



June 30, 2021
Federal Trade Commission

**Comment regarding items on the agenda of the July 1, 2021 open meeting of the
Federal Trade Commission**

National Taxpayers Union Foundation (NTUF) appreciates the opportunity to comment on the agenda for the July 1st open meeting and applauds newly appointed FTC Chair Lina Khan's commitment to holding such open meetings regularly in order to bring more transparency to the work of the Commission. At the same time, echoing the words of current FTC Commissioner Noah Phillips, "a mere week's notice on matters requiring serious deliberation, and a number of the policies themselves, undermine that very goal."¹

In particular, we find the sudden move to revoke the 2015 "Statement of Enforcement Principles Regarding 'Unfair Methods of Competition' Under Section 5 of the FTC Act" to be alarming. This Section 5 guideline was the product of a bi-partisan process under a Democratic-appointed majority FTC under the Obama Administration, and expresses as one of its principles the continuation of a decades-long bi-partisan consensus that the welfare of consumers should be paramount while considering antitrust enforcement. The point of creating this concise set of guidelines was to provide increased clarity with respect to how the FTC would define these unfair methods of competition (UMCs).

The National Taxpayers Union recently released an open letter to policymakers signed by over 70 economists and antitrust scholars highlighting the long-standing, non-partisan ideological consensus that has existed behind the consumer welfare standard for antitrust enforcement. The letter also warns against the sort of radical expansion of antitrust that this modest change in guidelines, given the expressed views FTC Chair Lina Khan,² seems to foreshadow. We've attached this letter along with our comment and hope that the Commission will take it into consideration.

As our letter argues, "...the harm and uncertainty posed to businesses from expanded or excessively broad interpretations of antitrust laws are significant. These destructive and ill-fated actions imperil the economy at a pivotal point in its progress toward full recovery from the effects of the pandemic."

¹ Commissioner Noah J. Phillips, @FTCPhillips, Twitter, June 25, 2021.
<https://twitter.com/FTCPhillips/status/1408459407134973955>

² See: Lina M. Khan, "Book Review: The End of Antitrust History Revisited," *Harvard Law Review*, Mar. 10, 2020. https://harvardlawreview.org/wp-content/uploads/2020/03/1655-1682_Online.pdf

In addition, we are concerned that the rushed process under which these changes are being considered indicates a shift towards partisan decision-making with respect to how the FTC will enforce competition policy. This meeting was announced fewer than ten days after Commissioner Lina Khan was sworn in as the new Chair of the FTC, allowing less than a week for public comment, and little to no time for real debate or consideration by the whole of the Commission.³ With Commissioner Chopra potentially leaving the FTC if confirmed in his nomination to head the Consumer Financial Protection Bureau, this sudden rush to a vote seems designed to quickly steamroll any potential opposition while the current ideological majority has this window in which to operate.

Similarly, we urge that the “streamlining” of Section 18 rulemaking procedures and of enforcement investigations (both of which are not defined in detail in the meeting agenda) should not curtail the ability of the public to provide input into these important activities of the commission. Certainly, any substantial changes in the FTC’s rulemaking procedures ought to be subject to the same standard minimum of 30 days’ advance notice to the public as any other federal regulatory proceeding.

If the true interest of the Chair is to promote more transparency regarding the FTC’s approach to enforcing antitrust laws, we encourage a process that fosters more deliberation and consensus than this rushed proceeding suggests.

Respectfully,

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³ “FTC Announces Agenda for July 1 Open Commission Meeting,” FTC.gov, June 24, 2021
<https://www.ftc.gov/news-events/press-releases/2021/06/ftc-announces-agenda-july-1-open-commission-meeting>