



The Daily Dish

# The FTC's Turn in the Spotlight

DOUGLAS HOLTZ-EAKIN | OCTOBER 20, 2017

## *Eakinomics: The FTC's Turn in the Spotlight*

Reuters [reports](#) that President Trump will nominate three new commissioners for the Federal Trade Commission (FTC). Joseph Simon will be the new chairman and will be joined by Noah Phillips and Rohit Chopra. With the three additions, the five-person FTC will be fully appointed due to the continued presence of Maureen Ohlhausen and Terrell McSweeney. A fully functioning FTC is always important because of its economy-wide mandate for consumer protection, and its growing role to police tech companies.

It may be even more important at the moment because of the widespread calls to regulate “big tech” like Facebook and Google. The FTC has a history with tech issues and will play a central role in its evolution. However, in contrast to calls for comprehensive legislation, the FTC takes a case-by-case approach. The latter approach is a better strategy for the rapidly changing tech industries where a one-size-fits-all, burdensome regulatory regime could harm its signature innovation.

That said, the FTC is not without its problems (see the testimony in this [Senate hearing](#) last month). Congress should act to clarify how the FTC does business; the House began examining how to [reform the agency](#) in the last Congress. Among other issues, the FTC has been chided for creating a “common law of consent decrees.” Most of what the agency does is enter into consent decrees with companies, each of which lasts 20 years. It is not clear that 20 years is the appropriate remedy for fast moving industries, or whether it should be shorter or longer in other cases. And because these cases don’t go to court, the agency doesn’t have to justify its determination. This means that the agency has been driven not by adversarial court cases but by the discretion of three commissioners.

That might be acceptable but these decrees don’t include the kind of hard economic analysis that should exist as the foundation of a finding of consumer harm and computation of the remedy. And it means that when the agency recommends best practices via reports and guides, this body of quasi-regulations does not have a foundation of rigorous regulatory analysis. The FTC is about to step into the spotlight but that should not preclude Congress from modernizing it first.