United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act

Section 5 of the Federal Trade Commission Act declares “unfair methods of competition in or affecting commerce” to be unlawful. 15 U.S.C. § 45(a)(1). Section 5’s ban on unfair methods of competition encompasses not only those acts and practices that violate the Sherman or Clayton Act but also those that contravene the spirit of the antitrust laws and those that, if allowed to mature or complete, could violate the Sherman or Clayton Act.

Congress chose not to define the specific acts and practices that constitute unfair methods of competition in violation of Section 5, recognizing that application of the statute would need to evolve with changing markets and business practices. Instead, it left the development of Section 5 to the Federal Trade Commission as an expert administrative body, which would apply the statute on a flexible case-by-case basis, subject to judicial review. This statement is intended to provide a framework for the Commission’s exercise of its “standalone” Section 5 authority to address acts or practices that are anticompetitive but may not fall within the scope of the Sherman or Clayton Act.

In deciding whether to challenge an act or practice as an unfair method of competition in violation of Section 5 on a standalone basis, the Commission adheres to the following principles:

the Commission will be guided by the public policy underlying the antitrust laws, namely, the promotion of consumer welfare;

the act or practice will be evaluated under a framework similar to the rule of reason, that is, an act or practice challenged by the Commission must cause, or be likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications; and

the Commission is less likely to challenge an act or practice as an unfair method of competition on a standalone basis if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm arising from the act or practice.

Donald S. Clark
Secretary

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