INVESTMENT COMPANY INSTITUTE

MEMO# 31568

January 18, 2019

ICI Submits Comment Letter to FTC on Common Ownership Following the FTC's Hearings on Competition and Consumer Protection in the 21st Century

[31568]

January 18, 2019 TO: ICI Global Regulated Funds Committee
SEC Rules Committee RE: ICI Submits Comment Letter to FTC on Common Ownership Following the FTC's Hearings on Competition and Consumer Protection in the 21st Century

ICI recently submitted the attached letter in response to the FTC's request for comment on the eighth session of its Hearings on Competition and Consumer Protection in the 21st Century. The session,[1] which was held on December 6, 2018 in New York, focused on the "common ownership hypothesis," the notion that institutional investors holding non-controlling stakes in competing companies in concentrated industries can decrease competition among those companies, leading to higher prices to consumers. The day-long hearing included opening statements by FTC Commissioner Noah Phillips and SEC Commissioner Robert Jackson, presentations on the economic basis of the hypothesis by a leading proponent and a leading critic, and panels concerning (1) institutional investors, diversification and corporate governance, (2) theories of competitive harm from common ownership, and (3) econometric evidence of competitive harm from common ownership.[2]

Background

The common ownership hypothesis originated with 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. This common ownership hypothesis has led some academics to propose measures to address the harms that allegedly result from common ownership. Generally, 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 (*e.g.*, proxy voting) if common ownership, as aggregated at the adviser level, exceeds a *de minimis* threshold.

More recently, however, other academics have written critiques in which the authors describe numerous methodological and theoretical shortcomings of the common ownership hypothesis.

Summary of ICI's Comment Letter

In our letter, we explain that the FTC's hearing confirmed that the academic debate over the common ownership hypothesis remains unsettled; the hypothesis rests on misunderstandings and incorrect assumptions about the asset management industry; and it would be inappropriate for policymakers to rely on the common ownership hypothesis as the basis for an enforcement action or a change in competition policy.

The letter calls attention to the fact that there is not even a consensus about whether there is a *correlation*—let alone any *causation*—between increased common ownership and higher prices. Also, proponents of the common ownership hypothesis have not proven that common owners would have an incentive or mechanism to influence competition. Lastly, we strongly discourage any policy action by the FTC based on the common ownership hypothesis and point out the consequences of such action, which include potential harm to retail investors, the asset management industry, businesses, and the economy.

George M. Gilbert
Assistant General Counsel

Nicholas Ersoy
Legal Intern

Attachment

endnotes

[1] FTC, *Hearings on Competition and Consumer Protection in the 21st Century*, *available at* https://www.ftc.gov/news-events/events-calendar/ftc-hearing-8-competition-consumer-protection-21st-century (Events Calendar).

[2] FTC, *Hearings on Competition and Consumer Protection in the 21st Century: An FTC-NYU School of Law Event*, *available at* https://www.ftc.gov/system/files/documents/public_events/1422929/hearings-agenda-nyu_4.pdf (Agenda).