Interview with Joseph Simons, Chairman, Federal Trade Commission

Editor's Note: Joe Simons was sworn in as the Chairman of the Federal Trade Commission on May 1, 2018. He joined the FTC from the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, where he was the co-chair of the firm’s antitrust practice group. He served as the Director of the Bureau of Competition from 2001 until 2003.

The interview was conducted at the ABA Section of Antitrust Law Fall Forum on November 15, 2018,* by Svetlana S. Gans, a Vice President and Associate General Counsel at NCTA—The Internet & Television Association, and formerly the Chief of Staff for Acting Chairman Maureen Ohlhausen.

Svetlana Gans: Mr. Chairman, you kicked off the FTC’s 21st Century Hearings earlier this year. Can you describe your goals for the hearings and what the reaction has been so far?

Chairman Simons: I’m extremely pleased with how the hearings are going. I want to give a big shout-out to Bilal Sayyed, the head of our Office of Policy Planning. He’s the one who developed the idea and is supervising it. Of course, I also want to give a shout-out to the staff at the FTC who are working tirelessly on this project and are really just going above and beyond on it. As everyone probably knows, we’ve modeled these hearings on the ones that were done in 1995, initiated by late Chairman Bob Pitofsky. I am so glad that we were able to continue this initiative in his memory, and also that we were able to start the hearings before Bob passed last month (a big loss for the antitrust community).

As I see it, the hearings have two broad purposes. First, the Commission is engaging in critical self-examination. We’re considering whether our approach has been right or wrong—and if it’s been wrong, what can we do to fix it?

Second, I am hopeful that these hearings will at least start—if not contribute significantly to—a rebuilding of what was previously a very strong bipartisan consensus about how to do antitrust enforcement. For 25 years or so, probably beginning in the ’90s, stakeholders in the antitrust community generally agreed on antitrust enforcement and policy. In recent years, that consensus has fractured somewhat, and I am hoping that these hearings will go some ways to reinvigorating that.

I think this kind of consensus is important for a host of reasons. First, it contributes and did contribute for a long time towards support on the Hill for what the FTC and the DOJ Antitrust Division were doing, including support for our budgets. Second, bipartisan consensus is important for staff morale. When everyone knows what they’re supposed to be doing and they are all singing from the same hymnal, it’s much easier to be productive and to sustain high staff morale. Personally, I was at the FTC back in the late ’80s, when bipartisan consensus hadn’t quite taken hold yet, and it was sometimes very divisive and counterproductive. We want to avoid that.

* This interview has been edited for publication. At the time of the in-person interview, Chairman Simons indicated that his remarks reflected his own views, not necessarily those of the Commission or any other individual Commissioner.
Another reason that bipartisan consensus is very important is, I think, because it increases our effectiveness in court. If it’s apparent that we have, for example, well-supported bipartisan agreement on merger guidelines, then those can be more influential when we get to court. And finally, I think that a strong bipartisan consensus also helps promote our brand of competition law overseas.

I think it’s really important that we make efforts to get our bipartisan consensus back, and I think we’re doing that. We’ve gone into these hearings with an open mind, and we’re doing our best to include testimony from a wide range of perspectives and viewpoints. So far, I’ve been criticized both from the left and the right for not having enough of either side. I think that’s a good sign. We have already received many thoughtful comments, hundreds of detailed written comments, and we still have more ground to cover with the hearings. I encourage everyone to stay tuned and follow the rest of the hearings over the next few months.

SVETLANA GANS: This week the FTC had hearings on artificial intelligence and predictive analytics, and there are some hearings coming up on privacy and data security in the next month, so we are looking forward to those.

CHAIRMAN SIMONS: Right. And more to be announced.

SVETLANA GANS: Recently the FTC has had a number of successes in merger litigation. Can you tell us what your key takeaways are from those successes?

CHAIRMAN SIMONS: This is something that the Bureau of Competition has been working on for a really long time. As Bureau Director back in the early 2000s, one of my goals was to reinvigorate litigation, in particular administrative litigation. We looked for cases that fit that bill, and we initiated training and recruitment to make sure we had the capability to execute on that strategy.

Since I left the Bureau, BC has taken litigation to a whole new level. When I was sworn in on May 1, there were 14 active cases in litigation. Let’s just pause on that for a minute: 14 cases in litigation. Four of them were active merger litigations. I can’t remember when there were four active merger litigations at the FTC or the DOJ. That’s a lot. And then, in addition, there were 10 non-merger litigations going on. To put that in perspective, if you look at the number of non-merger enforcement actions on an annual basis over, say, a 25-year period, you would see that overwhelmingly, the number of non-merger enforcement actions was 10 or fewer. And now, we have 10 litigations, not just enforcement actions. So, really, this is both a historic and crazy time. And of course, in order to support that level of litigation, the Bureau has improved and expanded the training programs that it offers, and it has been able to recruit very talented litigators, including from the private sector, for some time now. We are fortunate to have some very talented assistant directors and deputy assistant directors to manage all these litigations.

Our heavy workload is important for several different reasons. First, we demonstrate commitment to enforcement. Second, we put the Commission in a position to have an impact on antitrust jurisprudence. With administrative litigation, the Commission is able to write opinions and hopefully have some influence on the courts. And, finally, we put ourselves in a position to recruit and better retain top talent. I will put a plug in here for the Bureau of Competition. If you want to litigate, the FTC is a great place to be.

SVETLANA GANS: There’s been some discussion about remedies lately, including some increased
scrutiny of remedies. In your mind, what are the sorts of things that make for a good remedy, and what are the things that have been accepted in the past but may no longer be accepted as a remedy in the future?

**CHAIRMAN SIMONS:** On the competition side, first and foremost, a remedy must be effective in restoring competition to the status quo. That's the first principle of remedies in a competition case. Some of the increased scrutiny comes about as a result of the Bureau of Competition and Bureau of Economics study of merger remedies that was published last year, which is another example of our commitment to critical self-evaluation. As a result of that study, we've started to shift away from post-order divestitures towards favoring upfront buyers even more so than in the past. We're also bringing more monitors with industry expertise into the process. This occurs much earlier than before to help expedite and facilitate consent negotiations, especially with merging parties and prospective buyers. Most typically, this happens in IP cases, cases that are highly technical, and cases that involve more complex transition issues. This has been a longstanding practice in pharmaceutical divestitures, and now we're expanding it to other kinds of mergers.

We're also conducting more in-depth due diligence of divestiture buyers. One of the findings from the merger remedy study was that there was a high failure rate with respect to mergers that did not involve a standalone business. So for transactions like that, in particular, we're going much deeper in the due diligence process.

On the consumer protection side, we are reevaluating monetary relief. We want to consider afresh when monetary relief is appropriate and, when it is appropriate, how to calculate the amount. Our reevaluation is being undertaken by staff in the Bureau of Economics in consultation with the Bureau of Consumer Protection. So look for something to come out on that.

**SVETLANA GANS:** You were mentioning divestiture buyers and I recall that Commissioner Chopra has been skeptical of private equity as divestiture buyers and frankly as buyers at all. Do you have a take on that?

**CHAIRMAN SIMONS:** Yes. I think it would be a mistake to categorically condemn private equity buyers and prohibit them from participating in the process. I think we need to evaluate the buyers on a case-by-case basis, and not eliminate them from consideration just because they're private equity. Private equity buyers can be very effective in providing both financing and management expertise. There are some really large, well-run, well-financed private equity firms and I wouldn't want to keep those in particular out of the process. Having said that, there are some private equity companies that may be less effective. In dealing with those companies, we will conduct the more in-depth due diligence analysis that I described earlier, to ferret out whether they would be acceptable buyers or not. But I wouldn't take them out of the picture entirely on a categorical basis.

**SVETLANA GANS:** Sticking with remedies, there's been some skepticism lately on conduct remedies for vertical deals in particular, although it seems like they've been used for years. What do you think is animating the skepticism?

**CHAIRMAN SIMONS:** I think the talk of increased skepticism is a little bit overblown. I'm not sure that our skepticism has changed that much, at least not at the FTC; it may be a little more present than before at the DOJ. Other than the cases where there are information exchange issues, the FTC has
generally looked for structural remedies. We certainly want to avoid remedies that look like mini regulatory schemes—something that might be more appropriate for an agency like the FCC. I think there have been a small number of cases where the remedies look like mini regulatory schemes, but my sense is that we haven’t really done one of those in quite a while. The one that comes to mind immediately is AOL/Time Warner, which was somewhat regulatory in structure.

You could also argue that maybe there are some defense cases for which the remedies are a little more behavioral in nature on the vertical side. Those cases are a bit different because they typically involve one buyer: usually, the Department of Defense. And the DOD, the single customer, has a lot of influence over what the enforcement agencies can do. If you were to try to bring a case against DOD’s wishes, your case would probably have a low chance of success. So you have to pay a lot of attention to what the single customer is telling you. Not only that, but DOD has a unique ability to enforce behavioral requirements. In fact, I believe that in the Northrop Grumman case, the monitor is either associated with the DOD or approved by the DOD.

I think maybe on the DOJ side, people would be focused on the remedies in the Comcast/NBC deal, which was very regulatory in nature and kind of unusual. Maybe what you see at the DOJ is a step-back from that. I don’t remember the FTC doing something that regulatory in the recent past.

SVETLANA GANS: There has been some discussion of timing agreements, and there are some in the Bar who may believe that the model timing agreement is awfully one-sided and would actually lead to longer rather than shorter review periods. What’s your reaction to that criticism?

CHAIRMAN SIMONS: I don’t agree with that. The model timing agreement that we published is designed to allow the staff to get more information that will either resolve their concerns sooner, or narrow down and structure staff’s concerns to enable potentially quicker discussions on a remedy.

If you don’t have some kind of timing agreement, it gets very difficult for the staff unless it’s a really easy case. If you think about the way timing works, this becomes apparent. After the parties substantially comply, there’s a 30-day waiting period. The Bureau Director is generally going to take a week or two to digest the papers from the parties and the staff and to hold meetings. Then, the Bureau sends the material up to the Commission level, and the Commissioners engage in the same process. Usually that takes another two weeks. So between the Bureau and the Commission, the work takes up the 30-day period almost entirely. If that’s what you’re faced with as the staff, then as the parties are about to substantially comply, you are focused on: “Gee, I have to get my staff recommendation memo together, I have to brief the Bureau, and that means I have less time to talk to the parties about what their arguments are and why we should amend our recommendation.”

When you have that kind of timing pressure, it really is counterproductive for the parties to surprise the staff about when they intend to comply. Whereas, if you give the staff notice about when you’re going to comply with the Second Request, staff will feel comfortable about budgeting in time that they need to complete their staff memo, talk to the Bureau, and also talk to you. They will be more comfortable and will devote more time talking to you and addressing your concerns and hopefully, if they’re doing their job right, they will hear your concerns and they will respond. There will be a dialog, so that by the time you get up to the Bureau level and are making your arguments to the Bureau Director, they will all be fleshed out. The Bureau Director will have a good sense of them, and it won’t be the first time he’s heard them. He’ll understand the staff’s position and be able to make his own judgment in a better, more efficient way. I think conceivably there might be
instances in which a timing agreement leads to a longer review period, but on average, a timing agreement simply provides a better, more efficient review process.

**SVETLANA GANS:** Now I want to switch gears a little bit to talk about consumer protection and then we’ll turn back to non-merger enforcement. The EU’s General Data Protection Regulation (GDPR) and the new California Consumer Privacy Act (CCPA) have altered the privacy landscape. To what extent have these two new regimes changed the Commission’s perspective on these issues and in what circumstances could privacy be a competition concern?

**CHAIRMAN SIMONS:** I agree that these laws have changed the landscape on privacy. It’s not a big secret. The interest on the Hill in privacy, including federal privacy legislation, is now pretty high. And we encourage Congress to consider this type of legislation. We at the FTC are ready, willing, and able to work with Congress on this, if asked—and I assume we will be asked.

In the first instance, however, my own view is that this type of legislation requires cultural, societal, and political value judgments that are best made by Congress, not the FTC. However, we believe that any legislation that is passed should be enforced by the FTC, and we are committed to vigorously enforcing whatever Congress passes.

One thing I would suggest is that Congress should carefully consider the effects of any potential privacy legislation on competition. We are watching to see if the GDPR is having any impact on competition, and we are concerned that it could have the effect of entrenching some major tech platforms. We’re not saying that is definitely the case, but we’re looking to see if that is what might be happening over time. The GDPR, in my view, is a natural experiment that we should take advantage of and learn from. For example, if it turns out that some GDPR provisions are disadvantaging small companies or new entrants and entrenching the larger tech platforms, then that’s something that we could adjust and try to avoid. And I think this is a significant concern. We don’t know yet and the evidence is not all in. I will note that one Wall Street Journal article published right around the time the GDPR became effective suggested there were already signs that the regulation was causing advertisers to move towards the large platforms and away from the small ones. If true, that’s something we would look at carefully and try to learn from.

**SVETLANA GANS:** And I recall there was a hearing on big data and the GDPR last week at the FTC where you discussed this very issue.

Sticking with consumer protection for just a little bit longer, as you know, robocalls are always a huge problem and one the FTC has been trying to tackle for a long time. Can you tell us how the FTC and FCC are coordinating enforcement and what we should be looking out for in the way of robocalls in the future?

**CHAIRMAN SIMONS:** This is clearly a huge issue. Robocalls are the top consumer complaint received by the FTC. We received over 7 million “Do Not Call” complaints last year, of which about two-thirds involved robocalls. We aggressively pursue robocalls and other “Do Not Call” violations. To date, we have brought 139 cases against robocallers and “Do Not Call” violators.

Although we coordinate our enforcement with the FCC and the states, unfortunately, technology has overtaken our rules. It is now so cheap and easy to make robocalls from overseas, and it is hard for us to find the perpetrators. They’re in one place today, someplace else tomorrow. And, of course, the numbers from which they call change minute by minute. In response, we have launched four public challenges to develop technology to counteract robocalls, and we have
awarded $25,000 in prize money. One of the winners came up with a particularly ingenious call blocking app, which not only blocks the call, but also sends the robocaller to a source that keeps the caller on the line indefinitely. That wastes the robocaller’s time and money and not yours. I have one of these apps on my own phone and it works pretty well.

We also began publishing caller ID numbers that were included in consumer complaints filed with us through our Consumer Sentinel Network. This helps call blocking apps and the telecom carriers block these calls.

One of the things the FCC has done—with our encouragement—is to ask the carriers to block spam and robocalls. Of course, as you all know, we don’t have jurisdiction over common-carriage activity. We’ve asked for that authority many, many times, but unfortunately have never gotten it. Legislation has been introduced to do that, and I am hopeful the situation will change soon. Repeal of the common carrier exemption would allow us to go after common carriers that knowingly enable robocallers by providing them with access to our nation’s telephone network. We believe that common carriers servicing robocallers know what is going on because robocallers generate an extremely high volume of calls that are usually very, very short. It should be fairly easy to identify huge numbers of calls for very short time periods. If we had jurisdiction over the common carriers that are facilitating these robocalls, we might be able to attack the problem at the source.

SVETLANA GANS: One last question on consumer protection. You mentioned the repeal of the common carrier exemption. Is there any other additional authority you’d like to have in the consumer protection area?

CHAIRMAN SIMONS: Absolutely. In addition to the repeal of the common carrier exemption, we would like civil penalty authority for data security cases; authority over non-profits; and APA rule-making authority, at least for data security.

Let me elaborate on additional rulemaking authority. Section 5 cannot address all of the privacy and data security concerns in the marketplace, and one specific problem with our authority is our inability to obtain civil penalties, which reduces the Commission’s deterrent capability. In data security investigations, for example, it’s very hard to link a specific data breach to a specific series of identity thefts. That, in turn, makes it very hard for us to get monetary relief in the form of consumer redress. In privacy cases, it’s simply hard to put a monetary value on privacy. The Commission has a history of bipartisan support for data security legislation that would give us APA rulemaking and civil penalty authority, and the Commission continues to reiterate its longstanding call for comprehensive data security legislation.

We’ve already talked about the common carrier exemption and why its repeal would help in the fight against robocalls. But FTC jurisdiction over common carriers also could be useful in the privacy and data security area. The common carrier exemption creates some asymmetry because there are situations where—even within the same company—the FTC has authority over only some activities within the company. For example, we have authority over the wireless carriers with respect to their data services, but not with respect to services related to traditional telephony. That creates problems for us. In addition, on the advertising side, the carriers often bundle the products together. That conceivably creates a problem for us in terms of our jurisdiction to investigate potentially deceptive advertising involving a bundled product. So there are a whole host of reasons why it would be good to get rid of the common carrier exemption.
SVETLANA GANS: The Ninth Circuit definitely helped out there with the AT&T case, but maybe legislation would be warranted to clarify it even further.

CHAIRMAN SIMONS: If that case had gone another way, it would have been a much bigger problem. As you know, there are still other circuits in which this issue may come up. It would be nice to avoid having to litigate the issue elsewhere around the country.

SVETLANA GANS: I want to turn back to non-merger enforcement. You’ve talked about merger enforcement in the last few months. Can you tell us about the non-merger enforcement side and what you’re focusing on?

CHAIRMAN SIMONS: Yes. I did say I wanted to ramp up non-merger enforcement because historically that’s what I did while I was the Bureau Director. But when I said that, I didn’t really appreciate how active the Bureau already was in these non-merger enforcement matters. As I mentioned, there were already 10 ongoing non-merger litigations when I showed up and, as you can imagine, the staff and the Bureau is just running flat out. Keeping up the pace with the current level of non-merger enforcement is going to be a heavy lift, but we’re going to try. Maybe these litigations will calm down a little bit, the staff will get a little bit of a break to refresh themselves, and we’ll get back up and do it again.

The last time I was at the Bureau, in terms of the cases that we were looking at, there were four factors that we focused on. One, does the conduct pose a substantial threat to consumers? Two, does the conduct involve a significant economic sector of the economy? Three, does the FTC have experience that will allow it to make an impact quickly and efficiently? And four, does the conduct present a legal issue that would benefit from further study and potentially have a significant effect on antitrust jurisprudence? This last one tied into increasing and invigorating FTC administrative litigation for the purpose of having the Commission write opinions on matters that were either novel or could influence the courts.

These four factors clearly explain our sustained emphasis in the Bureau on the health care industry. For example, we have had pay-for-delay cases, sham litigation, and abuse of regulatory process cases in pharmaceutical markets, and we still have a very full plate with respect to those types of cases. I expect that to continue. The Commission’s recent federal court victory against AbbVie is a good illustration. We challenged AbbVie’s use of sham litigation to illegally maintain its monopoly over Androgel, a testosterone replacement drug. The district court awarded almost $500 million in monetary relief to those who were overcharged. This case was the first time that sham litigation was found to have violated Section 2 of the Sherman Act since the Supreme Court first recognized this theory back in the 1990s. Hopefully, this case is moving antitrust jurisprudence in a useful direction from the Commission's perspective. The case also involved an industry the Commission knows a lot about, and it also yielded significant monetary relief that will directly help consumers. So that case is a really good example that effectively covers all four of the factors the Bureau continues to use. In addition, we’re adding another factor: is there a dominant firm carrying out unilateral conduct operating in an industry with significant network effects, such that the conduct may impinge on entry or expansion?

SVETLANA GANS: That’s a very helpful framework. Sticking with IP issues, can you tell us what your views are on SEP licensing and whether the antitrust laws should play a role there?

CHAIRMAN SIMONS: I think antitrust definitely should be playing a role there. I continue to believe
that Rambus and Unocal are still good cases. Those were cases that I promoted while I was the Bureau Director back in the early 2000s. Rambus didn’t come out the way we had hoped, but aside from that, the court’s opinion still upholds the validity of that type of case. I think I would disagree with the court’s opinion in terms of whether you have to prove for sure that the defendant’s technology would not have been chosen had the deception not occurred.

I also believe that there’s an issue about holdup versus holdout, and whether one is more problematic than the other. I don’t really have a view on whether one is more problematic than the other, but I do have a view that both of them can be problematic. So if there is anticompetitive conduct going on in the sense that the companies in the standard-setting body are colluding against the technology owner—that would be a problem. And it’s also a problem, in my view, if the patent holder violates the rules of the standard-setting body. But that’s not in and of itself a problem. It’s not sufficient if the patent holder just breaches a FRAND commitment or commits fraud or deception. It must also be the case that the breach, the fraud, or the deception contributes to the acquisition or maintenance of monopoly power, or it involves some kind of an agreement that unreasonably restrains trade. You need both of those factors in order to have an antitrust claim. So, if the rest of the violation exists, in my view, there is no special privilege or exemption under the antitrust laws for the fraud, the deception, or the breach of contract merely because those acts occurred within the standard-setting process.

SVETLANA GANS: Just a few more questions on competition. Does the ownership interest of large, passive investors in multiple competitors in an industry present competition issues that the antitrust laws should address?

CHAIRMAN SIMONS: Well, this is obviously a new area of concern, and we are already looking at it in the context of our hearings. Some studies show that there are price effects from mutual funds owning non-trivial shares of multiple competitors in a particular industry—I recall airlines, at least, and maybe another one. Other studies looking at this type of issue find no effect. So it’s a little unclear. I don’t know if this is a widespread problem or whether it’s limited to one industry or another. That’s something we’re looking at.

We also don’t have a really good handle on the mechanism that would produce the price effects. The executives who are running the company and the board of directors have a fiduciary obligation to the shareholders as a group. Also, these mutual funds probably have heterogeneous portfolio holdings. So they’re not all holding the same competitors in the industry and probably not to the same degree. So it’s a little complicated in terms of how the incentives would work, and if there were to be some kind of impact caused by the mutual funds’ ownership, how that would actually occur? We have some more work to do in this area, but it’s definitely worth looking at and we are looking at it.

SVETLANA GANS: From your perspective, what are the best and worst practices when engaging with government officials investigating a company, and do they differ depending on whether you’re on the merger side versus non-merger side?

CHAIRMAN SIMONS: I don’t think they differ too much between the merger and the non-merger side. Let me give some of the worst practices first. One of the worst things you can do is not engage with the staff and just give them a stiff arm. It’s a terrible idea to assume that they’re against you all the way, and to decide not to engage with them.
being less than truthful. If the staff thinks they can’t trust you, you don’t get any benefit of the doubt, and getting the benefit of the doubt is worth a lot. So be truthful and upfront with the staff.

Another poor practice is not providing the staff information or access to documents in a timely manner—in other words, jamming the staff. This goes along with creating an atmosphere of distrust. Staff are worried about whether they can do their job, especially in a merger case because that’s where the timing becomes significant.

Another poor practice is failing to make all of your arguments to the staff and saving them for the Bureau Director, much less the Chairman. Failing to make all your arguments to the staff, and then running to the Bureau Director to try to get the investigation closed when he is hearing your arguments for the first time, is a bad idea. The Bureau Director will have no idea what the staff thinks of those arguments because the staff hasn’t heard them before either. This does happen, and it creates a big mess. It’s the worst when you get to the Bureau Director's meeting, and the staff is completely uninformed, they don’t have your documents, they haven’t heard your arguments, and they’ve been unable to test them. That actually happens a lot more on the consumer protection side and the non-merger side, in terms of withholding documents. Usually, for H-S-R transactions, you can’t start the waiting period back up until you’ve complied, so that worst-case scenario is not an issue.

The best practices are pretty much the reverse of what I just said. Meet with the staff early and be diligent in responding to their concerns. When the staff raises a concern with you, address it. Ignoring it is not likely to make the concern go away. Make all of your arguments to the staff and solicit their feedback. If they’re doing their job, they will give you feedback. Sometimes certain staff members have inclinations to not be as up-front about their concerns, I’m not sure exactly why. What I would recommend you do in those cases is be diligent and persistent and keep asking. Make sure that staff has told you all of their concerns. For example, you get in a meeting with the Bureau Director and staff, you start to make an argument. The Bureau Director says, “Oh, what about this and what about that?” You could respond by saying: “That concern has never been raised before with us, and we’ll get back to you on that.” Or: “We have an answer for that.” That would be a signal to the Bureau Director that the staff hasn’t been as transparent with you as they should have been.

Particularly on the merger front, try to build in enough time to account for review at the Bureau’s Front Office and at the Commission level. As I said before, a package probably requires two weeks at the Bureau and two weeks at the Commission. You should build that in. Now, we understand that sometimes, there are exigencies that you just can’t help. If that happens, we do the best we can to evaluate your transaction and give you an answer sooner than the normal process. But as a general rule, you should be cognizant of that time and try to build that in.

Finally, the last thing I’ll say is you should not use the meetings at the Commission level as an opportunity to negotiate settlement terms with individual Commissioners. That’s just incredibly inefficient and inconvenient, and basically what we’re going to end up doing is sending you back to the staff. Negotiate whatever settlement you're trying to negotiate with the staff. If you get to loggerheads and they won’t agree and you want to pursue that with the Commission, that's fine. But it's certainly not appropriate to negotiate at the Commission level in the first instance, or at least not until you've gotten into loggerheads with the staff.

SVETLANA GANS: Thank you. It's been a privilege to be here with you.