Dissenting Statement of Commissioner Christine S. Wilson

Open Commission Meeting on July 1, 2021

Made in USA Final Rule

Section 18 Rulemaking Procedures

Statement of Enforcement Principles Regarding 'Unfair Methods of Competition' Under Section 5 of the FTC Act (2015)

Enforcement Investigations/Omnibuses Procedures

Today the Commission held an open meeting on four agenda items. To facilitate transparency, I post here the remarks I made during the course of the meeting.

I. Introductory Remarks

Good afternoon to the Commission and to those watching these proceedings. I want to thank the members of the public who participated in the meeting, and provided feedback about the work of the Commission and areas that may be fruitful to pursue.

I support greater transparency in government decision making generally, and in federal antitrust enforcement specifically. With sufficient notice, advance planning, input from our knowledgeable staff, and a robust dialogue among my fellow Commissioners, open Commission meetings could facilitate that goal. Unfortunately, today's meeting falls short on all accounts. In fact, I only learned last Thursday of the Chair's intention to hold this meeting. At the same time, I was informed of her intention to hold votes to rescind the Section 5 Policy Statement and to pass several Omnibus Resolutions that would remove from Commission oversight large swaths of Commission business.

American consumers are best served when policy decisions are made with input from a variety of stakeholders. The FTC has a laudable history of seeking this input by issuing for notice and comment draft policy statements and other initiatives; holding workshops and hearings on policy issues; and preparing thoughtful and thorough reports. Our staff who host these proceedings, and who work each day to fulfill our mission, have developed significant expertise. The work of the Commission is enhanced when staff is available to present recommendations and answer questions. And I benefit from staff recommendations prepared by career professionals who have thought deeply about the issues and who will be tasked with implementing the initiatives on which we are voting. I am certainly better equipped to opine on matters for which I have received staff analyses.

I also benefit from the opportunity to have a dialogue with my fellow Commissioners, each of whom brings different experiences and skill sets to the table.

Unfortunately, the format the Chair has chosen for this meeting omits our knowledgeable staff and precludes a dialogue among the Commissioners. A bipartisan and collaborative approach has been the hallmark of the FTC for years and would be welcome today, particularly given the importance of the matters being considered. We have arrived at the consumer welfare standard, a rulemaking process that respects objectivity and public input, and an appreciation for our limited jurisdiction for very specific reasons. Those reasons are worth discussing, but that requires a thoughtful process. And when we have chaos instead of thoughtful process, it is the American consumer who will suffer.

II. Made in the USA Final Rule

I am a strong supporter of the Commission's Made in USA program. In contrast to Commissioners Chopra and Slaughter, I have voted yes on every Made in USA enforcement action since arriving at the Commission.[1]

Congress authorized us to pass a rule that governs labeling for Made in USA claims. And I fully supported consideration of a Made in USA **Labeling** Rule. But the rule presented to us today exceeds our statutory authority. It is not limited to "labeling" – it oversteps our Congressional mandate by including essentially all online claims.

Specifically, Section 45a gives the Commission authority to promulgate a **labeling** Rule.[2] The title of the section is "Labels on products." The Senate recently passed a Country of Origin Labeling Act, called the COOL Act, that prohibits deceptive country of origin claims in "any labeling, advertising, or other promotional materials, or any other form of marketing, including marketing through digital or electronic means"[3] – leaving no doubt it applies to all advertising. The COOL Act shows that Congress is aware of the difference between labeling and broader forms of advertising.

I am deeply concerned about the proliferation of deceptive Made in USA claims and want to engage with staff and my colleagues to explore ways to address claims that fall within our

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[1] *See* In the Matter of Gennex Media, LLC No. C-4741 (Apr. 2021), https://www.ftc.gov/system/files/documents/cases/2023122gennexmediafinalorder.pdf; In the Matter of Chemence, Inc., et al., No. 4738 (Feb. 2021), https://www.ftc.gov/system/files/documents/cases/2021-02-10_chemence_admin_order.pdf; In the Matter of Williams-Sonoma, Inc., No. C-4724 (July 2020), https://www.ftc.gov/system/files/documents/cases/2023025c4724williamssonomaorder.pdf; U.S. v. iSpring Water Systems, LLC, et al., No. 1:16-cv-1620-AT (N.D. Ga. 2019); https://www.ftc.gov/system/files/documents/cases/172_3033_ispring_water_systems_-_stipulated_order.pdf; In the Matter of Sandpiper Gear of California, Inc. et al., No. 182-3095, https://www.ftc.gov/enforcement/cases-proceedings/182-3095/sandpiper-california-inc-et-al-matter; Underground Sports d/b/a Patriot Puck, et al., No. 182-3113 (April 2019), https://www.ftc.gov/enforcement/cases-proceedings/182-3113/underground-sports-inc-doing-business-patriot-puck-et-al; In the Matter of Nectar Sleep, LLC, No.182-3038 (Sept. 2018), https://www.ftc.gov/enforcement/cases-proceedings/182-3038/nectar-brand-llc.

[2] 15 U.S.C. § 45a.

[3] U.S. Innovation and Competition Act, S. 1260, Section 2510, 117th Cong. (June 8, 2021), https://www.democrats.senate.gov/imo/media/doc/DAV21A48.pdf.

statutory authority. If we were able to engage in a dialogue at this meeting, it would have been constructive to discuss whether we should undertake a full rulemaking proceeding under Section 18 to cover *all* advertising, as some commenters urged us to do.[4]

Alternatively, it would have been constructive to discuss whether to pass a rule limited to MUSA labeling now, or to await further authorization from Congress through the COOL Act to address all MUSA advertising.

But it is ill-advised to proceed with the rule before us today, which clearly exceeds our Congressional authorization. We have recently been reprimanded for acting outside our Congressional authority – in the *AMG* case decided earlier this year, the Supreme Court unanimously ruled that the Commission has exceeded its authority to seek monetary relief under Section 13(b) of the FTC Act.[5] Consistent with decades of federal district court and court of appeals decisions, I support the FTC's use of Section 13(b) to seek equitable monetary relief in appropriate cases, and also to challenge conduct that wrongdoers have halted,[6] but we cannot ignore the Supreme Court's recent admonition that we have overstepped our Congressionally mandated boundaries. I am puzzled about why we would take the risk of promulgating this Rule so soon after a reprimand from the highest court in the land.

I have issued a separate written dissent that explains my concerns about this Rule more fully.

III. Section 18 Rulemaking Procedures

Regulations, even well-intentioned ones, impose costs that stifle innovation, raise the costs of doing business, limit consumer choice and increase the prices that consumers must pay, and ultimately undercut America's global competitiveness. [7] Congress empowered the FTC to issue trade regulations when it passed the Magnuson-Moss Act.[8] At the same time, it imposed

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[4] *See* UIUC Accounting Group Comment; Shirley Boyd Comment; UIUC – BADM Comment; Senators Comment; United Steelworkers Comment; Women Involved in Farm Economics/ Pam Potthoff Beef Chairman Comment.

[5] AMG v. FTC, slip op No. 19-508 (Apr. 22, 2021), https://www.supremecourt.gov/opinions/20pdf/19-508_l6gn.pdf.

[6] Christine S. Wilson, Commissioner, Fed. Trade Comm'n, Oral Statement Before the U.S. Senate Comm. on Commerce, Sci. and Transp. (Apr. 20, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589180/opening_statement_final_for_postingrevd.pdf. ("The bottom line is that the legitimate concerns of stakeholders can be addressed while also restoring the ability of the FTC to use Section 13(b) to pursue wrongdoers."). *See also* Letter from Fed. Trade Comm'n to U.S. House of Representatives Comm. on Energy and Commerce and U.S. Senate Comm. on Commerce, Sci., and Transp. (Oct. 22, 2020).

[7] I have issued several statements discussing this previously. *See* Regulatory *Review of Safeguards Rule*, Dissenting Statement of Commissioner Noah Joshua Phillips and Commissioner Christine S. Wilson (Mar. 5, 2019), *available at* https://www.ftc.gov/system/files/documents/public_statements/1466705/reg_review_of_safeguards_rule_cmr_phillips_wilson_dissent.pdf; *Notice of Proposed Rulemaking: Energy Labeling Rule*, Dissenting Statement of Christine S. Wilson (Dec. 10, 2018), *available at* https://www.ftc.gov/system/files/documents/public_statements/1433166/2018-12-7_statement_of_c_wilson_energy_labeling.pdf.

[8] Magnuson-Moss Warranty Act, Pub. L. No. 93-637, 88 Stat. 2183.

significant procedural obligations on the Commission to cabin the agency's broad rulemaking discretion.

In the wake of the Magnuson-Moss Act, the agency engaged in a flurry of rulemaking activity that sought to regulate broad swaths of the economy.[9] The negative reaction from businesses and many in Congress was swift. During this period, the Washington Post famously accused the agency of attempting to be the "national nanny."[10] Congress found that the agency's rulemaking efforts were filled with "excessive ambiguity, confusion, and uncertainty."[11] Backlash from the agency's sweeping regulatory efforts of the late 1970s culminated in the Federal Trade Commission Improvements Act of 1980, which imposed additional procedural obligations on Section 18 rulemaking efforts.[12] In other words, Congress sought to cabin the agency's discretion even more in what famed legal scholar Ernest Gellhorn characterized as "The Wages of Zealotry."[13]

Considering the backlash to this agency's earlier era of unbounded rulemaking activity, I am gravely concerned about today's proposals to pare down procedural safeguards embedded in our Rules of Practice related to Section 18 rulemaking. I want to thank Commissioner Slaughter for her transparency in explaining the materials included in the Commission's Section 18 rule proposal. Making this kind of information available to the public helps to foster the public's understanding of our proposal and also creates an opportunity for more open dialogue. Considering the proposal outlined by Commissioner Slaughter today, I would find it constructive to discuss a number of questions.

First, with respect to the objective management of the rulemaking process: The role of a Presiding Officer is to oversee the fair adjudication of the hearing process and make independent recommendations to the Commission based on relevant and material evidence. During the 1970s rulemaking spree, the Presiding Officer was viewed as a puppet of agency management, leading to the perception that outcomes were biased and predetermined. To address this issue and build trust in the rulemaking process, Congress imposed obligations designed to ensure the

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[9] I have described some of these rulemaking initiatives in recent statements. *See Notice of Proposed Rulemaking for the Energy Labeling Rule*, Dissenting Statement of Commissioner Christine S. Wilson (Dec. 22, 2020), *available at* https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf; *Advance Notice of Proposed Rulemaking for Regulatory Review of the Amplifier Rule*, Concurring Statement of Commissioner Christine S. Wilson (Dec. 17, 2020), *available at* https://www.ftc.gov/system/files/documents/public_statements/1585038/p974222amplifierrulewilsonstatement.pdf.

[10] *The FTC as National Nanny*, The WASH. POST (Mar. 1, 1978), https://www.washingtonpost.com/archive/politics/1978/03/01/the-ftc-as-national-nanny/69f778f5-8407-4df0-b0e9-7f1f8e826b3b/.

[11] S. REP. NO. 96-500, at 3 (1979).

[12] Federal Trade Commission Improvements Act of 1980, Pub. L. No. 96-252, 94 Stat. 374.

[13] Ernest Gellhorn, *The Wages of Zealotry: The FTC Under Siege*, 4 REGULATION 33 (1980).

independence of the Presiding Officer.[14] The Commission, heeding Congressional concerns regarding independence, required the Chief Administrative Law Judge to serve as the Chief Presiding Officer and empowered the Presiding Officers to lead the hearing process.

- In light of these Congressional concerns, why does today's proposal move away from using independent ALJs as Presiding Officers? How can we avoid public perception that the Commission is politicizing the rulemaking process if the Chair appoints the Presiding Officer?

- How can we preserve the independence of the Presiding Officer if the Commission, not the Presiding Officer, decides which issues will be discussed at the hearing and which parties will be permitted to testify, conduct cross-examination, and offer rebuttal evidence?

- How can the Commission ensure we get a neutral and thorough accounting of evidence and data instead of a cherry-picked record that serves an agenda?

- Under the revised rules, the Commission, not the Presiding Officer, will determine the list of disputed issues of material facts. How can stakeholders ensure that their proposed factual disputes will be part of the rulemaking record if their input is out of step with the majority view of the Commission?

Second, with respect to procedural limitations that impact public understanding and opportunities for input: The rule revisions remove self-imposed restrictions that I view as deliberate choices by this agency to comply not just with the letter of our Congressional mandate but the spirit of the law. Following our rulemaking spree in the 1970s, the FTC was stripped of funding, stripped of legal authorities, and required to institute new and substantial rulemaking steps to foster public trust in our trade rules.[15] Recognizing that this agency was on the brink of being shuttered, our Rules of Practice adopted a number of rulemaking procedures that provided for additional public comment periods, publication of a staff report, and multiple opportunities for the public to weigh in on disputed issues of material fact. While the procedures as revised *may* comply with the statute as drafted, I support the FTC's existing approach that provides for robust additional public input.

- If the agency is preparing to remove discretionary steps from our rulemaking process, are we concerned that the more limited process will fail to identify unintended consequences of proposed rules, particularly those that could harm small businesses and marginalized communities?

[14] Federal Trade Commission Improvements Act of 1980, Pub. L. No. 96-252, 94 Stat. 374.

[15] *Id. See also* J. Howard Beales III, *The Federal Trade Commission's Use of Unfairness Authority: Its Rise, Fall, and Resurrection*, 22 J. PUB. POL'Y & MKTG. 192 (2003).

- Is the Commission concerned that the public will view the more limited opportunities to comment on proposed rules as running counter to the democratic rationales for rulemaking that my colleagues have previously espoused?

Additionally, rulemaking efforts are enhanced when the public has the input from expert staff at agencies overseeing the rulemaking process. The FTC has built transparency into our Rules of Practice by requiring that rulemaking staff publish a staff report containing their analysis of the rulemaking record and recommendations as to the form of the final rule. But the new rules eliminate the staff report requirement.

- Considering the value of staff reports, how will the Commission build trust in the enforcement of new trade rules without transparency into staff's recommendations?

- In what ways will the public's understanding of any final rules suffer because the Commission will no longer publish a report from expert FTC staff highlighting key issues and formulating recommendations based on the record?

The Commission's proposal to revise its Rules of Practice related to Section 18 rulemaking procedures is not a small adjustment enacted to improve efficiency. These changes have the potential to usher in a return to aggressive, unbounded rulemaking efforts that could transform entire industries without clear theories of law violations and empirical foundations for recommended regulatory burdens. Even as we speak, Congress is considering bills that run the gamut from giving the FTC expansive new authority and resources to eliminating the agency's jurisdiction. In the midst of so much criticism and scrutiny from so many angles regarding so many aspects of our jurisdiction, why are we embarking on this path of revisiting an era that led to such significant constraints on our jurisdiction?

As the saying goes, if you don't acknowledge the mistakes of the past, you are doomed to repeat them. One striking example of this disregard for history can be found in the House Judiciary Committee's Majority Staff Report, which 12 different times points to railroad regulation as a model for Big Tech.[16] In a stunning omission, nowhere in its 450 pages or 2,500 footnotes does the report mention the fact of the bipartisan repeal of this regulatory framework because it harmed consumers and stifled innovation; neither does it mention the benefits that came from deregulation.[17]

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[16] For other reactions to the Majority Staff Report, *see* Christine S. Wilson, Remarks for American Bar Association Webcast, Interview with Commissioner Wilson and Barry Nigro on the House Judiciary Report, (Nov. 13 2020), https://www.ftc.gov/system/files/documents/public_statements/1588040/aba_interview_with_commissioner_wilson_on_the_house_judiciary_report.pdf *and* Christine S. Wilson, Remarks for the 2020 Global Forum on Competition, (Dec. 7 2020), https://www.ftc.gov/system/files/documents/public_statements/1589376/wilson-oecd-2020-remarks.pdf.

[17] *See* MAJORITY STAFF OF H. COMM. ON THE JUDICIARY, 116TH CONG., INVESTIGATION OF COMPETITION IN DIGIT. MKTS. 7 (2020), https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf at 380 ("In the railroad industry, for example, a congressional investigation found that the expansion of common carrier railroads into the coal market undermined independent coal producers, whose wares the railroads would deprioritize in order

There are many at the FTC who lived through the 1970s and 1980s and experienced the public and Congressional backlash during those dark days of the agency's history. There are many others who worked with and learned from those who lived through that period. Current management would be wise to seek their guidance.

IV. "Statement of Enforcement Principles Regarding 'Unfair Methods of Competition' Under Section 5 of the FTC Act" (2015) Procedures

I oppose rescinding the 2015 Section 5 Policy Statement. It was issued during the Obama Administration on a bipartisan basis.[18] As the majority of Commissioners in 2015 explained, the principles espoused in the Section 5 Policy Statement "are ones on which there is broad consensus."[19] They reflect more than a century of judicial precedent and the input of scholars and the bar.

The Policy Statement provides that (1) the Commission will be guided by the public policy of promoting consumer welfare, (2) conduct will be evaluated considering both likely harm to competition and procompetitive justifications, and (3) a standalone Section 5 case would be less likely when the competitive harm could be addressed by the Sherman and Clayton Acts.

When these Enforcement Principles were issued, most people in the antitrust community concluded that the Policy Statement imposed very few limits on the use of Section 5. But today's vote to rescind the 2015 Policy Statement appears to be an effort to remove even the modest constraint that the Commission will be guided by the public policy of promoting consumer welfare and that the full effects of conduct will be considered.

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to give themselves superior access to markets. In 1893, the Committee on Interstate and Foreign Commerce wrote that '[n]o competition can exist between two producers of a commodity when one of them has the power to prescribe both the price and output of the other.' Congress subsequently enacted a provision to prohibit railroads from transporting any goods that they had produced or in which they held an interest."); *id.* at 382 ("The 1887 Interstate Commerce Act, for example, prohibited discriminatory treatment by railroads."); *id.* at 383 ("Historically, Congress has implemented nondiscrimination requirements in a variety of markets. With railroads, the Interstate Commerce Commission oversaw obligations and prohibitions applied to railroads designated as common carriers"); *see also* Christine S. Wilson & Keith Klovers, *The growing nostalgia for past regulatory misadventures and the risk of repeating these mistakes with Big Tech*, 8 J. Antitrust Enforcement 10, 12-14 (2019), https://academic.oup.com/antitrust/article/8/1/10/5614371 (discussing the benefits from dissolving the ICC).

[18] Chairwoman Ramirez and Commissioners Brill, Wright, and McSweeny supported issuing the Enforcement Principles.

[19] Statement of the Federal Trade Commission On the Issuance of Enforcement Principles Regarding "Unfair Methods of Competition" Under Section 5 of the FTC Act , https://www.ftc.gov/system/files/documents/public_statements/735381/150813commissionstatementsection5.pdf, at 2 (August 13, 2015).

The consumer welfare standard is premised on evolving economic analysis. It promotes predictability, administrability and credibility in antitrust enforcement.[20] Without it, we can expect that antitrust enforcement will reflect political motivations rather than reasoned and objective assessments of benefits and harms to consumers. Enforcement based on political motivations rather than economic analysis would produce unpredictable outcomes that lack credibility.[21] Decades of antitrust enforcement guided by the consumer welfare standard demonstrate that the standard is administrable.

I've said before that what you measure is what you get. If the Commission is no longer measuring consumer welfare, then by definition, consumers will be harmed by the Commission's change of direction to prioritize other interests. Consumers will face higher prices, less innovation and reductions in quality because, contrary to popular assertions, the consumer welfare standard takes into account price, quality, and innovation.

If staff were here today, I would ask them: what cases would they have brought but thought were precluded by the constraints of the Section 5 Enforcement Principles? And if dialogue with my fellow commissioners were permitted, it would be constructive to discuss additional questions:

- If we rescind the Policy Statement, with what do we plan to replace it?

- When FTC Chairman Jon Leibowitz announced a plan to use Section 5 expansively, I was in private practice. I spent a great deal of time counseling concerned clients about what types of conduct could possibly run afoul of Section 5. In my experience, businesses *want* to follow the law – but they need to know what the law is. Are we concerned with the lack of clarity that we will create for the business community if we rescind the Policy Statement?

- If promoting consumer welfare is no longer the guide for Section 5 enforcement, what principles will guide Commission actions? If the Commission will not be guided by protecting consumer interests, whose interests will guide the Commission's enforcement of Section 5? Complaining, inefficient competitors?

- In the interest of transparency, do my colleagues plan to inform the public of the types of cases they intend to bring that were precluded by the Policy Statement?

- At a time when Senator Lee has introduced legislation that would eliminate the Commission's antitrust enforcement because of divergence between the antitrust agencies,[22] are my colleagues concerned that divorcing the use of Section 5 from the accepted antitrust principle of protecting consumers will further separate the

[20] *See* Christine S. Wilson, Thomas J. Klotz & Jeremy A. Sandford, *Recalibrating the Dialogue on Welfare Standards: Reinserting the Total Welfare Standard into the Debate*, 26 Geo. Mason L. Rev. 1435, 1444-46 (2019).

[21] *See id.* at 1453-55.

[22] One Agency Act, S. 633, 117th Cong. § 4 (2021).

Commission's enforcement of the antitrust laws from enforcement by the Department of Justice?

I acknowledge that the Commission may be able to identify language in court decisions that may appear to allow a broad use of Section 5, but prudence dictates that the Commission limit its use of standalone Section 5 cases to the public policy underlying the antitrust laws and to conduct that harms consumers.[23] In the 1980s, the Commission lost three cases when it attempted to push Section 5 beyond the boundaries of accepted antitrust principles. The Commission needs to acknowledge the Commission's losses in the *Ethyl* case,[24] *Boise Cascade Corp. v. FTC*,[25] and the *Official Airline Guides* case.[26]

And as I mentioned previously, the Commission was just admonished by a unanimous Supreme Court in *AMG* regarding the interpretation of our authority. The response to that decision should not be a new concerted effort by the Commission to exceed the FTC's authority regarding the use of Section 5 of the FTC Act. A decision to rescind the 2015 Enforcement Principles regarding the use of Section 5 appears to be the unfortunate first step toward that end.

V. Enforcement Investigations/ Omnibuses Procedures

Compulsory process is the method generally used at the FTC to compel testimony, documents, or data from targets to an investigation and third parties. The use of compulsory process can be an important aspect of conducting effective investigations. In some instances, the Commission votes to authorize staff to use compulsory process on an investigation-by-investigation basis. In other instances, the Commission votes on an omnibus resolution that authorizes staff to use compulsory process in specific types of cases or specific industries on an ongoing basis, without checking with the Commission first.

Today we are asked to approve seven omnibus resolutions authorizing the use of compulsory process. I received this set of resolutions last Friday, giving me fewer than five business days to assess their scope, content, and interaction with other existing Commission resolutions and initiatives. And I have not had the benefit of expert staff input on the legal and economic rationales for undertaking these sweeping measures, let alone their potential impacts and consequences.

While some of these omnibus resolutions may have merit, I am being asked to vote on them as a package. I am concerned that in the aggregate, these seven omnibus resolutions remove significant swaths of Commission oversight from our investigations without adequate

[23] *See generally* Christine S. Wilson, Remarks at Global Competition Law Lecture Series, Centre of European Law, Dickson Poon School of Law, King's College London, (Nov. 19, 2020), https://www.ftc.gov/system/files/documents/public_statements/1587210/remarks_of_commissioner_christine_s_wilson_at_kings_college_london.pdf.

[24] E.I. du Pont de Nemours & Co. v. FTC, 729 F.2d 128, 139 (2d Cir. 1984).

[25] Boise Cascade Corp. v. FTC, 637 F.2d 573, 582 (9th Cir. 1980).

[26] Official Airline Guides, Inc. v. FTC, 630 F.2d 920, 927 (2d Cir. 1980).

justification.[27] In the past, I have used my vote on compulsory process to narrow the burden on third parties that are not targets of an investigation.

My colleagues may try to paint this as an issue of whether I trust staff. As a political appointee nominated by the White House and confirmed by the Senate, I am obligated to exercise due oversight of Commission business. I have great respect for the FTC as an institution. My respect for the FTC is largely due to the hard work and thoughtful input of career staff, as well as the open deliberation and debate among Commissioners. If our expert staff were present, I would have asked them for their opinions on several issues:

- How will these resolutions add any clarity or insight to our mission?
- Will these resolutions help staff in either bureau conduct more efficient investigations?
- Have investigations been delayed by Commission review of compulsory process recommendations on a case-by-case basis?

And to facilitate a bipartisan and collaborative dialogue, there are a number of questions I would have asked of my fellow commissioners:

- What were my colleagues' thoughts on the limits, if any, of the many broad and vague terms in the resolutions?
- Are we concerned that authorizing investigations into "exploitative," "collusive," "coercive," or "predatory" acts or practices will lead to investigations outside the bounds of judicially recognized antitrust principles? Recall the three cases from the 1980s that I mentioned previously.
- When many of our resolutions run for five years, what is the rationale for making these resolutions run for 10 years?
- How do my colleagues envision investigations being closed under this process? Could staff close more investigations of transactions or conduct without Commission approval?

I cannot understand why the Commission would abrogate so much of its authority at such a critical time for both consumer protection and antitrust enforcement.

[27] Lack of oversight will allow for investigations not supported by sound principles in law or economics. *See generally* Christine S. Wilson, *The Sword of Damocles: The Slender Thread of Expanded Antitrust Conduct Claims*, (May 6, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589671/chamber_of_commerce_wilson_keynote_final_1.pdf (explaining my concern for proposals: (1) expanding the essential facilities doctrine; (2) removing the current predatory pricing recoupment standard; and (3) finding antitrust violations in product design changes that benefit consumers.).

In February 2018, the Senate Commerce Committee held a confirmation hearing for Joe Simons, Noah Phillips, Rohit Chopra, and me. Each of us was asked to reiterate our commitment to a collaborative and bipartisan process. Indeed, the Senate Commerce Committee emphasized that it expected the FTC to continue its legacy of bipartisan cooperation. This is my third stint at the FTC, and I know that the Senate Commerce Committee was correct to seek this commitment from us. Collaboration makes the FTC stronger, improves our enforcement, and is a characteristic to be nurtured, not abandoned.

Process matters. I welcome a dialogue with our new Chair and my fellow Commissioners on substance, but encourage our Chair to conduct that dialogue with thought and care.