

Oral Remarks of Commissioner Christine S. Wilson

Open Commission Meeting on November 18, 2021

Presentation on Criminal Referrals and Partnerships and Motion to Issue Commission Statement

6(b) Study on Supply Chain Disruptions

I. Presentation on Criminal Referrals and Partnerships and Motion to Issue Commission State

Thank you, Chair Khan, for using the open meeting format to highlight some of the staff's excellent work to protect consumers. Thank you to Valarie Verduce and Kara Monahan for today's presentation. I also want to thank our current Criminal Liaison Unit Chief, Savvas Diacosavvas, Markus Meier in the Bureau of Competition, and James Kohm in the Bureau of Consumer Protection for their leadership with respect to our criminal referral efforts.

Despite the small size of the FTC's work force, our dedicated and talented career staff tackle a wide variety of issues and tasks – including merger investigations, fraud litigation, major research studies, groundbreaking workshops on cutting-edge policy issues, technical assistance to foreign regulators standing up competition and consumer protection agencies, and robocall prevention. I regularly comment on the fact that the agency is small but mighty. Today's presentation highlights just how versatile the FTC is and how career staff excel despite the extraordinary breadth of their activities.

Returning to the focus of today's agenda, our Criminal Liaison Unit ("CLU") has supported thousands of criminal law enforcement investigations. The size of the entity being investigated does not impact decisions regarding whether to refer criminal matters to relevant federal, state, local law, or international enforcement partners. Large or small, FTC staff refers criminal matters.

Building on the successful stream of criminal referrals over the years, every CLU chief has added to the criminal referral program. Staff innovations include the development of a library of criminal pleadings, enhanced internal trainings on criminal law, and awards to recognize successful investigation partnerships. Our staff has helped to build a successful program through their creativity and expertise.

As the staff presentation demonstrated, we have had notable wins in both the competition and consumer protection missions. I am glad the agency is exploring ways to facilitate greater uptake of our criminal referrals and to boost transparency regarding our work in this area.

Thanks again to our dedicated staff for their continued work in this important area, and for the leadership of Chair Khan and Commissioner Slaughter on this initiative.

II. 6(b) Study on Supply Chain Disruptions

I want to thank the Chair for putting this important issue on the agenda. I also want to thank staff in the Office of Policy Planning and in other divisions for working diligently to construct this 6(b) study. It is vitally important to understand the supply chain disruptions impacting consumers and small businesses around the country. The Commission has worked closely on a bipartisan basis to revise this study, staff have worked long hours and been responsive to all requests, and the Commission is close to being able to vote on this proposal. I look forward to working with the Chair, my fellow Commissioners, and staff to finalize this study swiftly.

A well-crafted study of today's shortages will cast a wide net to examine the problems at each level of the supply chain. We have all heard public reports that the strains to our supply chain are seemingly everywhere. For example:

- Empty containers are piled high in areas where they are not needed and scarce in areas with a desperate need¹
- Container ships are stranded at ports²
- Ports are backlogged and are implementing operational changes to process cargo³
- Trucking concerns are causing retailers to delay nonessential shipments or pay high prices to get their goods delivered on time⁴
- Transportation companies are facing labor shortages, causing delivery delays and harming businesses⁵
- Manufacturers are struggling to keep pace with consumer demand because of shortages of certain inputs, like semiconductors, which cause slowdowns in production⁶

¹ Peter S. Goodman et al., *'I've Never Seen Anything Like This': Chaos Strikes Global Shipping*, N.Y. TIMES (Mar. 6, 2021), <https://www.nytimes.com/2021/03/06/business/global-shipping.html>.

² Gregory Schmidt, *A record number of cargo ships off the California coast shows a crack in the supply chain*, N.Y. TIMES (Sept. 23, 2021), <https://www.nytimes.com/2021/09/23/business/cargo-ships-supply-chain.html>; Jonathan Saul, *Supply chain chaos set to extend further, port operator ICTSI says*, REUTERS (Oct. 20, 2021), <https://www.reuters.com/business/finance/supply-chain-chaos-set-extend-further-port-operator-ictsi-says-2021-10-20/>.

³ Michael R. Blood, *Biden plan to run Los Angeles port 24/7 to break supply chain backlog falls short*, PBS (Nov. 16, 2021), <https://www.pbs.org/newshour/economy/biden-plan-to-run-los-angeles-port-24-7-to-break-supply-chain-backlog-falls-short>.

⁴ Samantha Raphelson, *Trucking Industry Struggles With Growing Driver Shortage*, NPR (Jan. 9, 2021), <https://www.npr.org/2018/01/09/576752327/trucking-industry-struggles-with-growing-driver-shortage%20s>; Pamela N. Danziger, *Unclogging The Ports Will Not Fix The Supply Chain's Even Bigger Trucking Crisis*, FORBES (Oct. 15, 2021), <https://www.forbes.com/sites/pamdanziger/2021/10/15/unclogging-the-ports-will-not-fix--the-supply-chains-even-bigger-trucking-crisis/?sh=29d26b74124f>.

⁵ Paul Ziobro, *FedEx Earnings Reflect Labor Shortage, Supply-Chain Woes*, WALL ST. J. (Sept. 21, 2021), <https://www.wsj.com/articles/fedex-lowers-forecast-as-labor-shortage-supply-chain-woes-sap-results-11632256848>.

⁶ Gregory Schmidt, *A record number of cargo ships off the California coast shows a crack in the supply chain*, N.Y. TIMES (Sept. 23, 2021), <https://www.nytimes.com/2021/09/23/business/cargo-ships-supply-chain.html>.

- Highly sought finished goods are idling off the U.S. coast instead of being delivered to homes and stores, while U.S. farmers struggle to export goods to buyers abroad⁷
- Factories abroad continue to close as covid cases spike in certain regions⁸

The list of examples is endless, but the message is clear. Only by examining each level of the supply chain will we gain an accurate assessment of where the problems lie – in large part because players at all levels of the supply chain are blaming each other for the problem. Again, the daily news provides myriad examples of this finger-pointing:

- Politicians blame ports for limited operating hours⁹
- Port operators argue they have nowhere to put containers being unloaded¹⁰
- Shipping lines blame a container shortage¹¹
- Container manufacturers blame the rising cost of raw materials¹²
- Big retailers blame shipping companies and are now buying their own containers and chartering their own ships¹³
- Small retailers point to big retailers and argue that their size leads to preferential treatment from suppliers¹⁴
- Logistics companies blame shortages in warehouse space and truckers¹⁵

As this list confirms, there are concerns with many aspects of the global supply chain. Participants at each level of the supply chain will be able to shed light on their own unique

⁷ Peter S. Goodman et al., *'I've Never Seen Anything Like This': Chaos Strikes Global Shipping*, N.Y. TIMES (Mar. 6, 2021), <https://www.nytimes.com/2021/03/06/business/global-shipping.html>.

⁸ Sapna Maheshwari and Patricia Cohen, *Retailers' Latest Headache: Shutdowns at Their Vietnamese Suppliers*, N.Y. TIMES (Sept. 29, 2021), <https://www.nytimes.com/2021/09/29/business/supply-chain-vietnam.html>.

⁹ Ana Swanson et al., *Biden Announces Measures at Major Ports to Battle Supply Chain Woes*, N.Y. TIMES (Oct. 13, 2021), <https://www.nytimes.com/2021/10/13/us/politics/biden-port-los-angeles-supply-chain.html>.

¹⁰ Peter S. Goodman, *'It's Not Sustainable': What America's Port Crisis Looks Like Up Close*, N.Y. TIMES (Oct. 14, 2021), <https://www.nytimes.com/2021/10/11/business/supply-chain-crisis-savannah-port.html>.

¹¹ Julia Horowitz, *How the pandemic turned humble shipping containers into the hottest items on the planet*, CNN (Sept. 8, 2021), <https://www.cnn.com/2021/09/08/business/shipping-containers/index.html>.

¹² *Id.*

¹³ Sarah Nassauer & Costas Paris, *Biggest U.S. Retailers Charter Private Cargo Ships to Sail Around Port Delays*, WALL ST. J. (Oct. 10, 2021), https://www.wsj.com/articles/biggest-u-s-retailers-charter-private-cargo-ships-to-sail-around-port-delays-11633858380?mod=djemRTE_h; MARITIME EXECUTIVE, *Ikea is Buying Containers and Chartering Vessels* (Sept. 2, 2021), <https://www.maritime-executive.com/article/ikea-is-buying-containers-and-chartering-vessels>.

¹⁴ Comments of the National Grocers Association in Response to Solicitation for Public Comment On Contract Terms that May Harm Competition, FTC-2021-0036-0022 (Sept. 30, 2021) https://www.nationalgrocers.org/wp-content/uploads/2021/09/9.30.21_NGA_Unfair-Contract-Terms_FTC-Submission_Final.pdf.

¹⁵ Lisa Baertlein, *Union Pacific says 24/7 California port operations no quick fix*, REUTERS (Oct. 21, 2021), <https://www.reuters.com/world/us/union-pacific-says-247-california-port-operations-no-quick-fix-2021-10-21/>.

challenges and concerns. For us to obtain a clear understanding of the supply chain issues and causes, we will need to cast a wide net.

Of course, it is important to acknowledge that while we need to be thorough, we also need to be intentional and deliberative in identifying the recipients of the 6(b) orders. First, the Paperwork Reduction Act limits the number of companies to which we can send 6(b) orders without jumping through additional hurdles. Second, certain jurisdictional complexities may hamstring the FTC's ability to target certain players or industries. And third, 6(b) studies consume significant resources. And we must recognize the opportunity cost of diverting resources from law enforcement efforts to conduct this study. One well-crafted study – even if it takes additional time and effort to prepare – will save resources in the review of the materials received and prevent the Commission from having to issue additional studies in the future.

The FTC has the unique capability to conduct objective studies to understand changes that can inform decision-making in the future. The supply chain disruptions have become a persistent problem, and have rightly gained the attention of all Americans, including President Biden. The FTC should act quickly when critically important issues arise, so I understand that this process will move more quickly than a typical 6(b).

I look forward to working closely with the Chair, my fellow Commissioners, and staff at the FTC to finalize this study swiftly. I fully expect that the Commission will unanimously issue this 6(b) in the near future.

For the reasons I have described, I offer a topping motion: I move to table the vote on this motion until November 24, 2021, to incorporate further input from the Commission and supply chain experts, so that we can finalize the scope of the 6(b) orders to be issued.