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**Opening Statement of
FTC Commissioner Rohit Chopra***

**As Prepared for Delivery
Before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Antitrust, Commercial, and Administrative Law**

***Hearing on Online Platforms and Market Power, Part 3:
The Role of Data and Privacy in Competition***

October 18, 2019

Chairman Cicilline, Ranking Member Sensenbrenner, and Members of the Subcommittee, thank you for holding this hearing. Today's topic could not be more important or timely as it seems almost daily we learn of problems stemming from lack of competition. The future of our economy and democracy will be determined by our ability to restore "free and unfettered competition as the rule of trade."

To this end, we need to focus on four ways companies are undercutting competition: concentration, conflicts of interest, contracts, and capture. Market power is concentrated with a few giants in nearly every industry thanks to decades of mergers, acquisitions, and roll ups. Conflicts of interest allow these dominant firms to rig the market in their favor at the expense of upstarts and companies that fairly compete. One-sided take-it-or-leave-it contracts and terms of service impose self-serving regulations on consumers and businesses. And all too often, the government is too captured by dominant incumbents that used their power to dictate their own preferred policies.

Competition in the tech market is structured around data, a valuable asset with unique economic features. Our personal data is powering the profits and dominance of tech companies that offer basic services like email, search, or photo sharing that are not truly free. The unique features and value of data should shape our thinking about market definitions, barriers to entry, and other anticompetitive abuses.

Fortunately, many of our international colleagues are leading the way forward. Reports from regulators in Australia, the United Kingdom, and the European Union are must-reads for everyone concerned about the future of our digital economy.

* These remarks represent my own views and not necessarily those of the Commission or any other individual Commissioner.

In the United States, our efforts are a work in progress. Last month, the FTC chairman and staff announced the next steps forward following the hearings on competition. I agree that we need to take a fresh look at our policies and guidance. As we do, it is important that any assessment begin with a rigorous review of quantitative market data and an analysis of the financial incentives driving market-distorting behavior. Since joining the commission, I have argued that the FTC should be using our authority under Section 6(b) to get the data we need to effectively police these markets and report our findings to the public. We have not yet launched any of these studies, but I hope we will.

When it comes to enforcement, I am more optimistic, now that scores of states attorneys general from both sides of the aisle are teaming up to investigate anticompetitive conduct in our digital economy. In this moment, it is all hands on deck, and I stay in constant communication with them. Decades ago, state AGs played a pivotal role in ending Microsoft's chokehold over the future of the internet. Without that action, there would likely be no Google or Facebook or Amazon.

While the FTC's recent settlements with Facebook and Google's YouTube included fines that made for great headlines, they did little to fix the core problems that fueled these companies' data abuses. Big fines are not big penalties for the world's biggest companies. As we have seen time and again, when a company can simply pay a fine from its ill-gotten gains, this isn't a penalty – this is an incentive.

As Congress, federal antitrust enforcers, and state attorneys general pursue their investigations, we will need to pursue remedies that reduce concentration, eliminate conflicts of interest, rescind abusive contract terms, and limit capture. For example, recent scholarship has revealed that antitrust actions that separated lines of business, required interoperability of standards, or ordered more patents available for public use all led to massive innovation and economic growth. These are useful tools in the toolbox for policymakers and enforcers to consider when looking to remedy *and* prevent harm.

In conclusion, while some believe that lax enforcement and absentee government are the ingredients of innovation, history teaches us that without a vigilant and active government promoting competition, markets cannot thrive. Sometimes that means providing corporations with benefits, like limited liability, licenses, contract enforceability, intellectual property, and other business opportunities. At the same time, free and fair markets simply won't work without meaningful consequences for lawbreakers, including the loss of some of these generous benefits provided by the public. Inaction by government is a price we simply cannot afford to pay.

Thank you and I look forward to your questions.