

MEMO# 31343

August 21, 2018

ICI Submits Comment Letter to FTC on Common Ownership

[31343]

August 21, 2018 TO: ICI Global Regulated Funds Committee
SEC Rules Committee RE: ICI Submits Comment Letter to FTC on Common Ownership

The Federal Trade Commission (FTC) announced hearings on competition and consumer protection in the 21st century in June.[\[1\]](#) Included on the Hearing Notice's lengthy list of items was a request for comment on "the analysis of acquisitions and holding of a non-controlling ownership interest in competing companies." This practice, which refers to a type of "common ownership," is the subject of considerable debate among some in the academic community. ICI submitted the comment letter (linked below) in response to the FTC's request for comment yesterday.

Background

The debate concerning common ownership was spurred by two academic papers that allege common ownership by institutional investors decreases competition and raises consumer prices in concentrated industries, even when all common holdings are small (in percentage terms) and the institutional investor controls none of the commonly-held firms (the "common ownership hypothesis"). The common ownership hypothesis also has led some academics to propose measures to address the harms that allegedly arise from common ownership. In general terms, these measures would either (i) reduce the ability of investment advisers to acquire or hold shares in competing firms on behalf of their clients, or (ii) compel clients of investment advisers to forfeit certain rights if common ownership, as aggregated at the adviser level, exceeds a *de minimis* threshold.

However, more recent papers critiquing this early research describe numerous methodological and theoretical shortcomings of the common ownership hypothesis.

Summary of ICI's Comment Letter

In our letter, we strongly disagree with the common ownership hypothesis, because it rests on: (1) misunderstandings and misinformation about the asset management industry; (2) incorrect assumptions about the incentives of advisers and their clients; and (3) flawed empirical work. In sum, we believe there is no valid empirical basis to conclude that investment advisers—solely because they manage their clients' broadly diversified investment portfolios, some of which include shares of competing companies—are causing competitive harm.

Consequently, the common ownership hypothesis cannot be the basis for enforcement or a change in competition policy. Put simply, it would be inappropriate for the FTC or other authorities to consider measures that would restrict common ownership by institutional investors, or strip away important shareholder rights (e.g., proxy voting) belonging to the clients of investment advisers. Further, such measures likely would have a disruptive impact on the economy, capital markets, and retail investors (e.g., by upending 401(k) plans' ability to offer a well-diversified menu of funds to workers).

Our letter is organized as follows:

- Section I describes relevant aspects of asset management practices and regulation to provide a factual baseline—which should anchor any analysis of common ownership. We highlight where and how some of the current academic work fails to accurately understand or describe the operations of investment advisers.
- Section II reviews the academic debate over whether common ownership affects competition. We examine both the preliminary papers asserting that it does and the newer papers challenging the preliminary research, demonstrating clearly that this debate is far from settled.
- Section III describes the potential harms associated with proposed measures to address the alleged anticompetitive effects of common ownership. We explain why we agree with commentators, including academics and regulators, who believe that consideration of such measures is inappropriate.

Attachment

George M. Gilbert
Assistant General Counsel

Matthew Thornton
Assistant General Counsel

[Attachment](#)

endnotes

[1] FTC, *Hearings on Competition and Consumer Protection in the 21st Century* (June 20, 2018), available at <https://www.ftc.gov/policy/advocacy/public-comment-topics-process> (Hearing Notice).