



Office of Commissioner  
Christine S. Wilson

UNITED STATES OF AMERICA  
**Federal Trade Commission**  
WASHINGTON, D.C. 20580

**STATEMENT OF  
COMMISSIONER CHRISTINE S. WILSON**

*In the Matter of HSR Premerger Notification  
Commission File No. P110014  
February 07, 2023*

In a statement accompanying the Fiscal Year 2021 Hart-Scott-Rodino Annual Report, Chair Khan and Commissioners Slaughter and Bedoya call for Congressional action to revise key facets of the HSR Act.

First, their statement recommends that Congress revisit statutory timelines imposed by the HSR Act on the agencies. I urge my colleagues on the Commission to look inward and acknowledge the damage the current administration has caused to the HSR process. For decades the timelines did not create problems for the agencies. Parties routinely entered timing agreements with staff that provided adequate time for investigations. But, early in the current administration, the Commission flouted a negotiated timing agreement after the parties voluntarily extended the review period several times.<sup>1</sup> The Commission also took affirmative steps to increase the burden, heighten the risk, and increase the uncertainty attendant to the HSR process.<sup>2</sup> In other words, this Administration has taken many steps to *appear* tough — while merger enforcement numbers plummet<sup>3</sup> and the realities of governing set in.<sup>4</sup> Current FTC leadership also undermined the integrity of our law enforcement program by directing staff to investigate theories of harm that would not support a merger challenge in court.<sup>5</sup> These actions

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<sup>1</sup> Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson, Seven & i Holdings Co., Ltd. / Marathon Petroleum Corporation, File No. 201-0108 (May 14, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1590067/2010108sevenmarathonphillipswilsonstatement.pdf](https://www.ftc.gov/system/files/documents/public_statements/1590067/2010108sevenmarathonphillipswilsonstatement.pdf).

<sup>2</sup> Statement of Commissioner Christine S. Wilson Regarding the Announcement of Pre-Consummation Warning Letters (Aug. 9, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1593969/pre-consummation\\_warning\\_letters\\_statement\\_v11.pdf](https://www.ftc.gov/system/files/documents/public_statements/1593969/pre-consummation_warning_letters_statement_v11.pdf); Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson Regarding the Fiscal Year 2020 Hart-Scott Rodino Annual Report to Congress (November 8, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1598127/phillips\\_wilson\\_hsr\\_report\\_statement\\_102821\\_final.pdf](https://www.ftc.gov/system/files/documents/public_statements/1598127/phillips_wilson_hsr_report_statement_102821_final.pdf).

<sup>3</sup> In 2020, the last year of the Trump Administration, the FTC challenged 31 mergers. In 2021, the first year of the Biden Administration, the FTC challenged 12 mergers.

<sup>4</sup> Christine S. Wilson, *Governing is Hard: Antitrust Enforcement in the First Year of the Biden Administration*, Remarks for the Mercatus Antitrust Forum: One Year of Biden Antitrust (Jan. 26, 2022), [https://www.ftc.gov/system/files/documents/public\\_statements/1600479/governing\\_is\\_hard\\_antitrust\\_enforcement\\_in\\_the\\_first\\_year\\_of\\_the\\_biden\\_administration\\_0.pdf](https://www.ftc.gov/system/files/documents/public_statements/1600479/governing_is_hard_antitrust_enforcement_in_the_first_year_of_the_biden_administration_0.pdf).

<sup>5</sup> Christine S. Wilson, *An Update on FTC Merger Enforcement*, Remarks at International Bar Association's 19<sup>th</sup> Annual International Mergers and Acquisitions Conference at 6 (June 15, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/CWilsonUpdateMergerEnforcement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/CWilsonUpdateMergerEnforcement.pdf).

create an environment in which merging parties rationally choose to shift away from the historical approach and instead keep the FTC on the statutory clock and save arguments for trial.<sup>6</sup> The Commission should not turn to Congress to resolve a problem of the Commission's own making regarding investigative processes. Instead, the Commission should take steps to restore the carefully crafted balance that Congress established with the HSR Act.

Second, their statement calls on Congress to increase FTC funding. For support, the statement cites an increase in HSR filings in fiscal year 2021. The statement also notes the increase in Second Requests. But despite increased filings and an increase in alleged problematic mergers requiring Second Requests, enforcement numbers under this administration are significantly lower than enforcement numbers under the Trump Administration.<sup>7</sup> I have no doubt that if Chair Khan heeded the recommendations and insights of our experienced and capable career staff, the FTC generally — and the merger review program specifically — would be running much more smoothly. And I also recognize that while it is routine for FTC staff to work long hours, evenings and weekends, the dedicated personnel in our merger shops are working even longer and harder schedules. If the Commission were operating productively, bringing enforcement actions supported by learned staff and targeted at significant consumer harms, additional resources might be warranted. But the rampant mismanagement shown by Commission leadership is concerning and warrants caution before throwing more resources at the problem.

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<sup>6</sup> Christine S. Wilson, *There's Nothing New Under the Sun: Reviewing Our History to Foresee the Future*, Keynote Address at GCR Live Merger Control (Oct. 7, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1597798/gcr\\_merger\\_control\\_keynote\\_final.pdf](https://www.ftc.gov/system/files/documents/public_statements/1597798/gcr_merger_control_keynote_final.pdf).

<sup>7</sup> *See supra* note 3.