Statement of
Chairman Joseph J. Simons and Commissioner Noah Joshua Phillips
Concerning the Rent-to-Own Swaps Matter
FTC File No. 191-0074

February 21, 2020

Today, the Commission votes to place a proposed settlement out for public comment to settle charges that three rent-to-own companies—Buddy's, Aaron's, and Rent-A-Center—entered into anticompetitive reciprocal purchase agreements, which in short hand have been referred to as store "swap" agreements. After a nearly ten-month investigation, agency staff identified a series of swap agreements that allegedly had the effect of allocating geographic markets among rent-to-own store competitors. Staff also found that these swap agreements contained non-compete provisions that prohibited the party transferring the contracts from reentering the market for three years. The proposed settlement would, if finalized, (i) prohibit these companies from swapping any more stores, (ii) abrogate related non-compete agreements among the companies, freeing them to compete more aggressively, and (iii) ban any individual associated with either Buddy's or Aaron's from serving on the board of directors of the other company. We believe this relief, which is tailored to both the nature of the challenged conduct and the governing law, would remedy the legal violation and prevent its recurrence.

Commissioner Chopra argues that proposed settlements in this matter are inadequate. We disagree. The settlements fully resolve the competitive concerns identified by staff and impose a significant margin of "fencing-in" relief.[1] A few points merit comment:

- Although staff only found a few swaps that they alleged were anticompetitive, the Commission's settlements bar the parties from entering into *all* such swap agreements among the three largest rent-to-own companies in the United States.[2] This outcome saves the agency resources that would be required to examine each individual future swap agreement to determine its competitive intent and effect.

- Because we only have evidence that a few swap agreements were anticompetitive, notifying all customers and employees affected by any swap agreement would be over-inclusive because a majority of those notified likely would not have been affected by any anticompetitive conduct.

- Unlike situations involving ongoing safety concerns, ongoing health concerns, hidden lack of performance, exposure to recurring charges, and preventing further dissemination of deceptive claims, where notice works to protect consumers, notice here would not

[1] Fencing-in relief bars a defendant from conduct beyond that which is alleged or found to be unlawful. The purpose of such relief is prophylactic, to reduce the risk that the defendant will violate the law going forward.
[2] Notably, the swap agreements were not of a type that so obviously raised concerns that they were hidden. Aaron's listed store swaps in multiple SEC filings and a press release. *See* http://investor.aarons.com/node/17201/html; https://www.prnewswire.com/news-releases/aarons-inc-reports-second-quarter-2015-results-300118252.html; https://sec.report/Document/0000706688-15-000156/.

protect consumers from any further harm. The settlement, which bans the parties from entering into future swap agreements, ensures that customers and employees suffer no further harm from this conduct. As a result, we believe publicizing the settlement and putting it out for public comment is sufficient notice to the public.

- Although Brian Kahn, the Managing Partner of Vintage Capital Management, the private equity firm that owns Buddy's, sat on Aaron's Board of Directors, that board interlock ended four years ago when Mr. Kahn stepped down from the Aaron's board. As a result, we do not believe adding a count under Section 8 of the Clayton Act, which would typically require the offending parties to end the interlock, adds anything to the settlement. Nor do we believe a Section 5 count alleging the same fact pattern is warranted.

As Commissioner Chopra notes, many customers of rent-to-own stores are among those least able to defend themselves against anticompetitive and illegal commercial practices. That is why the Commission has a long history of addressing harmful practices in this industry.[3] The Commission continues to be aggressive in rooting out anticompetitive conduct, and it will impose remedies where necessary to prevent future anticompetitive conduct and redress harms. We think the Commission's proposed orders strike the right balance by barring potentially anticompetitive conduct and conserving the Commission's resources to investigate other conduct.

[3] *See e.g., In re Aaron's Inc.*, Docket No. C-4442 (March 11, 2014) (prohibiting use of surreptitious tracking software on computers rented by RTO retail chain); James M. Lacko, Signe-Mary McKernan & Manoj Hastak, *Survey of Rent-to-Own Customers: Fed. Trade Comm'n Bureau of Econ. Staff Report* (April 2000), *available at* http://www.ftc.gov/reports/renttoown/renttoownr.pdf; *Rent-to-Own Transactions, Before the Subcomm. on Fin. Inst. and Consumer Credit, Comm. on Fin. Serv.* (July 26, 2011) (prepared statement of the Fed. Trade Comm'n), *available at* https://www.ftc.gov/public-statements/2011/07/prepared-statement-federal-trade-commission-rent-own-transactions; Fed. Trade Comm'n, *Rent-to-Own: Costly Convenience* (March 2015), https://www.consumer.ftc.gov/articles/0524-rent-own-costly-convenience.