

**Concurring Statement of Commissioner Joshua D. Wright**

*In the Matter of Ferrellgas Partners, L.P.*

Docket No. 9360

FTC File No. 111 0195

October 31, 2014

The Commission has voted to accept proposed Consent Agreements to remedy allegations that AmeriGas and Blue Rhino restrained competition by colluding to reduce the amount of propane in tanks sold to Walmart. I voted in

costlier and thus less profitable 17-pound tanks. To avoid this result, AmeriGas and Blue Rhino

quantity, and other competitive terms negotiated with purchasers can harm consumers by impeding the competitive process.<sup>14</sup> Here, it is self-evident that AmeriGas and Blue Rhino's agreement to reduce the amount of propane in tanks sold to Walmart has the economic effect of increasing the per unit price if prices are held constant. The mere fact that AmeriGas and Blue Rhino's agreement did not preclude the possibility that they would continue to compete on price or other terms is of little consequence for antitrust analysis. Indeed, if such

therefore simply does not implicate traditional concerns over false positives and the fear that the Commission might inadvertently chill procompetitive behavior.<sup>17</sup> In addition, while much has been written about the important shift away from per se rules in favor of a more effects-based rule of reason analysis under modern antitrust doctrine, the benefits of this shift unsurprisingly accrue only where the challenged conduct potentially offers some procompetitive benefits.<sup>18</sup> Again, that is not the case here. The record is devoid of evidence supporting a

two principal suppliers in an industry have colluded in their negotiations with a major distributor to impose contractual terms the distributor initially resisted, and there are no plausible efficiency justifications suggesting the conduct may have been procompetitive, that enquiry is appropriately brief. Enforcement actions to prevent anticompetitive conduct with no plausible efficiency are a wise use of agency resources and should be a focus of the Commission's competition