



## MEMORANDUM

**To:** GuidePost Clients  
**From:** GuidePost Strategies  
**RE:** Hudson Institute Discussion on Big Tech Regulation ft. FTC's Noah Phillips  
**Date:** October 6, 2022

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### OVERVIEW

On Thursday, October 6, the **Hudson Institute** hosted a discussion between Harold Furchtgott-Roth of the Center for the Economics of the Internet at the Hudson Institute and **Federal Trade Commission (FTC) Commissioner Noah Phillips**. The discussion centered around the regulation of technology and technology companies at the FTC.

### DISCUSSION SUMMARY

- Mr. Furchtgott-Roth asked Commissioner Phillips to comment on the recent FTC press release concerning the mistreatment of gig workers by the firms that employ them. The Commissioner responded that **while the FTC does not engage labor law enforcement, they can use consumer protection laws to protect the rights of independent contractors** that are being misled by their employers.
- Commissioner Phillips clarified that **the FTC does not have jurisdiction over disputes concerning employees** and the insinuation in the press release that they did could lead to confusion. The Commissioner went on to comment that the press release condones anticompetitive behavior from "worker cartels" while condemning similar behavior from large tech companies.
- Mr. Furchtgott-Roth asked Commissioner Phillips to comment on whether the current rash of data privacy regulations could end up exacerbating the issue that the regulation intends to remediate. The Commissioner responded that a multitude of varying **data privacy costs could cause the market to become more concentrated** as only larger firms would be able to weather the increased compliance costs.
- Mr. Furchtgott-Roth asked if Commissioner Phillips was concerned that domestic Big Tech firms might choose to offshore operations due to the recent regulatory pressure. The Commissioner responded that while American firms shouldn't receive preferential regulatory treatment, **regulators should consider that domestic firms are under a higher level of scrutiny** regarding issues such as data privacy compared to foreign-owned firms such as Tik Tok.
- On whether Big Tech issues such as data privacy and content moderation should be left to states or the federal government, Commissioner Phillips said that while states have

the right to regulate these issues, streamlining regulations and having a single set of national guidelines would reduce compliance costs for firms and increase transparency for consumers. The Commissioner added that while he considers content moderation a First Amendment issue, he understands the need to regulate online spaces.

- Responding to whether the FTC has the authority to ban targeted advertising, Commissioner Phillips clarified that they did not and simply have a mandate to protect consumers from deceptive and unfair business practices. Commissioner Phillips further argued that targeted advertising did not meet the standard for either of those classifications.
- Mr. Furchtgott-Roth asked Commissioner Phillips if he had any guidance for Congress for when they are considering enacting antitrust or consumer protection regulations. Commissioner Phillips commented that **Congress should attempt to find a targeted solution for the issue they're trying to solve** and that they should **carefully consider the economic costs** of implementing the proposed regulation.
- Commissioner Phillips argued that **antitrust regulators should intend to sanction the unwanted conduct of firms rather than sanctioning the firms themselves** for the key issues with which they are associated.
- Commissioner Phillips asserted that **antitrust regulation would not serve as a panacea for the negative issues such as data privacy and content moderation** that surround large tech firms.
- The Commissioner discussed his **concern that proposed data privacy regulations such as the American Data Privacy and Protection Act would result in further concentration of the industry** into the hands of the firms that afford to handle the increased compliance costs associated with the regulation.
- Mr. Phillips commented that by repealing Section 230, which would open tech firms to legal liability from the content posted on their website, social media firms would become ultra-conservative with their content moderation policies to limit any potential legal liability.
- Mr. Phillips commented on the FTC's recent ANPR on Commercial Surveillance and Data Security. He argued that **the FTC fails to recognize the economic tradeoffs of implementing targeted advertising regulations**.

