



THE CHAIRMAN

FEDERAL TRADE COMMISSION  
WASHINGTON, D C. 20580

April 15, 2002

The Honorable Frank R. Wolf  
Chairman  
House Appropriations Subcommittee  
on Commerce, State, The Judiciary and Related Agencies  
241 Canon House Office Building  
Washington, D.C. 205 15

The Honorable Jose E. Serrano  
Ranking Member  
House Appropriations Subcommittee  
on Commerce, State, The Judiciary and Related Agencies  
2342 Rayburn House Office Building  
Washington, D.C. 205 15-32 16

Dear Chairman Wolf and Congressman Serrano:

Commissioner Thompson's letter of April 15, 2002, claims that I mischaracterized his views when I stated, during a hearing before your committee last week, that he recommended eliminating the civil antitrust authority of the Department of Justice. I respectfully disagree.

On March 6, 2002, Commissioner Thompson issued a statement with the following passage:

Several possible rationale [sic] alternatives could be pursued instead of the proposed clearance agreement:

\* \* \*

Congress could unify merger and conduct investigations within the FTC and continue the DOJ's criminal jurisdiction, a result that would provide for maximum efficiency, fully utilize the FTC's independent antitrust purpose and structure, and continue to take advantage of DOJ's role as the federal government's criminal prosecutor.

This passage speaks for itself. To offer eliminating DOJ's civil antitrust jurisdiction as one "rational[]" alternative" to the new clearance agreement and then praise that alternative as providing "for maximum efficiency" certainly sounds like a recommendation.

Commissioner Thompson is a valued colleague who has given me excellent advice on several issues; I am grateful for his cooperation and expertise. On clearance, however, we have different perspectives. My perspective on this issue is shaped by the fact that, as Chairman, I must deal daily with our sister antitrust enforcement agency to further our mutual goal of promoting competition in the marketplace. The two agencies act jointly on a wide variety of initiatives, and a cooperative spirit is necessary to accomplish our objectives. Because we act within the context of statutorily established concurrent jurisdiction, our cooperative relationship necessarily involves some give and take.

In contrast, Commissioner Thompson's perspective is shaped by his strong belief that the FTC is superior to the Antitrust Division. While I admire Commissioner Thompson's stance as a strong advocate of the FTC's capabilities, I must note that the view expressed seems unburdened by the exigencies of concurrent jurisdiction. I believe that the quoted passage -- whether called a "rational[]" alternative" that would "provide for maximum efficiency" or a "recommendation" -- reveals his position. Such public discussion can serve only to exacerbate what too often have been strained relations between the two federal agencies charged with enforcing our nation's antitrust laws. The presumption of institutional superiority, shared in parts of both agencies, is one reason why the clearance process has generated a disturbing number of fractious disputes in recent years.

As I testified, Bob Pitofsky and Joel Klein -- the previous heads of the FTC and the Antitrust Division, respectively -- tried unsuccessfully for more than a year to resolve the clearance problem. With some give and take, Charles James and I succeeded in negotiating a new clearance agreement that will minimize future clearance battles. The new agreement is a good government initiative that would have been unattainable had an unyielding attitude of institutional preeminence prevailed in either agency.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Muris". The signature is fluid and cursive, with a large initial "T" and "M".

Timothy J. Muris