



**STATE OF WASHINGTON  
STATE INVESTMENT BOARD**

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December 3, 2018

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex C)  
Washington, D.C. 20580

Submitted online via regulations.gov

*Re: FTC Hearing #8: Competition and Consumer Protection: Holdings of Non-Controlling  
Ownership Interests in Competing Companies*

Dear Mr. Secretary:

The Washington State Investment Board (WSIB), representing \$130 billion in invested assets on behalf of more than 780,000 retirement fund beneficiaries, appreciates this opportunity to provide comments specific to the Federal Trade Commission's consideration of competition, common ownership of public investments, and ultimately the broad protection of consumers.

The WSIB is a long-term institutional investor responsible for managing 17 retirement funds for public employees, teachers, school employees, law enforcement officers, firefighters, judges and others. Our agency also manages investments for 16 other public trust funds in support of industrial insurance, colleges, universities, developmental disabilities and wildlife protection. The WSIB is an asset owner and fiduciary acting on behalf of our beneficiaries. Our team of investment professionals rely on both internal teams (staff members) and external teams (outside asset managers) to implement long-term investment strategies.

We appreciate being invited to the FTC's panel discussion on this topic on December 6, 2018. Due to previously scheduled Board meetings for our own organization, we were not able to attend in person. However, we do want to convey the WSIB's strong views on this issue. Our hope is that the FTC will carefully consider the following points when considering the implications of common ownership rules.

**The notion of constrained competitiveness surfaced when academic studies claimed that common ownership of equities in concentrated industries will lead to higher prices and undermined competition in the marketplace. Subsequent studies claim this is false or at least a flawed hypothesis.** The original claims surrounding the common ownership hypothesis have been credibly challenged by many researchers and authorities. We won't list a long stream of citations for such research since others such as the Council of Institutional Investors, the Investment Company Institute and BlackRock have already done so in separate letters. In our view as an asset owner, the common ownership hypothesis is errant and unpersuasive. The central flaw rests in the fact that past studies provided examples of correlation rather than meaningful evidence of direct causation. As investors, we recognize the potential perils of assuming results based on narrow correlation theories rather than clear causation. While the academic tension surrounding the impacts of common ownership may have raised some intriguing debate, we see few actionable findings. Policies that govern investment practices must be based on defensible standards that go beyond compelling debate. In our view, notion of constrained competitiveness has been substantially countered, or at least sufficient questions have been raised to show that these studies should not be the basis for reactive regulatory change. Creating a compelling debate can be constructive; responding with rules that would broadly undermine fundamental diversification of investment strategies can be destructive.

**The concept of limits on ownership appear to be arbitrary and damaging.** One suggested regulatory solution suggests that institutional investors and/or index funds should be permitted to own no more than one company in any single industry. Clearly, any such rule runs counter to the most fundamental principles of diversification – one of our Board's core investment beliefs. It also raises troublesome uncertainties about how such arbitrary industry lines would be drawn and which authorities would be qualified to define companies into categories. For example, the lines between sectors like transportation and technology are already being severely blurred, so any attempt to force investors and companies into some sort of categorization model will be short-lived. In a November 29, 2018 column in *The Wall Street Journal*, Jack Bogle, founder of Vanguard Funds, predicted that “such a drastic change would lead to the destruction of today's S&P 500 index fund, by common agreement, the most beneficial innovation for investors of the modern age.” While Mr. Bogle undoubtedly has his share of vested interest in index funds, so do many consumers, institutional investors and pension beneficiaries. Forcing index funds and their investors into arbitrary constraints would, on balance, be more harmful than helpful for everyone in the value chain.

**Investor engagement is increasingly integral to fiduciary responsibility.** Another suggested regulatory solution involves limiting the proxy voting powers of institutional share owners, including pension funds and their fund managers. Purportedly, this would limit the ability of large shareholders to influence or control pricing dynamics in concentrated segments of the marketplace. But again, such rules would likely backfire given today's core principles of responsible investing. We are long past the days when an investment portfolio consisted of a handful of stock certificates sitting idly in a desk file. Today's investment

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ownership, especially among institutions and public pension plans, comes with a dynamic set of responsibilities. The Securities and Exchange Commission's (SEC's) own policies are aimed at promoting shareholder engagement through active proxy voting. At the WSIB, our Board believes we have a fiduciary duty to our beneficiaries that includes voting proxies in order to promote long-term shareholder value. Limiting such voting would undermine our corporate governance program and disrupt our ability to hold accountable the companies that ultimately generate value for our retirement plans. Voting proxies allows shareholders to influence companies toward improved competitiveness -- a net enhancement to the open marketplace.

**Broader perspective needed to avoid doing more harm than good.** In order to fairly govern market competitiveness, regulatory considerations should not be driven solely by an embattled hypothesis involving common ownership. It would be short-sighted for any authority such as the FTC to restrict investors' common ownership or to impede shareholder rights in a manner that could create harmful disruption to the broader economy and capital markets. Any proposed shift in regulatory framework should be done with broad perspective that recognizes important distinctions between the roles and responsibilities of asset owners, asset managers and publicly owned companies. Any new considerations must allow investors an ability to cost-effectively pursue investment strategies that suit their particular objectives, whether through active selection of concentrated investments or through broad exposure to the market as a whole. Likewise, our regulatory framework must continue to encourage investors and their fiduciaries to vote proxies, including enlisting the support of proxy voting advisory services.

We trust the FTC will take into account the broadest possible implications of any action that might affect the integrity of the investment markets and the ability of public pension plans to be part of this value chain. We appreciate the opportunity to comment on the concept of common ownership as part of the hearing process. If we can provide more information on this topic, we will certainly accommodate further discussion.

Sincerely,

  
Theresa Whitmarsh  
Executive Director

  
Gary Bruebaker  
Chief Investment Officer

CC: WSIB Board Members