

Dissenting Statement of Maureen K. Ohlhausen
In the Matter of Fortiline, LLC
File No. 151-0000
August 9, 2016

The proposed order settles the FTC's allegations that Fortiline, LLC violated Section 5 of the FTC Act. I agree with my colleagues that it is unlawful for a firm to invite its competitor to collude even if they have a vertical relationship in other markets. The evidence regarding whether Fortiline made an invitation to collude and whether the communications arose in a vertical or horizontal context is ambiguous, however. Because I am concerned that imposing liability in such equivocal factual circumstances may chill procompetitive vertical conduct in markets with dual distribution, I respectfully dissent.