



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

For Release

FTC Restores Rigorous Enforcement of Law Banning Unfair Methods of Competition

Policy statement renews agency's commitment to exercising full legal authority against companies that use unfair tactics to gain an advantage instead of competing on the merits

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Tags: [Competition](#) | [Bureau of Competition](#) | [Section 5](#)

The Federal Trade Commission issued a [statement](#) today that restores the agency's policy of rigorously enforcing the federal ban on unfair methods of competition. Congress gave the FTC the unique authority to identify and police against these practices, beyond what the other antitrust statutes cover. But in recent years the agency has not always carried out that responsibility consistently. The FTC's previous policy restricted its oversight to a narrower set of circumstances, making it harder for the agency to challenge the full array of anticompetitive behavior in the market. Today's statement removes this restriction and declares the agency's intent to exercise its full statutory authority against companies that use unfair tactics to gain an advantage instead of competing on the merits.

"When Congress created the FTC, it clearly commanded us to crack down on unfair methods of competition," said FTC Chair Lina M. Khan. "Enforcers have to use discretion, but that doesn't give us the right to ignore a central part of our mandate. Today's policy statement reactivates Section 5 and puts us on track to faithfully enforce the law as Congress designed."

Congress passed the Federal Trade Commission Act in 1914 because it was unhappy with the enforcement of the Sherman Act, the original antitrust statute. Section 5 of the FTC Act bans "unfair methods of competition" and instructs the Commission to enforce that prohibition.

In 2015, however, the Commission issued a statement declaring that it would apply Section 5 using the Sherman Act "rule of reason" test, which asks whether a given restraint of trade is "reasonable" in economic terms. The new statement replaces that policy and explains that limiting Section 5 to the rule of reason contradicted the text of the statute and Congress's clear desire for it to go beyond the Sherman Act. And it shows how the Commission will

police the boundary between fair and unfair competition through both enforcement and rulemaking. The statement makes clear that the agency is committed to protecting markets and keeping up with the evolving nature of anticompetitive behavior.

Unfair methods of competition, the policy statement explains, are tactics that seek to gain an advantage while avoiding competing on the merits, and that tend to reduce competition in the market. The Policy Statement lays out the Commission's approach to policing them. It is the result of many months of work across agency departments. Staff researched the legislative history of Section 5 and its interpretation across hundreds of Commission decisions, consent orders, and court decisions—including more than a dozen Supreme Court opinions. This rich case history will guide the agency as it implements Section 5. Through enforcement and rulemaking, the Commission will put businesses on notice about how to compete fairly and legally. This is in contrast with the rule of reason, which requires judges to make difficult case-by-case economic predictions.

The Commission vote to approve the [Policy Statement](#) was 3-1, with Commissioner Christine S. Wilson voting no. Chair Lina M. Khan, joined by Commissioners Rebecca K. Slaughter and Alvaro M. Bedoya, issued a [statement](#).

Commissioner Bedoya, joined by Chair Khan and Commissioner Slaughter, issued a [statement](#). Commissioner Wilson issued a [dissenting statement](#).

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