



FEDERAL TRADE COMMISSION

PROTECTING AMERICA'S CONSUMERS

FTC Rescinds 2015 Policy that Limited Its Enforcement Ability Under the FTC Act

July 1, 2021

Rescinded Policy Failed to Fully Consider Congressional Directives

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The Federal Trade Commission rescinded a [2015 antitrust policy statement](#) that has constrained the agency's use of its authority to stop anticompetitive business tactics under Section 5 of the FTC Act.

Congress directed the FTC to enforce the prohibition on "unfair methods of competition." This prohibition extends beyond the Sherman Act and the Clayton Act. The 2015 Policy Statement purported to establish an analytical framework on how the Commission would seek to enforce the prohibition.

Chair Lina M. Khan was joined by Commissioners Rebecca Kelly Slaughter and Rohit Chopra [in a statement](#), which noted that the 2015 policy was shortsighted, and that the Commission must follow the congressional mandate to condemn "unfair methods of competition." They explained that "[i]n practice, the Statement has doubled down on the Commission's longstanding failure to investigate and pursue 'unfair methods of competition.'" Rescinding the statement, they concluded, is crucial to bringing the FTC back in line with its statutory obligations.

The Commission's inability, after a century of commanding this statutory authority, to deliver clear Section 5 principles suggests that the time is right for the Commission to rethink its approach and to recommit to its mandate to police unfair methods of competition even if they are outside the ambit of the Sherman or Clayton Acts. The task will require careful and serious work, but it is one that our enabling statute expected and required."

The majority statement also noted that the Commission will exercise this authority consistent with congressional directives and appropriate case law. In addition, the Commission may consider additional guidance, policy statements, and rules describing conduct that may violate the prohibition on unfair methods of competition.

The Commission voted 3-2 to rescind the Section 5 policy statement in an open Commission meeting live streamed to its website. Chair Khan and Commissioners Chopra and Slaughter voted yes, and Commissioners Noah Joshua Phillips and Christine S. Wilson voted no. Commissioner Phillips issued [dissenting remarks](#). Commissioner Wilson issued a [dissenting statement](#) regarding the overall meeting agenda.

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PRESS RELEASE REFERENCE:

FTC Issues Statement of Principles Regarding Enforcement of FTC Act as a Competition Statute

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