

Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson
Commentary on Vertical Merger Enforcement

The Commission voted to issue the Commentary on Vertical Merger Enforcement. This Commentary, which augments the guidance issued jointly by the Antitrust Division of the Department of Justice and the Commission, faithfully recounts the analysis the Commission has employed when it has considered vertical mergers and acquisitions. Providing a historical description of the Commission's analysis promotes agency transparency and facilitates both the predictability and credibility of the Commission's merger review process.

The Commentary recounts nearly 30 years of the Commission's past actions by describing a long line of cases that had bipartisan support when the Commission was led by both Democrats and Republicans. The Commentary describes the Commission's cases that challenge anticompetitive transactions, but the Commission's cases also recognize the widely accepted benefits of vertical integration, which result in lower prices for consumers.

Commissioners Chopra and Slaughter dissent, not because they quibble with the faithfulness of the Commentary's recounting of the history of vertical merger enforcement, but because they object to the history itself. That history reflects evolving antitrust jurisprudence, the steady refinement of economic analysis, and the specific facts of each case at issue. Any proposals for a new approach to vertical merger enforcement, which our colleagues have yet to articulate, would need to take into account and grapple with the law, economics, and the evidence in each case. Until then, vague promises of a dramatic and undefined change in enforcement ring hollow.