



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

JOINT DISSENTING STATEMENT OF COMMISSIONERS ROHIT CHOPRA AND REBECCA KELLY SLAUGHTER

*Regarding the Vertical Merger Commentary
Commission File No. P181201
December 22, 2020*

We voted against the Vertical Merger Commentary because it supports the flawed approach that we opposed in the Vertical Merger Guidelines.¹ These documents reflect the same status quo thinking that has allowed decades of vertical consolidation to go uninvestigated and unchallenged.

The commentary was an opportunity to highlight the actions the FTC has taken, however limited. So it is especially perplexing that it goes to great pains to include instances where the agency might have acted, but didn't, given that this inaction is publicly self-evident. Another troubling aspect to the commentary is that the majority of the examples are cases that were settled with behavioral remedies. The efficacy of behavioral remedies is suspect, particularly in light of the problematic market realities that have resulted.²

We strongly caution the market against relying on the Vertical Merger Guidelines and the Vertical Merger Commentary as an indication of how the FTC will act upon past, present, and future transactions. Moving forward, we need to aggressively enforce against the harms of vertical mergers. We look forward to turning the page on the era of lax oversight and to beginning to investigate, analyze, and enforce the antitrust laws against vertical mergers with vigor.

¹ Dissenting Statement of Comm'r Rohit Chopra Regarding the Publication of Vertical Merger Guidelines, File No. P810034 (June 30, 2020), <https://www.ftc.gov/public-statements/2020/06/dissenting-statement-commissioner-rohit-chopra-regarding-publication>; Dissenting Statement of Comm'r Rebecca Kelly Slaughter in Re FTC-DOJ Vertical Merger Guidelines, P810034 (June 30, 2020), <https://www.ftc.gov/public-statements/2020/06/dissenting-statement-commissioner-rebecca-kelly-slaughter-re-ftc-doj>.

² See Steven C. Salop, Invigorating Vertical Merger Enforcement, 127 YALE L.J. 1962, 1991–92 (2018); Makan Delrahim, Asst. Att'y Gen., Dep't of Justice, Antitrust Div., Keynote Address at American Bar Association's Antitrust Fall Forum (Nov. 16, 2017), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-deliverskeynote-address-american-bar>.