



Office of Commissioner  
Rohit Chopra

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

## STATEMENT OF COMMISSIONER ROHIT CHOPRA

*Regarding Flaws in the FTC's 2017 Study on Merger Remedies  
October 8, 2021*

In January 2015, the Federal Trade Commission announced that it was launching an effort to study the effectiveness of its merger settlements, which was intended to build upon the agency's 1999 Divestiture Study.<sup>1</sup> In February 2017, the Federal Trade Commission authorized the release of the study, noting that the study "affirms the effectiveness of [the] FTC merger remedy process."<sup>2</sup>

However, there has been significant criticism of the methodology used for the study,<sup>3</sup> which raised concerns about whether the study would fairly assess the status quo approach to addressing illegal mergers. In recent months, my office conducted a review of the study's underlying work product related to divestitures in the market for generic pharmaceuticals. I have shared the results of this review with other offices within the Commission.

Putting aside concerns with the methodology, it is clear that the findings released to the public in 2017 failed to fully reflect [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]<sup>4</sup> In my view, the Commission's report exaggerated the effectiveness of its settlement strategy and significantly understated the failure rate of past merger settlements.

Given the review conducted by my office and the severe deficiencies in this one section of the report, I am concerned that the 2017 study is neither rigorous nor reliable. I believe the study should not be cited by the public going forward. I urge my colleagues to determine whether additional information should be released regarding the study, whether the entire study should be subjected to a more complete independent review, or whether it should be rescinded altogether.

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<sup>1</sup> Press Release, Fed. Trade Comm'n, FTC Proposes to Study Merger Remedies (Jan. 9, 2015), <https://www.ftc.gov/news-events/press-releases/2015/01/ftc-proposes-study-merger-remedies>.

<sup>2</sup> Press Release, Fed. Trade Comm'n, FTC Releases Staff Study Examining Commission Merger Remedies between 2006 and 2012 (Feb. 3, 2017), <https://www.ftc.gov/news-events/press-releases/2017/02/ftc-releases-staff-study-examining-commission-merger-remedies>.

<sup>3</sup> See, e.g., John Kwoka, *One and a Half Cheers for the New FTC Remedies Study* (Feb. 7, 2018), <https://ssrn.com/abstract=3112807>; Chris Sagers, *The Limits of Divestiture as an Antitrust Remedy*, N.Y. TIMES (Feb. 14, 2017), <https://www.nytimes.com/2017/02/14/business/dealbook/the-limits-of-divestiture-as-an-antitrust-remedy.html/>.

<sup>4</sup> In consultation with the agency's Office of General Counsel, I have redacted certain deliberative process information in this statement.