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15 January 2019

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex C)
Washington, DC 20580

Re: ***Hearing #8. Competition and Consumer Protection: Holdings of Non-Controlling Ownership Interests in Competing Companies***

Dear Mr. Secretary:

CFA Institute[1] appreciates the opportunity to present our views to the Federal Trade Commission (the "FTC" or the "Commission") on anticipative effects from holding of non-controlling ownership interests in competing companies.[2] CFA Institute represents the views of those investment professionals who are its members before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

CFA Institute's membership is comprised largely of investment professionals who invest in public companies subject to FTC oversight. They support the important role the FTC plays in detecting unfair and deceptive commercial practices and blocking unfair competition. These are important issues we believe to be foundational to fair and competitive capital markets.

While the emerging issue of common ownership and its suggested effects on competition is an interesting academic theory, we are hard pressed to see this research as being serious, much less a foundational competitive consideration. We also urge some clarity on the interplay between the role of the FTC and the SEC on this issue. It seems the SEC is the agency that primarily oversees public company ownership thresholds, reporting requirements and collective action by

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[1] CFA Institute is a global, not-for-profit professional association of over 166,000 investment analysts, advisers, portfolio managers, and other investment professionals in 163 markets, of whom more than 159,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 152 member societies in 74 markets. For more information, visit www.cfainstitute.org.

[2] See https://www.ftc.gov/news-events/events-calendar/ftc-hearing-8-competition-consumer-protection-21st-century

investors. There is nothing anywhere to suggest such investors are acting collectively or even individually to signal to public companies "don't compete".

Discussion

This common ownership theory suggests that a growing number of large institutional owners of public equity may own too much of every company in every business sector, have too much proxy voting power and may be sending vibes to these investee companies that they not compete too hard. The thinking goes that these universal owners want all companies in their portfolio to do well and not out-compete one another -maybe not explicitly but unintentionally dampening competition in entire industries. Consequently, this line of thought contends these common owners tacitly encourages behavior that is good to the companies and their shareowners, but not to consumers.[3]

The concerns about common ownership effects on competition are not supported by the evidence.

We see no evidence in the academic literature or otherwise that common owners are impacting competition among investee companies. In fact, both investment managers and publicly traded companies are driven to gain market share and profit maximization. Common ownership theories instead assume that industries will implicitly decide on an equilibrium that is comfortable for everyone in the industry and profitable for everyone.

To be frank, we do not see free markets working in this way. Competitors compete. They look to gain market share from their competitor firms to benefit themselves and their shareowners. Meanwhile, institutional investors invest in thousands of companies, typically owning less than 1% -simply not enough to influence – either implicitly or explicitly – the competitive behavior of company managers or their boards.

Also, we should not confuse cases of shareowner activism where an owner does accumulate shares to influence company business strategies as anything to do with FTC regulated trade practices. In other words, this is not the situation outlined by those who contend common ownership is a competition problem. Engagement between issuers and institutional investors usually focuses on business strategy, poor shareholder returns, corporate governance flaws etc., that investors wish to improve at portfolio companies to drive long-term value creation. This engagement typically falls within the realm of activities and practices monitored by the SEC and not the FTC and aside from the occasional activist campaign, most institutional investors rarely interact with management. These so-called common owners defer to management and their boards on strategy more often than not.

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[3] Azar, José and Schmalz, Martin C. and Tecu, Isabel, Anticompetitive Effects of Common Ownership (May 10, 2018). Journal of Finance, 73(4), 2018. https://ssrn.com/abstract=2427345. The paper claims common ownership helped to foster anticompetitive practices in the airline industry.

Correlation is not causation.

We do not see a direct link between common ownership and the implicit support on anti-competitive behaviors suggested by researchers. While there were some correlations in the analysis of the airline industry that stoked this debate, there is little else to point to. We believe the FTC would need far stronger evidence of causation to take any regulatory action suggested by those who express common ownership concerns. We also note another academic paper published in the interim fully contests the findings of Azar.,.[4]

We welcome further debate on this topic and expect additional academic and empirical work. At this time however, we see little reason for any regulatory action around the topic of common ownership, much less the extreme measures discussed below.

The suggested remedies of blocking proxy votes and limiting ownership of companies within the same industry/sector make for fiduciary nonsense and damage investors.

Even if common ownership proved to be a competitive concern, CFA Institute does not support proposals to limit investment to one or two companies per industry. Such a rule would ultimately hurt the underlying beneficiaries whom are saving for retirement. Such limit would fundamentally change the nature of index investing and long-standing fiduciary norms of portfolio diversification.

Similarly, another potential solution offered by common ownership theorists proposes to block these institutional investors from voting proxies. We can think of nothing more contrary to established stewardship norms and the fiduciary duties of investment managers. Likewise, this would be a wholesale disenfranchisement of the shareholder rights of underlying investors.

We also note that in the past decade, there has been a tremendous growth in engagement between investors and issuers, which has been beneficial to both parties as issuers have gained from investors' ideas and perspectives, while investors have gained by improved corporate accountability and governance. Limiting proxy voting rights would effectively curtail this aspect of engagement and proper stewardship to the detriment of underlying investors.

Conclusion

CFA Institute welcomes serious and continuous examination of the role, impact and effectiveness of corporate ownership. We are hard pressed to see the topic of common ownership, in and of itself, as a serious concern to unfair trade or competitive practices at public companies. We encourage the FTC to focus on and regulate those public companies actually engaged in any such anti-competition practices instead of attributing this to some mysterious spell being cast by institutional investors and their underlying retirement savers.

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[4] See Dennis, Patrick J. and Gerardi, Kristopher and Schenone, Carola: "**Common Ownership Does Not Have Anti-Competitive Effects in the Airline Industry** "(February 5, 2018), https://ssrn.com/abstract=3063465

We thank the FTC for the opportunity to comment on this matter and are happy to discuss this matter further if the commission wishes to do so. Should you have any questions about our positions, please do not hesitate to contact Jim Allen, U.S. Head of Capital Markets Advocacy, Washington D.C. at jim.allen@cfainstitute.org or 434-951-5558.

Sincerely,

/s/ James Allen

James C. Allen, CFA
Head, Capital Markets Policy
Advocacy
CFA Institute

/s/ Linda Rittenhouse

Linda L. Rittenhouse
Director, Capital Markets Policy
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