



Office of Commissioner
Rebecca Kelly Slaughter

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

Statement of Commissioner Rebecca Kelly Slaughter

Regarding the Collaboration Act Report

Commission File No. P238400

April 10, 2024

I strongly support the Collaboration Act Report, and I write separately to underscore the importance of its recommendation that Congress provide the Commission with independent litigating authority to seek civil penalties—in other words, to eliminate the current requirement¹ that the Commission refer each such complaint to the Department of Justice for a decision to take the case or return it. The Report sets forth many good reasons to support such a change, to which I must add my own observation that the penalty-referral process with the Department of Justice is badly broken. This observation arises directly from feedback I have received from staff, not on a single case or in a single division, but throughout the Bureau of Consumer Protection.

Among the greatest joys of serving as a Federal Trade Commissioner is the opportunity to work closely with our dynamic staff as they bring creativity and tenacity to solving tough problems that bedevil American consumers and thwart free and fair competition. Of the various duties of a Commissioner, I doubt that any accomplishes quite as much as finding ways to support our staff so that they can carry out our missions in the most effective manner. To that end, I meet with each of our divisions and offices at least annually to hear about how things are going generally, beyond the parameters of any particular matter. These conversations can surface vitally important opportunities for improvements, whether concerning contracting for experts, information-technology woes, or other cross-cutting issues that affect the daily experiences of our staff.

Over my tenure, and especially over the last year, staff concerns about the civil penalty-referral process have loomed large in these conversations. These concerns exist not just about one matter or within one division but across the entire litigating staff of our Bureau of Consumer Protection, and they are profound. A sense of deep frustration arises in connection with matters that might require a referral. Will the Department honor our requests, make good use of our expertise, and protect our institutional equities? In some cases, the answer is yes, but to not know in advance is a painful place in which our staff regularly find themselves. And, even more concerning, when the answer to those questions is known, it often appears to be no. When I first arrived at the Commission and learned about these difficulties, I believed that the pain points around civil-penalty referrals must be the result of poor communication and solvable with more transparency and effort. I was wrong.

¹ See 15 U.S.C. § 56(a).

I have already written at some length about why I believe that Commissioners should make decisions about civil-penalty litigation without considering the possibility that the Department will make different decisions, such as settling cases for much less relief than we would.² Now, I am calling on the Commission to consider making public our civil-penalty referrals when we vote to refer them, rather than after the Department decides whether to take the case or return it (typically 45 days later). No law prevents publicizing referrals. As I said five years ago, I believe that Commissioners, as political appointees, should be held accountable for our decisions; so too should Department leaders be held accountable for theirs.³ Under current practice, the public and our overseers do not know what action or relief the FTC intended; they only see the outcome after the Department acts. Under my proposal, which decisionmakers make which decisions would be clear.

I know that the Department of Justice—both its political leadership and its career civil service—shares the FTC’s commitment to the American public. I continue to believe that our two institutions can forge a path forward that would obviate the need for publicized referrals, as we work collaboratively in the public interest; I am hopeful that we will do just that.

² See Fed. Trade Comm’n, Dissenting Statement of Comm’r Slaughter 4–5, *In re Facebook, Inc.* (July 24, 2019) https://www.ftc.gov/system/files/documents/public_statements/1536918/182_3109_slaughter_statement_on_facebook_7-24-19.pdf.

³ See *id.* at 5 (“I do not believe the Commission should vote for an inadequate settlement because of a fear that our sister agency will take action that we do not believe is in the public interest. We should endeavor to do the right thing even if our preferred course of action may be interrupted by the DOJ’s doing the wrong thing. We are accountable for our decisions, as DOJ is for theirs.”).