

Oral Remarks of Commissioner Christine S. Wilson

Open Commission Meeting on December 16, 2021

Advance Notice of Proposed Rulemaking to Combat Government and Business Impersonation Fraud

Thank you, Madam Chair.

Many thanks to Christopher Brown and Austin King for their work on this proposed Advance Notice of Proposed Rulemaking and for the excellent presentation today. Thanks also to staff in the Division of Marketing Practices and the Office of General Counsel who assisted with this recommendation.

As a general matter, I believe that rulemaking is problematic. Even when decisionmakers are motivated by the best intentions, the costs of rulemaking – particularly in the long run – tend to outweigh its benefits. I explained my concern (c)-1 35.49 0 TddTts es5eedd5 Tde

I want to draw a bright line between my support for this proposal and my dissent from the regulatory agenda published last Friday. That plan proposes an avalanche of rulemaking on both the competition and consumer protection fronts. You’ve heard of Lollapalooza? We’re going to be hosting Rule-a-Palooza here at the FTC.

Our historical experience reveals clearly the harm of a heavy-handed regulatory approach. The elaborate regulatory frameworks for airlines and railroads stifled innovation, increased costs, raised prices, limited choice, and decreased output. Because those frameworks harmed the very parties they were intended to benefit, they were repealed on a bipartisan basis.⁴ The FTC’s existing rules provide a similar cautionary tale. Our Care Labeling Rule has been criticized for excluding new competition in the form of wet cleaners that would compete with dry cleaners.⁵

Competition rulemaking presents unique concerns. It isn’t clear that we have legal authority to undertake substantive competition rulemaking,⁶ but we’re gearing up for a ton of it. My concerns with this plan begin with the underlying rationale. Specifically, advocates say we need competition rulemaking because we have a “hyper-concentrated” economy.⁷ Those assertions rely on flawed data, and have been heavily criticized by leading scholars and economists.⁸ But

Inc., No. 3:18-cv-06294 (N.D. Cal. Filed Oct. 15, 2018) (government impersonator used domains including www.usimmigration.us and www.uscitizenship.info).

⁴ 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 ENF’T 10 (2019), <https://academic.oup.com/antitrust/article/8/1/10/5614371>; Remarks of Commissioner Christine S. Wilson at British Institute of International and Comparative Law, Remembering Regulatory Misadventures: Taking a Page from Edmund Burke to Inform Our Approach to Big Tech (June 28, 2019), https://www.ftc.gov/system/files/documents/public_statements/1531816/wilson_remarks_biiicl_6-28-19.pdf; Dissenting Statement of Commissioner Christine S. Wilson Energy Labeling Rule, Comm’n Matter No. R611004 (Oct. 22, 2019), https://www.ftc.gov/system/files/documents/public_statements/1551786/r611004_wilson_dissent_energy_labeling_rule.pdf.

⁵ See Christine S. Wilson, Remarks for the Federalist Society at the Future of Rulemaking at the FTC Event, Hey, I’ve Seen This One: Warnings for Competition Rulemaking at the FTC (June 9, 2021), https://www.ftc.gov/system/files/documents/public_statements/1591666/wilson_statement_back_to_the_future_of_rulemaking.pdf.

⁶ *Id.*

⁷ FED.
