

Statement of Commissioner Maureen K. Ohlhausen
Committee on Energy and Commerce
Subcommittee on Digital Commerce and Consumer Protection
United States House of Representatives

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Chairman Latta, Ranking Member Schakowsky, and members of the Subcommittee, I am pleased to appear before you today alongside my FTC colleagues.

I have been a Commissioner for six years and was honored to be named Acting Chairman in January 2017 and to serve in that capacity until May 2018. Having a leadership role at the FTC provides a unique insight into the vital protections the agency provides for the American consumer, and I'm proud of the work that we will discuss in today's hearing. Although the FTC has many accomplishments, I will limit my remarks today to two areas: process reforms and competition enforcement.

First, process reforms. In April 2017, I directed the FTC's Bureau of Consumer Protection to identify ways we could streamline our Civil Investigative Demands or CIDs, which are the agency's version of administrative subpoenas. This initiative was, in part, a response to concerns raised by Members of Congress that FTC investigations often imposed undue burdens on legitimate companies.

Of course, the FTC must remain an effective and aggressive protector of the American consumer. That is our primary mission. But we should also look for ways to be more efficient.

These CID reforms have been in effect for a year, and I believe the agency has successfully navigated making the CID process friendlier to legitimate businesses without sacrificing our effectiveness.

For example, one difficulty for small business is wading through pages of legalese. To lighten this burden, the FTC now includes a plain language description of the CID process in every CID we issue, and we have posted FAQs for small business on our website to help them.

We are also being more selective about the timeframe for requested documents or information. Obviously the broader the timeframe, the greater the burden on companies. It is

now our policy, where appropriate, to limit the timeframe in our CIDs to more recent years. Of course, when there is good cause, we will seek a broader range of documents and information. But that is now the exception, not the rule.

These are just a handful of the ways we've reformed our CID process so that we can continue to protect consumers without placing undue burdens on legitimate companies.

Turning briefly to competition enforcement, I'd like to make just a few points.

In fiscal year 2017, the FTC challenged 23 mergers and obtained remedies for consumers in 15 others, maintaining essentially the same merger enforcement pace during the beginning of this administration as it had during the previous one. The brisk pace continues in FY2018, and the agency has already undertaken a number of merger challenges, including Tronox, Wilhelmsen, and Ottobock, all of which are currently in litigation. During the 2017-2018 time period, the Commission also stopped three mergers when the parties abandoned them after we sued. In addition, Walgreen's substantially restructured its proposed acquisition of Rite Aid due to Commission concerns.

I would like to highlight two merger cases that focus on important points about our competition mission.

Draft Kings/Fan Duel was a proposed merger of two internet platforms offering so-called "daily fantasy sports" contests. The FTC sued to block the deal, finding that these companies were the two leading providers and that other forms of fantasy sports were inadequate substitutes. Importantly, the Commission soundly rejected arguments that the technology was too "nascent" and "fast moving" to be able to draw reliable conclusions about likely future effects. In the face of the FTC's challenge, the parties ultimately abandoned their transaction.

The other case I'd like to briefly mention was CDK Auto/Mate, which involved two providers of specialized software used by auto dealers.

Our challenge to the deal noted that the current levels of competition between the parties likely understated the competitive significance of the smaller firm. In effect, the larger firm was buying out this promising upstart before it could grow to become a much more serious competitive threat. Again, in the face of the FTC's challenge, the parties abandoned their deal.

Both of these cases were big wins for U.S. consumers. But they also show how the Commission can use its existing authority to intervene in a factually-grounded, economically nuanced way, even in even fast-moving, high technology markets.

In addition to merger review, we've also brought a number of important conduct cases, including several challenging anticompetitive behavior by drug manufacturers.

Finally, our Economic Liberty Task Force, which I launched last year, has helped to spotlight unnecessary or overbroad occupational licensing, which often disproportionately harms those near the bottom of the economic ladder and burdens our military families.

Thank you for your time and I look forward to your questions.