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The Legacy of Joshua Wright

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When a presidential appointee leaves office, it is quite common to consider the person's legacy to their department or agency. We are delighted to participate in this symposium and to reflect on the contributions of our friend, Commissioner Joshua Wright, to the Federal Trade Commission.

To be sure, Commissioner Wright's time at the FTC has been marked by no shortage of important votes, statements, speeches, testimony, and policy proposals that individually have had a positive and meaningful impact on the Commission and on antitrust policy more generally. In our view, however, the hallmark of Commissioner Wright's most recent stint at the Commission is found in two overarching principles that have guided his approach to pursuing the agency's mission of promoting consumer welfare and that, as a result, will be important considerations for those entrusted with selecting his replacement as well as future commissioners. We see those overarching principles as: (1) the rigorous application and ceaseless promotion of economics within the Commission and (2) the indefatigable participation in the marketplace of ideas.

A key characteristic of Commissioner Wright's tenure at the FTC has been his insistence on rigorously applying modern economic principles to US competition law enforcement. Given that competition law is in reality applied industrial organization economics, well-grounded economic analysis is essential to the Commission's discharge of its competition law enforcement functions. One would be concerned if there was not a trained surgeon in the operating room. Similarly, we are better served by a FTC that includes a professional economist among the ranks of its Commissioners. Indeed, no one has trumpeted the importance of incorporating modern economics into antitrust policy more than Commissioner Wright. Over the last two and a half years, Commissioner Wright has used his platform at the agency both to identify instances where the Commission's economic analysis failed to live up to its potential and to praise those many occasions on which the talented attorneys and economists worked together to promote economically sound policies and enforcement decisions that the Commission adopted. This increased scrutiny and engagement on the economic analysis that underlies the Commission's work necessarily has focused the agency's attention on these core issues and created an environment where

economics is more regularly and rigorously incorporated into enforcement decisions. We think that this clearly has been to the benefit of the agency and consumers.

As an independent and expert bureau within the FTC, the Bureau of Economics (“BE”) plays a critical role in the agency’s enforcement decisions. However, the role of BE is not a substitute to the presence of a professional economist Commissioner who can ensure that the Commission considers, addresses, and hopefully more often than not, fully incorporates modern economic analysis into its decision-making at the highest level. The importance of including an economist among the Commissioners has become only more obvious in light of the recent [report](#) of the FTC Inspector General that evaluated the effectiveness of BE. There, the Inspector General discussed the organization and use of economists within the existing FTC structure and made several recommendations for areas for improvement to help optimize BE’s effectiveness. Unsurprisingly, in the wake of the report, Commissioner Wright issued a [statement](#) that included his own recommendations for institutional changes that might elevate the role of BE. As anyone who has had the privilege of working at the Commission or regularly practices before it knows, the agency is dominated by its attorneys, often at the expense of BE. In such an environment, it is even more critical to have at least one economist as a member of the Commission if we truly are, as we should be, committed to making economics a prominent part of the agency’s work.

Whether this important contribution by Commissioner Wright will be a lasting legacy will depend entirely on whether future presidents, together with the advice and consent of the Senate, will follow the lead of Presidents Reagan and Obama by continuing to appoint economists to the college of commissioners. Certainly, Commissioner Wright’s service demonstrates its value.

A second characteristic of Commissioner Wright’s tenure at the FTC is his willingness to engage frequently in the marketplace of ideas in order to advance antitrust policy. Commissioner Wright is a prolific writer and is well-known for not being shy in expressing his positions in any forum. Over the course of his tenure at the FTC, Commissioner Wright issued 16 dissents, delivered over 25 speeches, testified before Congress on three occasions, and participated in countless more symposia, roundtables, and interviews. Frequently writing in dissent or arguing for fundamental changes to antitrust policy, Commissioner Wright’s opinions and speeches merit a close read by any serious practitioner. Whether it was [Ardagh/Saint-Gobain](#) (asymmetrical nature of competitive harm and efficiencies analysis at the FTC), [Nielsen/Arbitron](#) (limits of antitrust in double potential competition cases lacking economic evidence), [Holcim/LaFarge](#) (structural presumption is unsupported by modern economics), his [torrent of writings that culminated](#) in a [historic statement](#) on [Section 5](#), or any number of his other statements or speeches, Commissioner Wright’s willingness to express his views and have them debated in the public forum has contributed significantly to the development of antitrust law.

We hasten to note Justice Ginsburg’s [observation](#) that powerful dissents force the majority to be more rigorous in their own analyses and ultimately produce better decisions. Donning his professor’s mortar board, Commissioner Wright was not reticent about grading the

decisions of the majority. The discipline this brings to the Commission's decisions should be welcomed by all. Borrowing from former Chief Justice Charles Evans Hughes, such dissents can provide a valuable critique of the prevailing conventional wisdom and discern a better path going forward.

Lastly, we would be remiss not to mention that although Commissioner Wright took an evidenced-based approach to antitrust law and policy grounded in modern economics seriously, he discharged his duties with both humility and humor. He was not one to stand on ceremony and honorifics and was often simply "Josh" to both the staff and those who appeared before the agency. He employed an open-door policy, welcoming staff to discuss and debate matters without ceremony. He made it a priority to nurture the development and careers of his advisors and interns. The simple fact is that as an academic he enjoyed serious discussion and was more than willing to consider the merits of "the other side." Indeed, Commissioner Wright found the crucible of testing the analysis fun and sought to make it fun for those on his staff.

Commissioner Wright's service on the FTC is yet another example of how the "revolving door" continues to replenish the intellectual stock of US agencies. Given that the "dismal science" does not respect national boundaries, one might wonder why economic analysis was employed both earlier and more rigorously in the United States than elsewhere. Are not there quality economists around the globe? We suggest that the "revolving door" bringing, as it does, new recruits from the academy and elsewhere fosters agency openness to new ideas. It continuously fertilizes the advancement and development of sound economic competition policy and enforcement. Not surprisingly, agencies that take from the cradle and give to the grave are less likely to benefit.

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