



Office of Commissioner  
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

**STATEMENT OF COMMISSIONER  
REBECCA KELLY SLAUGHTER**

*In re Your Therapy Source, LLC, Neeraj Jindal, and Sheri Yarbray*  
*Commission File No. 171-0134*  
October 31, 2019

Today, the Commission votes to finalize the proposed order *In re Your Therapy Source, et al.* I carefully read the thoughtful and constructive comments submitted in this case, paying particular attention to the calls for the FTC to revisit the proposed order to better achieve its enforcement objectives. After considering the arguments raised and the specific facts in the record, I vote today to finalize this order. Rather than renegotiate the settlement, the Commission's resources would be best used to investigate and prosecute additional cases of anticompetitive conduct that harms workers. However, I urge our enforcement partners with criminal jurisdiction to pursue a criminal investigation of the individuals involved in this case.

Agreements to fix the wages of employees or contractors, such as the one alleged in this matter, are *per se* illegal under the antitrust laws and give rise to criminal as well as civil liability.<sup>1</sup> As a general matter, I think criminal sanctions are the most effective remedy in these cases. The FTC's enforcement authority is limited to the civil realm.<sup>2</sup>

Like many commenters, I favor pursuing remedies that most effectively provide compensation and deterrence, as well as facilitate private enforcement—including disgorgement, notice, and an admission of liability.<sup>3</sup> If any of those terms had been included in this order when it was originally negotiated, I would have supported it. However, because staff investigated the conduct so quickly, there was no evidence tying the unlawful agreement to wage reductions. Without such evidence, the Commission and private litigants are unlikely to recover damages in court, which in turn diminishes the value of pursuing notice or admissions. While this circumstance should not dictate the scope of appropriate remedies for the Commission to pursue at the start of a settlement negotiation in the future, I cannot ignore them in evaluating whether it

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<sup>1</sup> See U.S. Dep't of Justice & Fed. Trade Comm'n, *Antitrust Guidance for Human Resource Professionals* at 2–3 (Oct. 20, 2016), [https://www.ftc.gov/system/files/documents/public\\_statements/992623/ftc-doj\\_hr\\_guidance\\_final\\_10-20-16.pdf](https://www.ftc.gov/system/files/documents/public_statements/992623/ftc-doj_hr_guidance_final_10-20-16.pdf).

<sup>2</sup> As noted in the Statement of the Commission, “where an investigation uncovers facts that could give rise to criminal liability, the Commission routinely refers matters to the Department of Justice and state law enforcement agencies for potential criminal prosecution. Once we make a referral, the other agency makes the ultimate determination as to whether or not to proceed criminally. No inference can or should be made as to whether we referred this matter for criminal prosecution based on the Commission’s action in this case.”

<sup>3</sup> See, e.g., Marshall Steinbaum et al., Pub. Cmt. No. 00003, *In re Your Therapy Source, LLC, Neeraj Jindal, and Sheri Yarbray* at 2 (Aug. 8, 2019), [https://www.ftc.gov/system/files/documents/public\\_comments/2018/08/00003-147707.pdf](https://www.ftc.gov/system/files/documents/public_comments/2018/08/00003-147707.pdf) (“[T]he FTC should seek remedies that make the injured workers whole and deter future wage fixing by employers.”); Sanjukta Paul et al., Pub. Cmt. No. 00107, *In re Your Therapy Source et al.* at 1 (Aug. 30, 2019), [https://www.ftc.gov/system/files/documents/public\\_comments/2018/08/00107-155426.pdf](https://www.ftc.gov/system/files/documents/public_comments/2018/08/00107-155426.pdf).

would be the best use of limited Commission resources to re-open a settlement that was negotiated largely before the Commissioners participating today arrived at the FTC.<sup>4</sup>

I echo commenters' calls for dedicating more of the Commission's limited resources to investigating and bringing more cases in which the anticompetitive harms fall on workers,<sup>5</sup> especially as the trend toward gig employment accelerates. Although monopsony issues were not evident in this case, I agree with the commenters that monopsony power in the healthcare industry (and more broadly) should be a high priority for the agency.<sup>6</sup> It is important that we consider the entire market ecosystem—including the role of downstream consolidation on upstream labor markets—in determining where to focus enforcement efforts. We should prioritize enforcement against the market participants who wield the most market power, especially “larger and relatively more powerful buyers of services that result in upstream wage suppression,”<sup>7</sup> as one comment suggested.

Finally, I note that wage-fixing cases such as this one are not and should not be the only way the Commission addresses harms imposed on workers. For example, I am deeply troubled by the pervasive use of non-compete clauses in employer-employee contracts, and I support calls for the Commission to consider banning such conduct by rule.<sup>8</sup> The Commission should also consider whether no-poach provisions in franchise agreements that limit competition and worker mobility should be banned.

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<sup>4</sup> The case began and was developed before the Commissioners participating in this vote arrived at the FTC and before staff could reasonably have been expected to anticipate our particular priorities and views on enforcement. While I share Commissioner Chopra's general view about the negotiating posture that the Commission should adopt in settlement discussions, I will apply these principles to cases going forward.

<sup>5</sup> See, e.g., Cmt. of Marshall Steinbaum et al. at 1 (“The FTC's action represents a positive development toward greater enforcement of competition laws on behalf of workers. Given the pervasiveness of anticompetitive behavior by employers in the labor market, we applaud this action and look forward to further enforcement actions against labor market monopsony.”); Cmt. of American Antitrust Institute at 1 (“AAI applauds the Commission for challenging an alleged naked horizontal agreement, and invitations to collude, among therapist staffing companies to reduce therapist pay rates.”).

<sup>6</sup> See, e.g., American Antitrust Institute, Pub. Cmt. No. 00106, *In re Your Therapy Source et al.* at 2 (Aug. 30, 2019), [https://www.ftc.gov/system/files/documents/public\\_comments/2018/08/00106-155423.pdf](https://www.ftc.gov/system/files/documents/public_comments/2018/08/00106-155423.pdf) (“[I]t is particularly important to deter *per se* antitrust violations that harm buyer competition among employers to hire and retain workers . . . in the healthcare industry, where consolidation throughout the supply chain (among insurers, pharmacy benefit managers, group purchasing organizations, retail pharmacies, and generic and branded drug manufacturers, for example) has opened the door to all manner of strategic anticompetitive behavior.”); Michael Kades & Raksha Kopparam, Washington Center for Equitable Growth, Pub. Cmt. No. 00104, *In re Your Therapy Source et al.* at 2 (Aug. 30, 2018), [https://www.ftc.gov/system/files/documents/public\\_comments/2018/08/00104-155424.pdf](https://www.ftc.gov/system/files/documents/public_comments/2018/08/00104-155424.pdf) (“The Federal Trade Commission is right to focus on stopping anticompetitive activity in an industry in which monopsony power is prevalent.”); Cmt. of Marshall Steinbaum et al. at 2 (“More broadly, the FTC should use this case as an opportunity to study how economic concentration and market power at different levels of a supply chain affect workers. . . . Growing evidence shows that downstream concentration is projected upstream through supply chains and operates to the detriment of workers. The commission should recognize the ability of powerful buyers to hold down prices paid to their (often dependent) suppliers and use its enforcement authority to address that buyer-side power.”).

<sup>7</sup> Cmt. of Sanjukta Paul et al. at 1.

<sup>8</sup> See Open Markets Institute et al., *Petition for Rulemaking to Prohibit Worker Non-Compete Clauses* (Mar. 15, 2019), <https://openmarketsinstitute.org/wp-content/uploads/2019/03/Petition-for-Rulemaking-to-Prohibit-Worker-Non-Compete-Clauses.pdf>.