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FTC Focus: Ad Deal Signals Viewpoint Suppression Is A Risk

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This article is part of a monthly column that considers the significance of recent Federal Trade Commission announcements about antitrust issues. This installment considers how the FTC's recent advertising agency settlement connects Section 1 doctrine with broader concerns over viewpoint suppression, and offers lessons for coordinated industry initiatives through trade associations addressing socially or politically sensitive subject matter.

The Federal Trade Commission, joined by a coalition of eight state attorneys general, has resolved a sweeping antitrust action against three of the country's largest advertising agency holding companies — WPP, Publicis and Dentsu — over allegations that the firms colluded to impose uniform brand safety standards across the digital advertising ecosystem. The FTC framed the action as restoring competition in both in the market for digital ad-buying services and in the digital news ecosystem.[1]

The case is notable both for its industry significance, as the targeted agencies — including three alleged co-conspirators Omnicom, Interpublic and Havas North America — collectively control more than $81 billion in U.S. ad-buying power, and for weaving traditional Section 1 horizontal conspiracy theory together with concerns about viewpoint suppression.

The states that signed on to the case are Florida, Indiana, Iowa, Montana, Nebraska, Texas, Utah and West Virginia.

The settlements also contain unusually prescriptive injunctive terms, including prohibitions tied to political or ideological viewpoints and diversity, equity and inclusion-based criteria.

The Alleged Conspiracy: Brand Safety as a Vehicle for Coordination

According to the April 15 complaint filed in the U.S. District Court for the Northern District of Texas, beginning in 2018 the Big Six agreed to adopt common brand safety standards rather than competing on differentiated approaches to inventory exclusion. The agencies operated through two trade association vehicles: the Advertiser Protection Bureau within the American Association of Advertising Agencies, formed in 2018, and the Global Alliance for Responsible Media, established in 2019.

According to the complaint, through these vehicles, the agencies promulgated a "brand safety floor" and "brand suitability framework," defining categories of content deemed "not appropriate for any advertising support." Initial categories such as "online piracy" and "spam or harmful content" were uncontroversial, but the alleged conspiracy expanded over time to encompass "debated sensitive social issues" and ultimately "misinformation," added as a new floor category in June 2022.

The complaint quotes candid contemporaneous statements, including an American Association of Advertising Agencies vice president who isn't named in the complaint, and who declared that when "it comes to brand and consumer safety, media agencies have to put competition aside," and an advertising executive who described the Global Alliance for Responsible Media as a place where agencies check "their competitive relationships at the door."

The FTC charged the conduct as both a Section 1 violation and an unfair method of competition under Section 5 of the FTC Act. Even though Global Alliance dissolved in August 2024 in the wake of a House Judiciary Committee investigation, the FTC alleged that the conspiracy could easily recur, pointing to communications among trade association executives in late 2024 about waiting "until the dust settles after the election to see where the political chips fall."

The Consent Orders: Substantive Prohibitions and Structural Remedies

The three stipulated final orders, entered the same day the complaint was filed on April 15, are materially identical across the agencies and were entered without any admission of liability. Several features warrant attention.

First, the orders define "covered bases" expansively. The defined term sweeps in (1) political or ideological viewpoints, including viewpoints about whether information is misinformation, disinformation, or bias; (2) adherence to journalistic standards or ethics established by a third party; and (3) commitment or adherence to DEI efforts such as diverse ownership or casting.

Fraudulent content is carved out. The inclusion of DEI-based criteria, absent from the complaint's narrative, signals that the agency views third-party DEI rating systems as potential vehicles for the same coordinated demonetization conduct targeted here.

Second, the orders impose two distinct categories of conduct prohibitions. They prohibit agreements with other sellers of media buying services to "prohibit, restrict, limit, or impede" media buying business with publishers based on news and political or social commentary content.

Separately, they prohibit agreements with any third party that direct, refuse to direct, or decline to deal with advertisers based on covered bases, and bar reliance on exclusion lists, inclusion lists, or other means of differentiating between publishers on those bases.

Third, the orders contain a client-direction carveout. Lists developed at the express direction of an advertiser, even if based on covered bases, are permitted, but the agencies cannot offer such a list to other clients or solicit third parties to do so on their behalf. This preserves space for individual brand preferences while foreclosing coordination through shared lists or vendors.

Finally, the orders impose a five-year monitorship. They also require annual compliance reports, document retention, FTC access rights and prior notice of organizational changes. The orders terminate 10 years after entry.

Key Takeaways for Companies and Antitrust Practitioners

This action carries several lessons for businesses navigating coordinated industry initiatives, particularly those organized through trade associations and addressing socially or politically sensitive subject matter.

Trade associations and forums with multiple stakeholders may present antitrust risk.

The FTC's theory rested heavily on contemporaneous communications generated within the American Association of Advertising Agencies and Global Alliance working groups, including statements that the agencies should "speak as a single entity" and that brand safety discussions were governed by "Fight Club" secrecy.

Internal correspondence describing trade association work as a forum to "collaborate not compete" formed the evidentiary backbone of the complaint. Companies participating in industry standard initiatives should ensure that competitively sensitive choices remain unilateral and that association activity is bounded by counsel-vetted antitrust guidelines.

Brand safety and other quality-based dimensions can be antitrust-relevant.

The complaint emphasizes that, prior to the alleged conspiracy, agencies competed on differentiated brand safety scorecards and approaches and that this dimension of competition was suppressed by collective adoption of a uniform floor. The case is an important reminder that Section 1 breaches nonprice coordination affecting quality, service or product attributes — not just price or output.

The orders' scope reflects the current FTC's substantive priorities.

By defining the covered bases to include not only politically charged content judgments but also DEI-related criteria and third-party journalistic standards adherence, the orders signal where the commission's attention is likely to be directed in adjacent industries. Companies that rely on third-party rating systems evaluating counterparties on viewpoint, ideology or DEI grounds should be aware of the risk of FTC characterization as facilitating concerted refusals to deal.

Be mindful of ability and willingness to recur.

The FTC pled that, even after the Global Alliance dissolved in 2024, industry actors continued to discuss whether and when to regroup depending on political conditions. Disbanding an initiative is unlikely, on its own, to extinguish enforcement risk if internal communications suggest the conduct could resume.

Documents will continue to drive enforcement outcomes.

Many of the most damaging passages quoted in the complaint were ordinary internal emails, panel prep notes or presentation slides. Antitrust compliance training emphasizes careful drafting remains essential.

Looking Ahead

This case illustrates how the FTC under Chairman Andrew Ferguson is using traditional Section 1 doctrine to address conduct that intersects with the agency's broader concerns about viewpoint suppression and the operation of the digital information ecosystem. The same fact pattern exists across sectors, from financial services to insurance to technology: for competitors coordinating through a trade association to align on a responsible or ethical standard that effectively forecloses certain counterparties.

Companies in such initiatives should expect continued FTC scrutiny and treat the covered bases framework as a window into the criteria the agency views as presumptively suspect when applied collectively.

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[1] https://www.ftc.gov/news-events/news/press-releases/2026/04/ftc-takes-action-restore-competition-digital-advertising-ecosystem.

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