 2016 showed that real appropriations decreased at the FTC when adjusted for inflation.⁹ While our budget remains essentially constant, each year our task grows. The economy has grown – the U.S. GDP in 2000 was just over \$10 trillion, but totaled almost \$21 trillion in 2020.¹⁰ And the number of consumers has also grown – the U.S. population in 2000 was 282 million, and grew to 329 million in 2020.¹¹ But in the face of this growth, the level of FTEs and funding at the FTC has remained relatively constant for many years.¹² As I have stated before, I am incredibly proud of what the FTC accomplishes with so few resources at its disposal.¹ But it isn't easy – FTC lawyers, economists, investigators, paralegals, and other staff work long days, nights, and weekends to get the job done." [Remarks for the Mercatus Antitrust Forum: One Year of Biden Antitrust, [1/26/22](#)]

- **Wilson: "While Our Budget Remains Essentially Constant, Each Year Our Task Grows."** "While our budget remains essentially constant, each year our task grows." [Remarks for the Mercatus Antitrust Forum: One Year of Biden Antitrust, [1/26/22](#)]

...EVEN THOUGH SHE ARGUED AGAINST INCREASED FUNDING THAT COULD'VE HELPED IMPROVE MORALE AND INCREASE PRODUCTIVITY

In March 2022, Wilson Argued The FTC Did Not Need A Budget Increase Because "Under Current Leadership, The Enforcement Productivity Of The Agency Ha[d] Declined Substantially." "In recent fiscal cycles, Congress has provided the Commission with substantial additional resources—an increase of more than 20% in the agency's budget in just the last three years. President Biden proposes to increase the FTC's budget by an additional 30% in just one year. But under current leadership, the enforcement productivity of the agency has declined substantially, despite the congressional largesse already granted to us. We believe that unfounded policy and implementation choices, not any change in the commitment of our diligent staff, are driving those results." [FTC.gov, [3/28/22](#)]

WILSON ARGUED THAT KHAN HAD REJECTED CONCERNS OF A CONFLICT OF INTEREST WITH THE META-WITHIN CASE AND WAS "SPURNING DUE-PROCESS CONSIDERATIONS"

Wilson Complained That Before Coming To The FTC, Khan Had "Argued That Meta Should Be Blocked From Making Any Future Acquisitions" But As Commissioner "Would Now Sit As A Purportedly Impartial Judge And Decide Whether Meta [Could] Acquire Within." "Consider the FTC's challenge to Meta's acquisition of Within, a virtual-reality gaming company. Before joining the FTC, Ms. Khan argued that Meta should be blocked from making any future acquisitions and wrote a report on the same issues as a congressional staffer. She would now sit as a purportedly impartial judge and decide whether Meta can acquire Within. Spurning due-process considerations and federal ethics obligations, my Democratic colleagues on the commission affirmed Ms. Khan's decision not to recuse herself." [WSJ, Wilson Op-Ed, [2/14/23](#)]

- **Wilson: "Spurning Due-Process Considerations And Federal Ethics Obligations, My Democratic Colleagues On The Commission Affirmed Ms. Khan's Decision Not To Recuse Herself."** "Consider the FTC's challenge to Meta's acquisition of Within, a virtual-reality gaming company. Before joining the FTC, Ms. Khan argued that Meta should be blocked from making any future acquisitions and wrote a report on the same issues as a congressional staffer. She would now sit as a purportedly impartial judge and decide whether Meta can acquire Within. Spurning due-process considerations and federal ethics obligations, my Democratic colleagues on the commission affirmed Ms. Khan's decision not to recuse herself." [WSJ, Wilson Op-Ed, [2/14/23](#)]

Wilson Said Her Dissent Over Khan's Decision Not To Recuse Herself From The Meta-Within Case Was Based On "Due-Process Grounds, Which Require[d] Those Sitting In A Judicial Capacity To Avoid Even The Appearance Of Unfairness." "She would now sit as a purportedly impartial judge and decide whether Meta can acquire Within. Spurning due-process considerations and federal ethics obligations, my Democratic colleagues on the commission affirmed Ms. Khan's decision not to recuse herself. I dissented on due-process grounds, which require those sitting in a judicial capacity to avoid even the appearance of unfairness. The law is clear. In one case, a federal appeals court ruled that an

FTC chairman who investigated the same company, conduct, lines of business and facts as a committee staffer on Capitol Hill couldn't then sit as a judge at the FTC and rule on those issues." [WSJ, Wilson Op-Ed, [2/14/23](#)]

- **Wilson Said "The Law [Was] Clear" On Due Process And Courts Had Ruled An FTC Chairman Couldn't Adjudicate A Case After Making Statements Suggesting He Prejudged Its Outcome.** "I dissented on due-process grounds, which require those sitting in a judicial capacity to avoid even the appearance of unfairness. The law is clear. In one case, a federal appeals court ruled that an FTC chairman who investigated the same company, conduct, lines of business and facts as a committee staffer on Capitol Hill couldn't then sit as a judge at the FTC and rule on those issues. In two other decisions, appellate courts held that an FTC chairman couldn't adjudicate a case after making statements suggesting he prejudged its outcome. The statements at issue were far milder than Ms. Khan's definitive pronouncement that all Meta acquisitions should be blocked." [WSJ, Wilson Op-Ed, [2/14/23](#)]
- **Wilson Believed That On Those Grounds, "Ms. Khan's Participation Would Deny The Merging Parties Their Due Process Rights."** "In two other decisions, appellate courts held that an FTC chairman couldn't adjudicate a case after making statements suggesting he prejudged its outcome. The statements at issue were far milder than Ms. Khan's definitive pronouncement that all Meta acquisitions should be blocked. These cases, with their uncannily similar facts, confirm that Ms. Khan's participation would deny the merging parties their due-process rights. I also disagreed with my colleagues on federal ethics grounds. To facilitate transparency and accountability, I detailed my concerns in my dissent—but Ms. Khan's allies ensured the public wouldn't learn of them." [WSJ, Wilson Op-Ed, [2/14/23](#)]

A FEDERAL JUDGE HAD PREVIOUSLY ALLOWED KHAN TO PARTICIPATE IN RE-FILING AN ANTITRUST LAWSUIT AGAINST FACEBOOK FOR BUYING RIVAL MESSAGING PLATFORMS

A Federal Judge Rejected Facebook's Argument That Khan Should Recuse Herself From Participating In The FTC's Decision To Refile Their Antitrust Lawsuit Regarding Its Purchase Of Rival Messaging Platforms. "The judge's Tuesday ruling said the FTC can proceed with its core allegation that Facebook unlawfully sought to suppress competition by buying up potential rivals such as the messaging platform WhatsApp and image-sharing app Instagram [...] The judge also rejected Facebook's argument that new FTC Chairwoman Lina Khan should have recused herself from participating in the commission's decision to refile the lawsuit, which came on a party-line 3-2 vote. The company had argued that Ms. Khan, a leading progressive critic of big tech firms, couldn't be impartial and had made up her mind before joining the FTC that the company had violated the law." [WSJ, [1/11/22](#)]

IN ANOTHER FACEBOOK CASE, THE JUDGE FOUND KHAN'S NOVEL LEGAL APPROACH TO BE PLAUSIBLE DESPITE WEAK FACTUAL ASSERTIONS

When The FTC Filed Suit Against Meta's Purchase Of Within, The Judge Overseeing The Case Found The FTC's Novel Legal Approach As Plausible, Even If The Agency's Factual Assertions Were Weak. "The F.T.C. sued Meta in July in federal court to temporarily halt the deal, and then asked its in-house court in August to fully block the acquisition. The F.T.C. will have to decide whether to proceed with its in-house challenge despite the ruling. [...] William E. Kovacic, a former F.T.C. chairman, said the sealed ruling in the Meta case would be more problematic for the agency if the judge panned the legal theories underpinning the challenge. But if Judge Davila saw the F.T.C.'s more novel approach as plausible — even if the agency's factual assertions were weak in this case — 'that's a low-impact defeat' less likely to hurt its future efforts, Mr. Kovacic said." [NY Times, [2/1/23](#)]

WILSON CLAIMED DEMOCRATIC FTC COMMISSIONERS HAD HEAVILY REDACTED A DISSENT OF HERS EVEN THOUGH IT DIDN'T DISCLOSE CONFIDENTIAL BUSINESS INFORMATION

Wilson Claimed Commissioners Slaughter And Bedoya "Imposed Heavy Redactions On My Dissent," Despite Redactions Being Used "To Prevent Disclosure Of Confidential Business Information." "Despite previous disclosures of analogous information, Commissioners Rebecca Slaughter and Alvaro Bedoya imposed heavy redactions on my dissent. Commission opinions commonly use redactions to prevent disclosure of confidential business information, but my opinion contained no such information. The redactions served no purpose but to protect Ms. Khan from embarrassment. I am not alone in harboring concerns about the honesty and integrity of Ms. Khan and her senior FTC leadership. Hundreds of FTC employees respond annually to the Federal Employee Viewpoint Survey." [WSJ, Wilson Op-Ed, [2/14/23](#)]

- **Wilson: "My Opinion Contained No Such Information. The Redactions Served No Purpose But To Protect Ms. Khan From Embarrassment."** "Despite previous disclosures of analogous information, Commissioners

Rebecca Slaughter and Alvaro Bedoya imposed heavy redactions on my dissent. Commission opinions commonly use redactions to prevent disclosure of confidential business information, but my opinion contained no such information. The redactions served no purpose but to protect Ms. Khan from embarrassment. I am not alone in harboring concerns about the honesty and integrity of Ms. Khan and her senior FTC leadership. Hundreds of FTC employees respond annually to the Federal Employee Viewpoint Survey.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

WILSON SAID KHAN HAD ABUSED HER POWER WITH HER ANTITRUST AND WORKER RIGHTS EFFORTS

Wilson Said Uncovering Khan’s Abuses Of Power Had “Become Increasingly Difficult As She Ha[d] Consolidated Power Within The Office Of The Chairman.” “Since Ms. Khan’s confirmation in 2021, my staff and I have spent countless hours seeking to uncover her abuses of government power. That task has become increasingly difficult as she has consolidated power within the Office of the Chairman, breaking decades of bipartisan precedent and undermining the commission structure that Congress wrote into law. I have sought to provide transparency and facilitate accountability through speeches and statements, but I face constraints on the information I can disclose—many legitimate, but some manufactured by Ms. Khan and the Democratic majority to avoid embarrassment.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

Wilson Said Khan’s Actions Had Broken “Decades of Bipartisan Precedent” And Undermined “The Commission Structure That Congress Wrote Into Law.” “Since Ms. Khan’s confirmation in 2021, my staff and I have spent countless hours seeking to uncover her abuses of government power. That task has become increasingly difficult as she has consolidated power within the Office of the Chairman, breaking decades of bipartisan precedent and undermining the commission structure that Congress wrote into law. I have sought to provide transparency and facilitate accountability through speeches and statements, but I face constraints on the information I can disclose—many legitimate, but some manufactured by Ms. Khan and the Democratic majority to avoid embarrassment.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

Wilson Felt The Nov. ’22 Policy Statement On Antitrust Enforcement Asserted “That The FTC Could Ignore Decades Of Court Rulings And Condemn Essentially Any Business Conduct That Three Unelected Commissioners [Found] Distasteful.” “My fundamental concern with her leadership of the commission pertains to her willful disregard of congressionally imposed limits on agency jurisdiction, her defiance of legal precedent, and her abuse of power to achieve desired outcomes. Three additional examples are illustrative. In November 2022, the commission issued an antitrust enforcement policy statement asserting that the FTC could ignore decades of court rulings and condemn essentially any business conduct that three unelected commissioners find distasteful. If conduct can be labeled with a nefarious adjective—‘coercive,’ ‘exploitative,’ ‘abusive,’ ‘restrictive’—it may violate the FTC Act of 1914.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

- **Wilson: “The New Policy Adopts An ‘I Know It When I See It’ Approach” Despite Due Process Demanding “That The Lines Between Lawful And Unlawful Conduct Be Clearly Drawn.”** “If conduct can be labeled with a nefarious adjective—‘coercive,’ ‘exploitative,’ ‘abusive,’ ‘restrictive’—it may violate the FTC Act of 1914. But the new policy contains no descriptions or definitions of these terms, many of which also lack context in the law. The commission also candidly explained that its analysis under the new policy may depart from prior antitrust precedent, and identified previously lawful conduct as now suspect. In other words, the new policy adopts an ‘I know it when I see it’ approach. But due process demands that the lines between lawful and unlawful conduct be clearly drawn, to guide businesses before they face a lawsuit.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

Wilson Believed Under Biden, The FTC Leadership “Abused The Merger Review Process To Impose A Tax On All Mergers” Instead Of Ones That “Hinder[ed] Competition.” “Under President Biden, FTC leadership has abused the merger review process to impose a tax on all mergers, not only those that hinder competition. Progressives tried but failed to enact a legislative moratorium on mergers in early 2020 and to pass other restrictions since. Ms. Khan now does so by fiat. Abuse of regulatory authority now substitutes for unfulfilled legislative desires.” [WSJ, Wilson Op-Ed, [2/14/23](#)]

Wilson Complained That The FTC Had Launched Rulemaking For Non-Compete Clauses, Saying It Went Against SCOTUS Precedent. “In January 2023, the commission launched a rulemaking that would ban nearly all noncompete clauses in employee contracts, affecting roughly one-fifth of employment contracts in the U.S. This proposed rule defies the Supreme Court’s decision in *West Virginia v. EPA* (2022), which held that an agency can’t claim ‘to discover in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority.’” [WSJ, Wilson Op-Ed, [2/14/23](#)]

THE FTC AND ITS CHAIRS WERE NO STRANGER TO CRITICISM AND HAD FACED MANY OF WILSON’S COMPLAINTS IN THE PAST

FTC FACED INTERNAL DIVISIONS, OUTSIDE CONDEMNATION AND CONFLICT-OF-INTEREST COMPLAINTS LONG BEFORE KHAN'S ARRIVAL

TRUMP'S FTC CHAIRMAN, JOSEPH SIMONS, HAD BEEN "UNDER FIRE" SINCE THE BEGINNING OF HIS CHAIRMANSHIP

WSJ: FTC Chairman Joseph Simons Had Been "Under Fire" Since He Began His Term. "After Mr. Trump won the White House in 2016, he didn't select an FTC chairman for almost a year. Mr. Simons, who didn't campaign heavily for the job, emerged as the pick as other potential nominees canceled each other out. He took the helm of the five-member FTC in May 2018. He has been under fire from the start. Mr. Simons, who also worked at the FTC during the George W. Bush administration, has led the commission while antitrust enforcement has entered the mainstream political debate." [WSJ, [12/11/20](#)]

FORMER FTC COMMISSIONER JOSHUA WRIGHT WAS A FREQUENT DISSENER AND ATTACKED THE AGENCY FOR NOT BEING TRANSPARENT ABOUT ITS POLICIES

FTC Commissioner Joshua Wright Was A Frequent Dissenter To Antitrust Enforcement Actions Brought Under Democratic Leadership. "Commissioner Joshua Wright, 38 years old, will leave on Aug. 24 after nearly three years at the FTC, the commission said Monday. Mr. Wright had developed a reputation as the FTC's most conservative commissioner and was a frequent dissenter to antitrust enforcement actions brought under Democratic leadership, including to the commission's successful challenge earlier this year to the planned merger of rival food distributors Sysco Corp. and US Foods Inc." [Wall Street Journal, [8/17/15](#)]

In 2015, FTC Commissioner Joshua Wright Complained That The Agency Was Not Transparent About What Kind Of Activities Could Get Businesses In Trouble. "For the first time in its 100-year history, the Federal Trade Commission on Thursday laid out the guidelines it follows when deciding to go after a company for attempting to stifle competition. [...] But the business community has complained that the agency is not transparent about what kind of activities could get them in trouble. Those complaints have been echoed by Commissioner Joshua Wright (R). 'Such uncertainty inevitably results in the chilling of some legitimate business conduct that would otherwise have enhanced consumer welfare but for the firm's fear that the commission might intervene,' Wright said in a speech earlier this year." [Washington Post, [8/13/15](#)]

- **Wright: "Such Uncertainty Inevitably Results In The Chilling Of Some Legitimate Business Conduct That Would Otherwise Have Enhanced Consumer Welfare But For The Firm's Fear That The Commission Might Intervene."** "For the first time in its 100-year history, the Federal Trade Commission on Thursday laid out the guidelines it follows when deciding to go after a company for attempting to stifle competition. [...] But the business community has complained that the agency is not transparent about what kind of activities could get them in trouble. Those complaints have been echoed by Commissioner Joshua Wright (R). 'Such uncertainty inevitably results in the chilling of some legitimate business conduct that would otherwise have enhanced consumer welfare but for the firm's fear that the commission might intervene,' Wright said in a speech earlier this year." [Washington Post, [8/13/15](#)]

Commissioner Wright Attacked The FTC Under Chairwoman Edith Ramirez For Failing To Consider The Potential Benefits To Consumers Of Certain Practices It Found Unfair. "Under Ramirez's leadership, the FTC gained a reputation in Washington as a key technology regulator [...] But the agency has also faced criticism over the way it's handled some tech-related matters. Some, including a few of its own members, argued the FTC failed to consider the potential benefits to consumers of certain practices it found unfair, such as Apple's approach to in-app purchases. 'The unfairness standard places the burden on the commission to show the harms of those decisions outweigh the benefits,' said FTC Commissioner Josh Wright in a 2014 speech. Wright, a Republican, left the FTC in 2015 to become a law professor at George Mason University." [Washington Post, [1/13/17](#)]

- **Wright Said The Unfairness Standard "Place[d] The Burden On The Commission To Show The Harms Of Those Decisions Outweigh[ed] The Benefits."** "Under Ramirez's leadership, the FTC gained a reputation in Washington as a key technology regulator [...] But the agency has also faced criticism over the way it's handled some tech-related matters. Some, including a few of its own members, argued the FTC failed to consider the potential benefits to consumers of certain practices it found unfair, such as Apple's approach to in-app purchases. 'The unfairness standard places the burden on the commission to show the harms of those decisions outweigh the benefits,' said FTC Commissioner Josh Wright in a 2014 speech. Wright, a Republican, left the FTC in 2015 to become a law professor at George Mason University." [Washington Post, [1/13/17](#)]

MAJOR VOTES AT THE FTC HAD FALLEN ON PARTY LINES IN THE PAST, INCLUDING AN ANTITRUST SUIT AGAINST FACEBOOK FOR BUYING AND SHUTTING OUT RIVALS

A 2020 ANTITRUST LAWSUIT AGAINST FACEBOOK'S PURCHASING OF RIVAL PLATFORMS RECEIVED A 3-2 VOTE, WITH WILSON HERSELF VOTING AGAINST THE LAWSUIT

2020: When The FTC Brought An Antitrust Lawsuit Against Facebook On Buying Up And Shutting Out Rivals, The Vote Was 3-2, With Republican Chairman Joseph Simons Siding With Democrats. “Joseph Simons has navigated an agitated White House, criticism from Congress and colleagues who are difficult to wrangle since becoming chairman of the Federal Trade Commission. The filing of the FTC’s antitrust lawsuit against Facebook Inc., though, was a career-defining act [...] The FTC lawsuit alleges Facebook engaged in an anticompetitive campaign to buy up and shut out rivals. The company rejects the claims as revisionist history and is preparing to battle the FTC in court. The case came on a 3-2 vote, with Mr. Simons, a Republican, joining two Democratic commissioners in the majority. The FTC’s other two GOP members voted no.” [WSJ, [12/11/20](#)]

- **The FTC’s Two GOP Members Voted Against The Decision.** “Joseph Simons has navigated an agitated White House, criticism from Congress and colleagues who are difficult to wrangle since becoming chairman of the Federal Trade Commission. The filing of the FTC’s antitrust lawsuit against Facebook Inc., though, was a career-defining act [...] The FTC lawsuit alleges Facebook engaged in an anticompetitive campaign to buy up and shut out rivals. The company rejects the claims as revisionist history and is preparing to battle the FTC in court. The case came on a 3-2 vote, with Mr. Simons, a Republican, joining two Democratic commissioners in the majority. The FTC’s other two GOP members voted no.” [WSJ, [12/11/20](#)]
- **Chairman Simons Sided With The FTC’s Two Democratic Commissioners In His Vote.** “The Federal Trade Commission and 46 states sued Facebook Inc. on Wednesday, accusing the social-media giant of buying and freezing out small startups to choke competition [...] The FTC voted 3-2 to file the lawsuit, which came after an investigation that stretched more than a year. The agency’s two Democrats joined Republican Chairman Joseph Simons for the suit, a sign it will likely continue once President-elect Joe Biden takes office.” [WSJ, [12/9/20](#)]
- **Wilson Voted Against The Lawsuit.** “The Federal Trade Commission and 46 states sued Facebook Inc. on Wednesday, accusing the social-media giant of buying and freezing out small startups to choke competition [...] The FTC voted 3-2 to file the lawsuit, which came after an investigation that stretched more than a year. The agency’s two Democrats joined Republican Chairman Joseph Simons for the suit, a sign it will likely continue once President-elect Joe Biden takes office [...] Democratic Commissioners Rohit Chopra and Rebecca Slaughter voted with Mr. Simons. Republican commissioners Noah Phillips and Christine Wilson voted no.” [WSJ, [12/9/20](#)]

The Voted Decided Whether The FTC Would Join 46 States In Suing Facebook For Buying And Freezing Out Small Starts To Choke Competition. “The Federal Trade Commission and 46 states sued Facebook Inc. on Wednesday, accusing the social-media giant of buying and freezing out small startups to choke competition. The FTC’s sweeping antitrust case seeks to force Facebook to unwind its acquisitions of WhatsApp and Instagram, two of its landmark deals. The states filed a separate and similar lawsuit, alleging a lack of competition has harmed consumers, including by weakening privacy protections.” [WSJ, [12/9/20](#)]

REPUBLICAN FTC CHAIRMAN SIMONS STRUGGLED TO WIN SUPPORT FOR A \$5 BILLION FINE FACEBOOK

In 2019, FTC Chairman Simons Struggled To Win Support For A Nearly \$5 Billion Settlement With Facebook By The Agencies Two Democrats, Who Worried The Settlement Wouldn't Be Tough Enough. “Facebook said April 24 that it was expecting to pay up to \$5 billion in an accord with the FTC. At the time, people closely following the talks said a settlement was expected within days. But over the past month, Republican Chairman Joseph Simons has struggled to win support for the deal from at least one of the panel’s two Democrats, Rebecca Kelly Slaughter and Rohit Chopra, who are concerned the settlement won’t be tough enough, according to one of the people familiar. Consumer groups and others watching the talks say Mr. Simons wants a bipartisan decision to strengthen the FTC’s credibility by underscoring its mission as a nonpartisan regulator.” [WSJ, [5/24/19](#)]

AN ATTEMPT BY THE FTC TO BLOCK A MERGER BETWEEN STAPLES AND AN OFFICE-SUPPLY WHOLESALER HAD A 3-2 VOTE

In 2019, The FTC Faced A Partisan 3-2 Vote On Whether To Block A Merger Between Staples And Office-Supply Wholesaler Essendant Inc. “A new-look Federal Trade Commission saw its first partisan split in a merger case late Monday, with a Republican majority allowing office-supply giant Staples Inc. to acquire office-supply wholesaler Essendant Inc. over Democratic objections that the FTC should do more to stop questionable deals. The sparring over the \$483 million transaction revealed some of the early political contours of a commission whose five leadership positions all turned over last year. The FTC’s three new Republican commissioners said concerns about corporate consolidation alone aren’t enough to justify more merger challenges; the commission should only challenge deals when there is enough evidence to support it, they said.” [WSJ, [1/29/19](#)]

AN APPROVAL FOR COMCAST-TIME WARNER TO BUY ADELPHIA COMMUNICATIONS FELL ON A 3-2 VOTE

In 2008, The FTC Approved The Purchase Of Adelphia Communications Corp By Comcast And Time Warner By A 3-2 Vote. “The Federal Trade Commission cleared the acquisition of Adelphia Communications Corp.'s cable assets by Comcast Corp. and Time Warner Cable Inc., amid objections that the purchase would raise the cost of sports programming. “The evidence obtained during the investigation does not suggest that the proposed transactions are likely to substantially lessen competition in any geographic region in the United States,” said FTC Chairman Deborah Platt Majoras. She and two fellow Republicans approved the purchase over the objections of two colleagues who argued the government should have imposed conditions. Comcast and Time Warner last April agreed to acquire Adelphia’s assets after the company collapsed in an accounting scandal.” [WSJ, [6/18/08](#)]

WHEN THE FTC WAS CONSIDERING HOW TO PENALIZE FACEBOOK FOR PRIVACY MISHAPS, THE GOP LED AGENCY ABANDONED THE IDEA OF BILLIONS IN PENALTIES

When Considering How To Penalize Facebook Over Privacy Mishaps, The FTC Considered Penalties In The Billions Of Dollars, But The GOP Led Agency Abandoned Such An Idea In The Face Of Opposition From The Platform. “The U.S. government on Wednesday issued an unprecedented rebuke of Facebook after a year of massive privacy mishaps, charging that the company deceived its users and “undermined” choices they made to protect their data as part of a settlement that requires the tech giant to pay \$5 billion and submit to significant federal oversight of its business practices [...] Many of the penalties announced Wednesday proved to be much more lenient on Facebook than commission staff initially considered in the earlier days of the probe. At one point, the FTC had considered a fine into the tens of billions of dollars, for example, and it considered placing Zuckerberg personally under order, The Post previously reported. But the FTC abandoned many of these ideas in the face of Facebook opposition, which could have resulted in a protracted court battle that the government wasn’t guaranteed to win.” [Washington Post, [7/24/19](#)]

- **The Three Republican Commissioners, Including Wilson, Said It Was “Highly Unlikely” The FTC Could’ve Obtained As Big Of Settlement If They Proceeded With Litigation.** “At one point, the FTC had considered a fine into the tens of billions of dollars, for example, and it considered placing Zuckerberg personally under order [...] But the FTC abandoned many of these ideas in the face of Facebook opposition, which could have resulted in a protracted court battle that the government wasn’t guaranteed to win. The agency’s three Republicans — Simons, along with commissioners Noah Phillips and Christine Wilson — defended their decision to settle with Facebook in a joint statement Wednesday. Anticipating critics, they said it would have been ‘highly unlikely the Commission could have obtained this magnitude of injunctive relief if we had proceeded with litigation.’” [Washington Post, [7/24/19](#)]
- **When The FTC Levied Their Record Fine Against Facebook, The Agency’s Dissenting Democrats Believed The Agency Could’ve Gone Farther And Had Erred In Not Trying To Extract More From The Platform.** “The U.S. government on Wednesday issued an unprecedented rebuke of Facebook after a year of massive privacy mishaps, charging that the company deceived its users and “undermined” choices they made to protect their data as part of a settlement that requires the tech giant to pay \$5 billion and submit to significant federal oversight of its business practices [...] In response, the agency’s Democrats argued the FTC had erred in not trying to extract more from Facebook, a company whose profit model Chopra described as ‘propelled by surveillance and manipulation.’ And they expressed fear that the settlement might let Facebook and its leaders ‘off the hook,’ as Chopra put it, for potentially other violations of users’ privacy that occurred before the settlement and may not have been fully investigated.” [Washington Post, [7/24/19](#)]

FORMER FTC CHAIRS HAD CONFLICTS OF INTEREST ON MATTERS RANGING FROM NET NEUTRALITY TO JOURNALISM IN THE DIGITAL AGE

TRUMP'S ACTING FTC CHAIR OPPOSED NET NEUTRALITY, YET OVERSAW AN FTC LAWSUIT AGAINST AT&T FOR THROTTLING CUSTOMERS MOBILE DATA

Washington Post: In 2017, Trump's Pick For Acting FTC Chairwoman, Maureen Ohlhausen, Was Said To Be A "Noted Critic Of Government Regulation" Like Net Neutrality. "President Trump has designated Maureen Ohlhausen as the Federal Trade Commission's acting chairwoman, putting her in charge of a powerful consumer protection agency that in recent years has become a major technology and privacy watchdog. Ohlhausen, a Republican, had been serving as an FTC commissioner since 2012. She is a noted critic of government regulation, such as the Federal Communications Commission's net neutrality rules, and frequently uses the phrase 'regulatory humility' to describe her philosophy on federal policymaking." [Washington Post, [1/25/17](#)]

- **Washington Post: Ohlhausen Frequently Used The Phrase "Regulatory Humility" To Describe Her Philosophy On Federal Policy Making.** "President Trump has designated Maureen Ohlhausen as the Federal Trade Commission's acting chairwoman, putting her in charge of a powerful consumer protection agency that in recent years has become a major technology and privacy watchdog. Ohlhausen, a Republican, had been serving as an FTC commissioner since 2012. She is a noted critic of government regulation, such as the Federal Communications Commission's net neutrality rules, and frequently uses the phrase 'regulatory humility' to describe her philosophy on federal policymaking." [Washington Post, [1/25/17](#)]

Ohlhausen Was A Critic Of The FCC's Open Internet Order (Net Neutrality) And Said Excessive Regulation Could Make Large Companies "Suffer." "President Trump has appointed Maureen Ohlhausen as acting commissioner of the Federal Trade Commission (FTC). For now, she'll be in charge of the agency that protects US consumers' safety and privacy, while guarding them from anti-competitive business practices [...] Ohlhausen is a critic of rules like the FCC's Open Internet Order (net neutrality), having recently said in a speech that excessive regulation can make large companies 'suffer.' Instead, she's in favor of keeping corporations in line through enforcement and cooperation, and believes the commission should use 'a philosophy of regulatory humility ... and be mindful of the private and social costs that government actions inflict.'" [Engadget, [1/26/17](#)]

While Acting Chairwoman, Ohlhausen Oversaw The FTC As It Sued AT&T For Throttling Customers Mobile Data. "A federal appeals court ruled on Monday that the Federal Trade Commission (FTC) can move forward with its lawsuit against AT&T over allegations the company deceptively slowed data for some of its customers. The decision also affirms the FTC's authority to police internet service providers, an issue that had been in question amid the Federal Communications Commission's (FCC) repeal of its net neutrality rules. The FCC's net neutrality repeal handed oversight of internet service providers to the FTC, but critics said that would create an enforcement gap. 'I welcome the 9th Circuit's ruling as good news for consumers,' Maureen Ohlhausen, the FTC's acting chairwoman, said in a statement. 'It ensures that the FTC can and will continue to play its vital role in safeguarding consumer interests including privacy protection, as well as stopping anticompetitive market behavior.'" [The Hill, [2/26/18](#)]

A REPUBLICAN FTC COMMISSIONER CHOSE NOT TO RECUSE HIMSELF FROM AN FTC REVIEW OF INTEL DESPITE PREVIOUSLY BEING THEIR CHIEF ANTITRUST DEFENDER

Republican FTC Commissioner Thomas Rosch Did Not Recuse Himself From A FTC Review Of Intel Despite Being The Company's Chief Antitrust Defender Before Becoming A Commissioner. "In 2011, as the nation's health care laws changed, encouraging greater collaboration between hospitals and doctors for cost savings, Mr. Rosch warned that without 'vigorous antitrust enforcement,' the new alliances could reduce competition and increase costs to consumers. Some of his former clients were not happy to see him on the opposing side. In 2009, Intel, where Mr. Rosch had been the chief antitrust defender for years, tried unsuccessfully to disqualify him from reviewing a case accusing the company of abusing its power over the microprocessor market." [New York Times, [4/13/16](#)]

- **Intel Had Tried To Disqualifying Rosch From Reviewing A Case Accusing Intel Of Abusing Its Power Over The Microchip Market.** "In 2011, as the nation's health care laws changed, encouraging greater collaboration between hospitals and doctors for cost savings, Mr. Rosch warned that without 'vigorous antitrust enforcement,' the new alliances could reduce competition and increase costs to consumers. Some of his former clients were not happy to see him on the opposing side. In 2009, Intel, where Mr. Rosch had been the chief antitrust defender for years, tried unsuccessfully to disqualify him from reviewing a case accusing the company of abusing its power over the microprocessor market." [New York Times, [4/13/16](#)]

FTC CHAIR JON LEIBOWITZ CONDUCTED AN FTC WORKSHOP ON JOURNALISM IN THE DIGITAL AGE WHILE HIS WIFE WAS AN EDITORIAL WRITER AT THE WASHINGTON POST

In 2009, The FTC Conducted Workshops On Journalism In The Digital Age Despite Then-Chairman Jon Leibowitz Being Married To An Editorial Writer At The Washington Post. “Just about everyone, from the general public to news executives, has an opinion about the future of journalism. Now, the Federal Trade Commission is stepping into the debate. The commission is planning two days of workshops in December titled ‘From Town Criers to Bloggers: How Will Journalism Survive the Internet Age?’ to examine the state of the news industry [...] . But Jon Leibowitz, the F.T.C. chairman, says the agency has taken a look at other industries, through workshops on hospital competition, food marketing and the patent system. Journalism’s future falls in the agency’s purview, he said [...] Disclosure: Mr. Leibowitz is married to Ruth Marcus, an editorial writer at The Washington Post. But he said the commissioners, who are a mix of Democrats and Republicans, are supportive of the workshops.” [NY Times, [8/23/09](#)]

- **Leibowitz Said After The Workshop, The FTC Could Make Recommendations To Lawmakers On Changes In Policies On Topics Ranging From Taxation Of News Organizations To Copyright Issues.** “Just about everyone, from the general public to news executives, has an opinion about the future of journalism. Now, the Federal Trade Commission is stepping into the debate. The commission is planning two days of workshops in December titled ‘From Town Criers to Bloggers: How Will Journalism Survive the Internet Age?’ to examine the state of the news industry [...] A report will be issued after the workshops that may make recommendations to lawmakers on changes in policies on anything ranging from taxation of news organizations to copyright issues, Mr. Leibowitz said. He said no specific issues had been chosen. ‘We really want to keep an open mind,’ Mr. Leibowitz said. The workshops will help because ‘we don’t have a sense empirically of the nature of the problem,’ he said.” [NY Times, [8/23/09](#)]

THE FTC CREATED NEW RULES AND WORKED TO EXPAND ITS POWER PLENTY OF TIMES BEFORE KHAN

IN AUGUST 2015, THE FTC DECLARED “UNFAIR METHODS OF COMPETITION IN OR AFFECTING COMMERCE” UNLAWFUL...

In August 2015, The FTC Declared “Unfair Methods Of Competition In Or Affecting Commerce” To Be Unlawful. “Statement of Enforcement Principles Regarding ‘Unfair Methods of Competition’ Under Section 5 of the FTC Act Section 5 of the Federal Trade Commission Act declares ‘unfair methods of competition in or affecting commerce’ to be unlawful. 15 U.S.C. § 45(a)(1). Section 5’s ban on unfair methods of competition encompasses not only those acts and practices that violate the Sherman or Clayton Act but also those that contravene the spirit of the antitrust laws and those that, if allowed to mature or complete, could violate the Sherman or Clayton Act. Congress chose not to define the specific acts and practices that constitute unfair methods of competition in violation of Section 5, recognizing that application of the statute would need to evolve with changing markets and business practices.” [FTC.gov, [8/13/15](#)]

- **The FTC Noted That Congress Had Not “Define[d] The Specific Acts And Practices That Constitut[e] Unfair Methods Of Competition” And Practices That “Contravene[d] The Spirt Of Antitrust Laws.”** “Statement of Enforcement Principles Regarding ‘Unfair Methods of Competition’ Under Section 5 of the FTC Act Section 5 of the Federal Trade Commission Act declares ‘unfair methods of competition in or affecting commerce’ to be unlawful. 15 U.S.C. § 45(a)(1). Section 5’s ban on unfair methods of competition encompasses not only those acts and practices that violate the Sherman or Clayton Act but also those that contravene the spirit of the antitrust laws and those that, if allowed to mature or complete, could violate the Sherman or Clayton Act. Congress chose not to define the specific acts and practices that constitute unfair methods of competition in violation of Section 5, recognizing that application of the statute would need to evolve with changing markets and business practices.” [FTC.gov, [8/13/15](#)]

WHILE CREATING NEW RULES FOR GOING AFTER BUSINESSES THAT WERE APPROVED IN A CLOSED-DOOR MEETING

In 2015, The FTC Approved New Policies For How It Would Decide To Go After Businesses For Attempting To Stifle Competition. For the first time in its 100-year history, the Federal Trade Commission on Thursday laid out the guidelines it follows when deciding to go after a company for attempting to stifle competition. The new policy, approved by the commission in a closed-door meeting, was detailed by Chairwoman Edith Ramirez at a George Washington University speech. The agency will use its authority to protect consumers and evaluate ‘commercial practices by focusing on harm to competition or the competitive process,’ Ramirez said.” [Washington Post, [8/13/15](#)]

- **The Policies Were Approved In A Closed-Door Meeting.** “For the first time in its 100-year history, the Federal Trade Commission on Thursday laid out the guidelines it follows when deciding to go after a company for attempting to stifle competition. The new policy, approved by the commission in a closed-door meeting, was

detailed by Chairwoman Edith Ramirez at a George Washington University speech. The agency will use its authority to protect consumers and evaluate 'commercial practices by focusing on harm to competition or the competitive process,' Ramirez said." [Washington Post, [8/13/15](#)]

- **Washington Post: "The FTC Did Not Feel Compelled To Deliver Guidelines Before Because It Does Not Use Its Powers In This Arena Often."** "The FTC did not feel compelled to deliver guidelines before because it does not use its powers in this arena often, said Feinstein, the former head of the FTC's Bureau of Competition. "The Commission hasn't used this authority that frequently over the years and continued to develop it on a case by case basis," he said. The new enforcement principles attempts to provide some clarity, but it's also very brief — less than a page long — and appears primarily to codify how the agency already uses its unfair competition power." [Washington Post, [8/13/15](#)]

FTC CHAIR LEIBOWITZ SOUGHT TO EXPAND THE FTC'S POWER BY REVIVING A DORMANT PART OF SECTION 5

FTC Chairman Jon Leibowitz Sought To Expand The Agencies Power By Reviving A Long-Dormant Part Of Section 5 Of The FTC Act So It Could Target Unfair And Deceptive Practices Beyond The Scope Of Antitrust Law. "Last April, it also declined to challenge the \$29 billion merger of two of the nation's largest prescription-drug benefit managers, Express Scripts Inc. and Medco Health Solutions Inc., a deal some consumer advocates criticized as anticompetitive. Mr. Leibowitz also sought to expand the agency's power by reviving a long-dormant part of the law that he believes allows it to target "unfair and deceptive" business practices beyond the scope of the antitrust laws. However, the FTC never litigated a case under that statute—Section 5 of the FTC Act—in that more expansive way, leaving the matter unsettled in the courts." [WSJ, [1/31/13](#)]

CRITICS OF THE FTC SAID IT WAS DOGGED BY FOR BEING A WATCHED DOG THAT "RARELY BITES" AND HAD "SLOW-PACED DELIBERATIONS"

New York Times, 2018: Many In Washington Saw The FTC As "A Watchdog That Too Rarely Bites." "The F.T.C. serves as the country's de facto privacy regulator, relying on more limited rules against deceptive trade practices to investigate Google, Twitter and other tech firms accused of misleading people about how their information is used. But many in Washington view the agency as a watchdog that too rarely bites. In more than 40 interviews, former and current F.T.C. officials, lawmakers, Capitol Hill staff members, and consumer advocates said that as evidence of abuses has piled up against tech companies, the F.T.C. has been too cautious." [NY Times, [12/30/18](#)]

- **New York Times: "In More Than 40 Interviews, Former And Current F.T.C. Officials, Lawmakers, Capitol Hill Staff Members, And Consumer Advocates Said That As Evidence Of Abuses Has Piled Up Against Tech Companies, The F.T.C. Has Been Too Cautious."** "The F.T.C. serves as the country's de facto privacy regulator, relying on more limited rules against deceptive trade practices to investigate Google, Twitter and other tech firms accused of misleading people about how their information is used. But many in Washington view the agency as a watchdog that too rarely bites. In more than 40 interviews, former and current F.T.C. officials, lawmakers, Capitol Hill staff members, and consumer advocates said that as evidence of abuses has piled up against tech companies, the F.T.C. has been too cautious." [NY Times, [12/30/18](#)]

WSJ, December 2020: The FTC Was "Dogged By A Reputation For Caution And Slow-Paced Deliberations." "Policy advocates and lawmakers from both parties have accused the commission and the Justice Department of doing too little to police the nation's biggest companies for competition violations, especially in the tech space. Mr. Simons promised vigorous enforcement, including in Silicon Valley. 'We're interested in tech platforms,' he said shortly after taking office. The FTC, however, has been dogged by a reputation for caution and slow-paced deliberations. Its decision in 2013 not to bring a case against Google after a lengthy investigation drew criticism for years, especially as European enforcers brought multiple antitrust cases against the search giant." [WSJ, [12/11/20](#)]

- **According To The Wall Street Journal, The FTC Had Been Accused Of "Doing Too Little To Police The nation's Biggest Companies For Competition Violations, Especially In The Tech Space."** "He took the helm of the five-member FTC in May 2018. He has been under fire from the start. Mr. Simons, who also worked at the FTC during the George W. Bush administration, has led the commission while antitrust enforcement has entered the mainstream political debate. Policy advocates and lawmakers from both parties have accused the commission and the Justice Department of doing too little to police the nation's biggest companies for competition violations, especially in the tech space. Mr. Simons promised vigorous enforcement, including in Silicon Valley." [WSJ, [12/11/20](#)]