



Office of Commissioner
Andrew N. Ferguson

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

**Statement of Commissioner Andrew N. Ferguson
Concurring in Part and Concurring in the Decision
Commission Decision Regarding Section 5(B) Modification Authority
In the Matter of Facebook, Inc.
Docket Number C-4365**

January 10, 2025

Today the Commission issues a decision rejecting various arguments that Meta Platforms, Inc. (previously known as Facebook, Inc.) raised against the Commission's Order to Show Cause Why the Commission Should Not Modify the Order and Enter the Proposed New Order ("Order to Show Cause").¹ I agree with the decision's analysis as to several of Meta's arguments—that the authority to modify orders under Section 5(b)² does not extend to consent orders, that the absence of language in the previous order allowing modification precludes modification, and that consent orders are contracts not allowing unilateral modification. I also agree with the decision's conclusion that the Order to Show Cause is not an illegal attempt at order enforcement, but I think the decision's analysis on this argument misses the mark.

"Enforcement" of an order involves some process for compelling a party subject to an order to conform its conduct to the requirements of the order.³ Meta is correct that "enforcement" of Commission orders is reserved to the judiciary. Only the judiciary can issue an injunction compelling the subject of an order to comply with the order, or civil penalties and consumer redress for failing to obey the order.⁴ Modification of an order, even when the basis for that modification rests in part on violations of the order, is not "enforcement" of that order in any meaningful sense. Modifying an order does nothing to compel the party to comply with that order. The Commission's loose use of the word "enforcement" to describe order modification has now created considerable confusion and given rise to Meta's argument that the Order to Show Cause is an illegal attempt at "enforcement." Order modification is not enforcement. The Commission's use of the word to describe it was a mistake. We ought not to repeat it. But the Commission's misuse of the English language does not transform order modification into enforcement. Order modification cannot compel compliance with an order; it therefore is not enforcement of that order, no matter what label the Commission has attached to it. I therefore concur in the decision's rejection of Meta's argument to the contrary.

¹ *In re Facebook, Inc.*, Dkt. No. C-4365 (May 3, 2023).

² 15 U.S.C. § 45(b).

³ *Enforcement*, Black's Law Dictionary (12th ed. 2024) ("The act or process of compelling compliance with a law, mandate, command, decree, or agreement; specif., the forcible or compulsory exaction of some duty, such as making a payment, honoring a promise, or otherwise meeting a responsibility").

⁴ See 15 U.S.C. § 45(c)–(e), (l)–(m); *id.* § 57b(a)(2).