



Conversation with FTC Commissioner Melissa Holyoak

Panelist

Melissa Holyoak, Commissioner | Federal Trade Commission

Moderators

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Introduction

The commentary of FTC Commissioner Melissa Holyoak on merger-related issues since she joined the Commission on March 25, 2024, underscores her robust contributions to ongoing policy debates regarding the contours of competition law and the role of the Federal Trade Commission as an independent agency.

Merger Challenges

The FTC has challenged several mergers since Commissioner Holyoak joined the Commission:

1. Tapestry / Capri – April 22, 2024

- a. The Commission voted unanimously to issue a complaint, alleging that the merger would give Tapestry a dominant share of the “accessible luxury” handbag market and eliminate head-to-head competition between the parties.¹
 - b. While the complaint also addressed labor concerns, Commissioner Holyoak limited her support of the case to the alleged horizontal concerns.
 - c. The Southern District of New York granted the preliminary injunction on October 24, 2024. The parties abandoned the transaction on November 14, 2024.
2. ExxonMobil / Pioneer – May 2, 2024
- a. In a party-line vote, the Democrat majority voted to accept a consent order for ExxonMobil’s acquisition of Pioneer Natural Resources that prevented Pioneer founder and former CEO Scott Sheffield from serving on ExxonMobil’s Board of Directors.²
 - b. In her dissent, joined by Commissioner Ferguson, Commissioner Holyoak wrote that “the Commission is leveraging its merger enforcement authority to extract a consent from Exxon rather than addressing the conduct of one misbehaving executive” and the Commission has given no reason to believe that the transaction violates Section 7.³
 - c. The FTC issued its final decision and order on January 17, 2025. Commissioner Holyoak again dissented, joined by Commissioner Ferguson, emphasizing that “alleged past efforts by Mr. Sheffield to suggest (or even attempt) coordination are insufficient to plausibly allege anticompetitive effects from this acquisition...” and that the acquisition did not violate Section 7.⁴
 - d. On April 11, 2025, FTC announced that it is seeking public comment on Sheffield’s petition to modify the final order.⁵
3. Tempur Sealy / Mattress Firm – July 2, 2024
- a. The Commission unanimously voted to block Tempur Sealy’s acquisition of Mattress Firm, arguing that Tempur Sealy “will have the ability and incentive to suppress competition and raise prices for mattresses” in the “premium mattress market” and that the “vertical acquisition would merge Tempur Sealy’s manufacturing and supply operations with Mattress Firm’s vast retail footprint, giving the combined company enormous power at multiple parts of the mattress supply chain.”⁶
 - b. Commissioner Holyoak supported this complaint, noting that while vertical mergers “are more likely to generate efficiencies that prevent anticompetitive

¹ [FTC Moves to Block Tapestry’s Acquisition of Capri | Federal Trade Commission](#)

² [FTC Order Bans Former Pioneer CEO from Exxon Board Seat in Exxon-Pioneer Deal | Federal Trade Commission](#)

³ [Exxon/Pioneer: Joint Dissenting Statement of Commissioners Holyoak and Ferguson](#)

⁴ [Dissenting Statement of Commissioner Melissa Holyoak Joined by Commissioner Andrew N. Ferguson](#)

⁵ [FTC Seeks Public Comment on Petition to Modify Exxon-Pioneer Final Order | Federal Trade Commission](#)

⁶ [FTC Moves to Block Tempur Sealy’s Acquisition of Mattress Firm | Federal Trade Commission](#)

effects,” the “substantial evidence generated by the staff’s thorough investigation, especially the parties’ own ordinary-course documents” raise concerns that this deal may substantially lessen competition.⁷

- c. On January 31, 2025, the Southern District of Texas denied the FTC’s motion for a preliminary injunction, clearing the way for the deal to close.

⁷ Microsoft Word - Tempur-Sealy-Mattress Firm--Statement of Commissioner Holyoak 7.02.24 FINAL

4. Chevron / Hess – September 30, 2024

- a. In another party-line vote, the Democrat majority voted to accept a consent order regarding Chevron’s acquisition of Hess that prohibited Chevron from appointing Hess CEO John B. Hess to its Board of Directors.
- b. Commissioner Holyoak’s dissenting statement discussed the politicization of the oil and gas mergers in 2023. The statement notes that “no legitimate and factually supported theory of harm existed for the Commission’s Majority to execute the bidding of the political left” in including that prohibition on board appointment.
- c. The final order was issued on January 17, 2025.⁸
- d. On April 11, 2025, FTC announced that it is seeking public comment on the parties’ request to modify the final order.⁹

Commissioner Holyoak has also participated in Commission actions pertaining to a merger challenged before her FTC tenure began:

1. Kroger / Albertsons – February 26, 2024

- a. The FTC brought suit to challenge Kroger’s acquisition of Albertsons, noting the proposed transaction would lead to higher grocery prices and eliminate competition for grocery store workers.¹⁰
- b. Commissioner Holyoak, joined by Commissioner Ferguson, dissented from the FTC’s denial of a continuance for the administrative hearing over concerns about “[t]he burden and inefficiency of running overlapping trials on opposite sides of the country.” The Statement emphasized that “[h]olding a Part 3 administrative hearing before the preliminary injunction hearing is not only irregular, but also may result in wasted resources...”
- c. On December 10, 2024, a federal judge issued a preliminary injunction against the transaction. A state court judge also ruled that the merger violated a Washington state consumer protection law. Albertsons subsequently sued Kroger in Delaware Chancery Court, alleging that Kroger failed to fulfil its obligations under the merger agreement.

2. Enbridge / Spectra Energy – February 16, 2017

- a. On January 22, 2025, the FTC announced that it is seeking public comment on Enbridge’s petition to set aside the consent order finalized in 2017.¹¹
- b. The consent order required Enbridge to establish firewalls to limit its access to information regarding the Discovery pipeline, and board members of the

⁸ [FTC Approves Final Order in Chevron-Hess Deal | Federal Trade Commission](#)

⁹ <https://www.ftc.gov/news-events/news/press-releases/2025/04/ftc-seeks-public-comment-petition-modify-chevron-hess-final-order>

¹⁰ [FTC Challenges Kroger’s Acquisition of Albertsons | Federal Trade Commission](#)

¹¹ [FTC Seeks Public Comments on Enbridge Inc.’s Petition to Set Aside 2017 Order | Federal Trade Commission](#)

Spectra-affiliated companies that hold a 40% share in the Discovery pipeline were required to recuse themselves from votes regarding the pipeline. Enbridge had acquired an indirect interest in the Discovery pipeline (which competes with its own Walker Ridge pipeline) but it exited that partnership in December 2024.¹²

- c. The FTC approved Enbridge's request to modify the final order on April 8, 2025, noting that "the requirements of the final consent order are no longer necessary because Enbridge no longer holds any ownership interest in the Discovery pipeline."¹³

Other Merger-Related Developments

1. Final Premerger Notification Form and HSR Rules

- a. On October 10, 2024, the FTC unanimously approved the final version of the new HSR Act filing form and the HSR rules.¹⁴
- b. In her statement, Commissioner Holyoak expressed support for the "dramatic differences" between the Notice of Proposed Rulemaking and the Final Rule.¹⁵
- c. Chairman Ferguson allowed the new form and rules to go into effect on February 10, 2025, writing on X that "updates were long overdue."¹⁶
- d. At the ABA Antitrust Fall Forum, Commissioner Holyoak noted that she will "analyze the effects of the rule," including looking at the burden it places on parties and whether the information that it requires is assisting the agencies with evaluating transactions. If the rule proves to be overly burdensome, Commissioner Holyoak expressed a willingness to reconsider aspects of it.

2. 2023 Merger Guidelines

- a. On February 18, 2025, Chairman Ferguson announced that the 2023 Merger Guidelines issued by Biden appointees in December 2023¹⁷ would remain in effect, noting in his memorandum to FTC staff that stability and predictability in the merger review process are important for businesses.¹⁸
- b. Speaking at GCR Live: Law Leaders Global 2025 on January 30, 2025, Commissioner Holyoak outlined goals for "a new season at the FTC" under

¹² [FTC Preserves Competition in Merger of Enbridge Inc. and Spectra Energy Corp | Federal Trade Commission](#)

¹³ [FTC Approves Modification of Enbridge Inc. Final Order | Federal Trade Commission](#)

¹⁴ [FTC Finalizes Changes to Premerger Notification Form | Federal Trade Commission](#)

¹⁵ [Statement of Commissioner Melissa Holyoak Regarding Final Premerger Notification Form and the Hart-Scott-Rodino Rules \(ftc.gov\)](#)

¹⁶ [Andrew Ferguson on X: "Today is a big day if you care about stopping monopolization and protecting Americans from anticompetitive mergers. Updated rules are now in effect for businesses when they notify the @FTC of proposed large mergers or acquisitions. The old rules were passed nearly 50 years ago." / X](#)

¹⁷ [Federal Trade Commission and Justice Department Release 2023 Merger Guidelines | Federal Trade Commission](#)

¹⁸ [FTC Chairman Andrew N. Ferguson Announces that the FTC and DOJ's Joint 2023 Merger Guidelines Are in Effect | Federal Trade Commission](#)

Chair Ferguson, explaining that “the merger review process should be improved and made more predictable.”¹⁹

- c. The 2023 Merger Guidelines replace the 2020 Vertical Merger Guidelines and the 2010 Horizontal Merger Guidelines.

3. AI Partnerships and Investments 6(b) Study

- a. On January 17, 2025, FTC “issued a staff report on the corporate partnerships and investments formed between the largest cloud service providers...and two of the most prominent generative AI developers...” The report discusses the implications for competition, including information sharing, access to inputs, and switching costs. It also outlines areas to watch as the industry develops.
- b. Commissioner Holyoak issued a concurring and dissenting statement, joined by Commissioner Ferguson (and also joined his statement), emphasizing that “one aspect of partnerships that may be of future interest is whether business-to-business agreements between such companies may operationalize and incorporate terms and conditions, or design requirements, intended to reshape consumer-facing products or experiences in ways that restrict free speech.”

¹⁹ [January 30, 2025 - Remarks of Commissioner Melissa Holyoak at GCR Live: Law Leaders Global 2025](#)