

SCHOOL OF LAW

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

*Submitted electronically via regulations.gov*

**Re: Competition and Consumer Protection in the 21st Century Hearings, Common Ownership**

Dear Commissioners,

I write in my individual capacity as a professor of law and an expert in corporate law and finance as well as the economic analysis of law to express my concerns (and advise some caution) regarding the possible promulgation of regulations to address the “common ownership hypothesis”—the theory that institutional ownership of non-controlling interests of companies that compete within the same sector decreases competition and consumer welfare in concentrated industries. This topic was focal in the Federal Trade Commission’s (“FTC”) recent “Competition and Consumer Protection in the 21<sup>st</sup> Century Hearings.”

I have spent considerable time reviewing the relevant scholarship, including the papers finding supporting evidence for the hypothesis in the United States airline and banking industries.<sup>1</sup> This is a fascinating and thought-provoking area of inquiry—and one that continues to be worthy of our collective attention as academic researchers. Indeed, I find the area particularly interesting because it raises substantially more questions than it answers, regarding (for example) the robustness of the existing results relative to

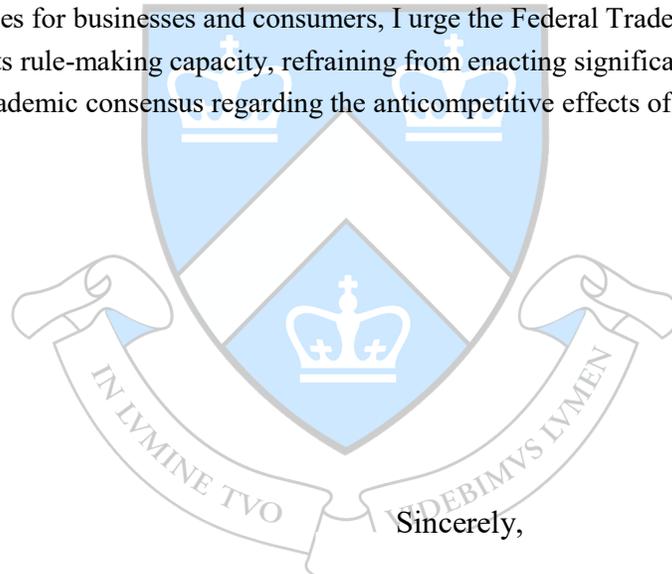
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<sup>1</sup> See, e.g., José Azar, Martin C. Schmalz, and Isabel Tecu, “*Anticompetitive Effects of Common Ownership*,” May 10, 2018 and José Azar, Sahil Raina and Martin Schmalz, “*Ultimate Ownership and Bank Competition*,” July 24, 2016.

alternative empirical assumptions as well as what theoretical mechanism (if any) might work to translate fractional horizontal ownership stakes into coordinated anticompetitive market power.

As interesting as these questions are to academics, their resolution is very much in doubt at present. Significantly more traction on these issues would be needed, in my view, before any agency—including the Federal Trade Commission—can confidently formulate sound regulations related to the asserted anticompetitive effects of horizontal ownership. Such open questions include not only the validity of the common ownership hypothesis itself in particular settings, but also (a) a more coherent theory of how corporate governance and decision making interact with non-activist block ownership, (b) a robust theory of how the anticompetitive harm is caused, (c) an assessment of lost benefits of diversification for public and private investors, and (d) whether the initial findings uncovered thus far in the academic literature can be extrapolated beyond the specific industries and the circumstances in which those findings were made.

In the light of these open (though clearly interesting) questions, as well as the potential for significant unintended consequences for businesses and consumers, I urge the Federal Trade Commission to exercise prudential restraint in its rule-making capacity, refraining from enacting significant new policy measures until there is greater academic consensus regarding the anticompetitive effects of common ownership and the proposed remedies.



Sincerely,

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Eric L. Talley  
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