

New FTC Acting Chair Maureen Ohlhausen Offers Insight into Consumer Protection Priorities

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February 3, 2017

Just over one week after [being named acting chair of the Federal Trade Commission \(FTC\)](#), [Maureen Ohlhausen](#) delivered the keynote address at the [American Bar Association's biennial Consumer Protection Conference](#) in Atlanta on February 2.

During her remarks, acting chair Ohlhausen offered insight into consumer protection priorities during her tenure as acting chair.

First, acting chair Ohlhausen signaled the importance of the Agency focusing on stopping fraudulent schemes, especially those targeting vulnerable populations such as the elderly or military members.

Second, the acting chair noted that remedies sought in FTC cases should be more closely linked to actual, rather than speculative, consumer injury or harm, echoing her recent dissent in *Qualcomm*, and further posited that the FTC's efforts in recent cases to collect disgorgement in non-fraud cases is inconsistent with prior FTC practice. Specifically, the acting chair called into question the Agency's practice of seeking disgorgement that is disproportionate to actual consumer injury. As an example, she referred to her dissent in *Uber*, where she wrote that "I dissent from the complaint against Uber and the settlement resolving that complaint because the monetary settlement of \$20 million is not tied to an estimate of consumer harm." And for privacy enforcement actions, she emphasized the need for "concrete injury" to justify agency action.

Third, acting chair Ohlhausen indicated a desire for the FTC to be more transparent about its investigation and enforcement matters. She noted that there may be value in disclosing (without disclosing confidential information) details of investigations where the FTC closes an investigation without any enforcement action. According to acting chair Ohlhausen, such transparency would help provide guidance to businesses about practices and policies that the Commission deems permissible, in addition to those that are not. It is unclear how much additional information acting chair Ohlhausen envisions disclosing beyond information contained in Commission closing letters at present.

Also with respect to investigations, the acting chair signaled the need for the Agency to narrowly tailor investigative requests to only obtain information that is necessary and relevant to its investigations. Recognizing the burden of overly broad information requests, she stated that "the FTC must remain able to collect the information we need to enforce the law, but I am certain that we can do this while reducing the burden on businesses, particularly third parties who are not under investigation."

Although her remarks were brief, the acting chair's address suggests a more restrained approach by the FTC than it has pursued in recent years. Given the three open seats on the Commission yet to be filled, two by Republicans, and the future appointment of a permanent chairperson, more changes are a certainty.