



Office of Commissioner
Rohit Chopra

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

**DISSENTING STATEMENT OF
COMMISSIONER ROHIT CHOPRA**

In the Matter of Your Therapy Source, LLC, Neeraj Jindal, and Sheri Yarbray
Commission File No. 1710134
October , 2019

for colluding against workers are likely to be minor,” noted one response to the proposed settlement. Our approach must change.

Settlements are important. They can help the public resolve an issue more quickly and with fewer resources. But when there is overwhelming evidence of wrongdoing, it is dangerous for government agencies to enter into weak settlements that give a violator a free pass. In settlement negotiations, the Commission may not obtain all of the relief it seeks. But when we fail to make any substantive demands at all, we guarantee that our settlements will fail to hold bad actors accountable. We need to reject the false choice between settling for nothing and litigating. Instead, we can make thoughtful demands based on rigorous analysis that lead to accountability and deterrence.

In this matter, the FTC’s investigation uncovered text messages and other unambiguous evidence that revealed a conspiracy to fix wages, a per se violation of antitrust laws that can even carry criminal sanctions. Despite these facts, the settlement carries virtually no consequences.

The vast majority of enforcement actions taken by the Commission are unanimous. Over the last year, the Commission has failed to reach a unanimous decision in only a handful of consumer protection and competition conduct cases. When we have disagreed, it is typically because the Commission essentially demanded nothing in settlement negotiations beyond paperwork requirements and a promise not to violate the law again. Since these no-consequences settlements fail to deter bad actors, they should only be used in narrow circumstances.

Calibrating Consequences

The Commission should generally presume that no-consequence settlements that simply order a Respondent to cease and desist are not in the public interest. Advocates for wrongdoers sometimes argue that violations should not carry meaningful consequences when there is no known “harm.” This logic is flawed, particularly for misconduct that has a low probability of detection and high likelihood of harm. For example, by this logic, so

public database of individuals banned from debt collection. Former FTC Commissioner Joshua Wright and former Assistant Attorney General of the Antitrust Division Douglas Ginsburg have argued that individual debarments can often be appropriate in price-fixing matters, given the low probability of detection.

Notice to Affected Parties When a wrongdoer formally notifies potential victims, customers and clients, employees, creditors, and counterparties, this facilitates transparency and follow-on actions for third parties to remedy or mitigate actual and potential harms, especially for harms that may not have been uncovered or assessed in an investigation.

In this settlement, the Commission includes standard language requiring the firm to notify its officers, directors, and employees about the Commission's order, but not the independent contractors targeted by the misconduct, nor the employees seeking these services. In a comment, Rep. David Cicilline and Sen. Cory Booker question this logic, noting that the Commission requires the violators to essentially notify themselves. Even if the Commission's investigation did not uncover specific evidence that the conspiracy led to suppressed wages this instance, notice to current and former contractors will help uncover if there were other instances of illegal price-fixing. Without notice, clients of these staffing agencies also be left in the dark about the violations and may unknowingly be continuing to do business with bad actors, subjecting them to reputational damage and other risks.

Findings or Admissions of Liability As I noted in Patriot Puck, a recent no-consequences settlement, findings and admissions can reduce the likelihood that a flagrant violator can lie about their past conduct. Findings or admissions of facts and liability can also advance the interests of those seeking to vindicate their rights through private litigation.

Conclusion

The conduct in question in this matter raises questions of criminal liability. Ideally, it would be resolved by an entity with both criminal and civil enforcement authority. But, when the FTC takes action, it should avoid a no-consequences settlement, especially for matters with virtually no litigation risk. The FTC is typically far harsher with small firms than with large firms, so this outcome may send a signal to those engaging in widespread wage theft that their illegal conduct will be worth the risk.

The 2016 Antitrust Guidance for Human Resources Professionals set expectations for greater and more effective enforcement when it comes to wage and other antitrust
