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ICI Seeks to Inform FTC Discussion on Common Ownership

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Comments describe how asset management operates, review existing literature, and caution against policy measures

Washington, DC; August 20, 2018—The Investment Company Institute (ICI) submitted a comment letter to the Federal Trade Commission (FTC) today to help inform its consideration of the "common ownership hypothesis," i.e., the hypothesis that institutional investors who hold stock of companies in concentrated industries—such as airlines or banks—decrease competition and raise consumer prices, even when their holdings are small. The filing was in response to the FTC's announcement that it would hold hearings on competition and consumer protection in the 21st century and the agency's request for comment on various issues, including "the analysis of acquisitions and holding of a non-controlling ownership interest in competing companies." ICI's submission provides a factual baseline on key elements of the discussion, including how investment advisers and their regulated fund clients operate, to help dispel misrepresentations infusing discussions about the common ownership hypothesis.

"The FTC's request for comment provides an opportunity to set the record straight on the role that investment advisers and regulated funds play in the financial markets, and how they interact with the companies in which they invest," said ICI Chief Economist Sean Collins. "Claims that 'common ownership' by institutional investors decreases competition are based on misunderstandings and misinformation about the asset management industry, as well as unconvincing empirical work."

“A growing body of legal experts, regulators, and academics have warned that policy proposals to address alleged anticompetitive effects associated with common ownership could cause significant harm to millions of investors and to our capital markets at large,” said ICI General Counsel Susan M. Olson, who co-signed the ICI letter with Collins. “We hope the FTC will recognize that such proposals are unwarranted and inappropriate.”

ICI’s submission to the FTC reinforces three main points:

1. **Analysis of Common Ownership Requires an Accurate Understanding of the Asset Management Industry**

   ICI’s comment letter seeks to correct misrepresentations by proponents of the common ownership hypothesis. The letter specifically addresses how the common ownership proponents err in that (i) they conflate asset ownership and asset management, essentially treating an adviser and its clients as one and the same, and (ii) in their search for a mechanism by which advisers could adversely influence competition, they miscast how advisers and regulated funds engage with companies.

   The letter provides a detailed description of the relationship between advisers and clients. It notes the range of investment strategies that a single adviser might pursue on behalf of its diverse clients, belying the assumption that an adviser and its clients take a single, uniform “view” of a stock or industry. The letter also details how advisers engage with portfolio companies on behalf of their clients (including through proxy voting), and the regulation that guides and circumscribes this activity. See page 3 of ICI’s letter for more on these issues.

2. **Research Linking Common Ownership to Decreased Competition Is Hotly Disputed**

   ICI’s submission provides a description of the initial papers that claim common ownership decreases competition in the banking and airline industries, as well as other papers that search for a mechanism that causes the supposed reduced competition. The Institute’s letter also details several recent papers that argue the airline and banking papers fail to prove that common ownership causes higher prices and make unsupported assumptions about the influence that minority shareholders have on corporate managers. Indeed, some of the literature reviewed in ICI’s letter questions whether advisers and their clients have the incentives or a mechanism to control the competitive strategy of portfolio companies. For more detail on this work, please see page 11 of ICI’s letter.

3. **Policy Measures Based on the Common Ownership Hypothesis Would Harm Investors, Companies, and the Economy, and Are Inappropriate**

   The final section of ICI’s letter describes recent academic literature arguing that it would be inappropriate to consider policy measures that would purport to address common ownership. This literature warns that adopting measures to curtail common ownership could have harmful consequences, such as increasing the cost of investing—particularly for retirement savers—and eroding the quality of corporate governance.

As a result, the Institute believes the FTC and other authorities should not consider measures designed to restrict or limit common ownership or restrict institutional investors' ability to vote client shares in competing firms. Even if policymakers were convinced that common ownership softens competition, they would need to establish that measures to reduce common ownership would produce benefits that outweigh their significant costs. ICI cautions that forging ahead without a sound basis would impose costs on American investors and businesses without providing any certain benefit to consumers. For more detail on warnings against measures to address common ownership, see page 22 of ICI's letter.

Background on Common Ownership

The issue focuses on academic papers that allege common ownership by institutional investors of companies in concentrated industries—such as airlines or banks—decreases competition and raises consumer prices, even when all common holdings are small and do not confer control in those companies. This research depicts investment advisers that advise regulated funds as major shareholders in concentrated industries.
