



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Commissioner
Alvaro M. Bedoya

STATEMENT OF COMMISSIONER ALVARO M. BEDOYA, JOINED BY CHAIR LINA M. KHAN AND COMMISSIONER REBECCA KELLY SLAUGHTER

Regarding Omnibus Resolutions Approved by the Federal Trade Commission

August 17, 2022

The Commission recently voted to authorize two new omnibus resolutions permitting compulsory process and to revise a third, which was approved last year. Specifically, the Commission approved resolutions authorizing compulsory process in investigations involving the car rental industry and collusive practices, and approved changes to the omnibus resolution covering proposed mergers, acquisitions, and transactions.

Use of omnibus resolutions by the Commission's Bureau of Competition and Bureau of Consumer Protection is not new. For decades, the Commission has used this tool to effectively initiate investigations into alleged illegal conduct. These omnibus resolutions also cover wide swaths of the Commission's authorities, including, for example, enforcement under the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Fair Debt Collection Act, the Franchise Rule, the Gramm-Leach-Bliley Act, and the Truth in Lending Act -- nearly all of the Commission's authorities focused on consumer finance. Furthermore, the vast majority of the related omnibus resolutions were enacted before the currently-composed Commission took office.

Historically, the Bureau of Consumer Protection has employed this power more often than the Bureau of Competition. We now increase the use of this tool in the Bureau of Competition to enhance the Commission's ability to quickly investigate emerging threats of anticompetitive conduct in our economy.

For example, one of the resolutions announced today will help staff obtain evidence, such as documents and testimony, in connection with investigations of potentially unlawful collusive and coordinated conduct. This conduct involves competitors working together against consumer or worker interests rather than competing against one another.

Media reports and scholarly work suggest that concentrated markets provide greater opportunities for companies to work together, even doing so in plain sight.¹ There have been

¹Tobias Burns, *Inflation is Providing Cover for Price Fixing: Economists*, The Hill, July 19, 2022, <https://thehill.com/policy/finance/3564912-inflation-is-providing-cover-for-price-fixing-economists/>; Gaurab Aryal, Federico Ciliberto, & Benjamin T. Leyden, *Coordinated Capacity Reductions and Public Communication in the Airline Industry*, Rev. of Econ. Studies (forthcoming), <https://doi.org/10.1093/restud/rdab100>; Joseph E. Harrington Jr., *Collusion in Plain Sight: Firms' Use of Public Announcements to Restrain Competition* (Working Paper, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3644714.

reports of companies appearing to use their public statements as invitations to their competitors to collude in industries as diverse as mobile phone networks,² soft drinks,³ and meat packing.⁴ These allegations involve the kind of conduct that eats away at family budgets and lays the ground for worse to follow. This is the kind of competition harm that warrants fast and thorough investigation by Bureau of Competition staff and strong enforcement action by the Commission.

A second resolution announced today marks an expansion of the merger omnibus to cover even those mergers that companies do not report to the antitrust agencies under the Hart-Scott-Rodino Act. The Commission's 6(b) study on non-HSR reported acquisitions by Alphabet/Google, Amazon, Apple, Facebook, and Microsoft highlighted how some of the largest firms in our economy have made hundreds of acquisitions that were not reported to the FTC or DOJ.⁵ Firms can also deliberately structure their deals to sidestep the HSR reporting thresholds; this use of "avoidance devices" actively subverts the agencies' work.⁶ Broadening the merger omnibus equips the FTC to expeditiously investigate even those deals that would otherwise fly under our radar. Given that unlawful deals can hike prices, lower wages, reduce innovation, and hinder new business formation and entrepreneurship, ensuring that the FTC is best positioned to discharge its statutory obligation to investigate and halt illegal mergers is paramount.

Our colleagues, Commissioner Phillips and Commissioner Wilson, have raised concerns about the use of omnibus resolutions by the Bureau of Competition. We take seriously their arguments about transparency and oversight. As has been the case with enforcement efforts by our Bureau of Consumer Protection for decades, we believe that these resolutions will not substantially change the multiple layers of checks and balances that are critical to the Commission's oversight of investigations.

Not individually authorizing compulsory process in each matter simply removes an unnecessary and time-consuming barrier to staff's pursuit of an investigation. Moreover, at a time of quickly-rising consumer prices, we are eager for staff to have the flexibility they need to quickly investigate and stop collusive and other anticompetitive behavior.

² The Capitol Forum, *Coordination Out Loud: Volume 1: Analysis of Remarks by CEO of Telephone & Data Systems, Inc., Parent Company of US Cellular*, October 23, 2020, <https://library.thecapitolforum.com/docs/4ddtvq973zkr>.

³ The Capitol Forum, *Coordination Out Loud: Volume 4: Analysis of Monster Beverage Corporation Q4 2020 Earnings Call*, March 4, 2021, available at <https://library.thecapitolforum.com/docs/4r1eez0yvk8b>.

⁴ The Capitol Forum, *Coordination Out Loud: Volume 5: Analysis of Public Statements by Beef Meatpacking Executives*, July 20, 2021, <https://library.thecapitolforum.com/docs/534nzacw2r4k>.

⁵ Federal Trade Commission, *Non-HSR Reported Acquisitions by Select Technology Platforms, 2010–2019: An FTC Study*, [ftc.gov/system/files/documents/reports/non-hsr-reported-acquisitions-select-technology-platforms-2010-2019-ftc-study/p201201technologyplatformstudy2021.pdf](https://www.ftc.gov/system/files/documents/reports/non-hsr-reported-acquisitions-select-technology-platforms-2010-2019-ftc-study/p201201technologyplatformstudy2021.pdf).

⁶ For some examples of common avoidance devices, see Prepared Remarks Of Commissioner Rohit Chopra, *Non-HSR Reported Acquisitions by Big Tech Platforms*, September 15, 2021, https://www.ftc.gov/system/files/documents/public_statements/1596340/20210915_final_chopra_remarks_non-hsr_reported_acquisitions_by_big_tech_platforms.pdf.