



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Concurring Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson

In the Matter of San Juan IPA, Inc., LLC, File No. 211-0085, Docket No. C-4142
September 26, 2022

The Federal Trade Commission (the “Commission” or “FTC”) has a compelling interest in enforcing compliance with its orders. San Juan IPA, Inc., LLC (“San Juan”), an independent physician practice association in northwest New Mexico, will pay a civil penalty of \$263,000 for alleged violations of a 2005 Decision and Order (“2005 Order”) related to the provision of physician services.

San Juan is a group of approximately 460 independently practicing physicians that contracts with payors (e.g., health plans, employers) on behalf of its members. In 2005, San Juan agreed to settle FTC charges that it orchestrated and carried out agreements among its member physicians to set the price that they would accept from health plans, to bargain collectively to obtain the group’s desired price terms, and to refuse to deal with health plans except on collectively determined price terms, and entered into the 2005 Order.¹ In violation of that order, San Juan allegedly refused to deal or threatened to refuse to deal with an insurer, negotiated or attempted to negotiate price related terms rather than leave such terms for the insurer to negotiate individually with each of San Juan’s member physicians, and engaged in efforts to have its member physicians deal with an insurer only through San Juan. We commend staff for conducting a thorough investigation, and the Commission for this enforcement action. Today’s announcement sends a clear signal to companies under an FTC order: abide by its terms.

Ferretting out illegal restraints of trade is critical, especially in a case like this. Healthcare costs are a major concern for all Americans and have been growing for decades, even where other costs have fallen.² Our action today will prevent a group of doctors from allegedly getting together to negotiate against a big insurance company to ensure higher incomes for themselves and higher costs for their patients. This is cartel behavior.

Cartels are “the supreme evil of antitrust”.³ They raise prices⁴ and reduce choice.⁵ In doing so, cartels harm consumers. Some antitrust reformers tout shielding cartels from antitrust as a

¹ Decision & Order, *In the matter of San Juan IPA, Inc., Docket No. C-4142* (June 30, 2005), <https://www.ftc.gov/sites/default/files/documents/cases/2005/07/050705do0310181.pdf>.

² See e.g., Ryan Nunn et al., *A Dozen Facts about the Economics of the U.S. Health-Care System* (Mar. 2020), https://www.brookings.edu/wp-content/uploads/2020/03/HealthCare_Facts_WEB_FINAL.pdf.

³ *Verizon Communications v. Law Offices of Curtis V. Trinko*, 540 U.S. 398, 408 (2004).

⁴ See e.g., Joseph E. Harrington, Jr., *How Do Cartels Operate?*, *Foundations and Trends in Microeconomics*, Vol. 2: No.1, 1-105, 14 (Aug. 22. 2006), https://repository.upenn.edu/cgi/viewcontent.cgi?article=1080&context=bepp_papers.

⁵ *Id.* at 9, 25.

means to “level the playing field” between big corporations and small producers.⁶ They lament government enforcement against small producer cartels.⁷ But, today, we put consumers first. That individual doctors in San Juan County may be smaller than an insurance company is not the point. When they work together to set price, individual Americans paying more for healthcare lose.

The Commission reached the right result here. Cartels are bad, thwarting competition to secure for themselves monopoly profits that would otherwise redound to the benefit of consumers. Immunizing them may or may not hurt big companies, but it will certainly hurt consumers. That is antithetical to the goal of antitrust. Antitrust protects competition, and we are glad that is what we did today.

⁶ See e.g., Barry Lynn and Kevin Carty, *To Address Inequality, Let’s Take on Monopolies* (Sep. 22, 2017), <https://inequality.org/research/address-inequality-lets-take-monopolies/>; Siri Bulusu, BLOOMBERG LAW, *FTC’s Khan Urges Antitrust Legislation to Protect Gig Workers* (Sept. 28, 2021), <https://news.bloomberglaw.com/daily-labor-report/ftcoverreaching-on-labor-market-oversight-commissioner-says>.

⁷ See e.g., Sanjukta Paul, *Antitrust As Allocator of Coordination Rights*, 67 UCLA L. REV. 4 (2020); see also Fed. Trade Comm’n, *FTC Policy Statement on Enforcement Related to Gig Work* (Sep. 15, 2022), at 14, fn 68, https://www.ftc.gov/system/files/ftc_gov/pdf/Matter%20No.%20P227600%20Gig%20Policy%20Statement.pdf (“Commission enforcement therefore will not focus on organizing efforts undertaken by gig workers. Despite past efforts, the Commission will also refrain from other enforcement or policy efforts that might undermine the ability of gig workers to organize.”).