FTC Enforcers Summit 2024 | April 8, 2024

Speaker 1:

Before we get started today with our substantive program, I need to review some administrative details for you all. Please be sure to silence any mobile phones and electronic devices. We'll note that if you leave the Constitution Center Building for any reason during the summit, you will have to go back through security screening again. Most of you received a lanyard with a plastic FTC event security badge. We reuse these, so when you leave for the day, please return your badge to security. In the event of an emergency and you need to leave conference center but remain in the building, follow the instructions provided over the building PA system. If an emergency occurs that requires the evacuation of the building, an alarm will sound. Everyone should leave the building through the main Seventh Street exit. After leaving the building, turn left and proceed down Seventh Street and across E Street to the FTC emergency assembly area. Remain in the assembly area until instructed to return to the building.

If you notice any suspicious activity, please do alert building security. This summit will be photographed, webcast, and recorded. Please be advised that by participating in the summit you are agreeing that your image and anything you say or submit may be posted indefinitely at ftc.gov or on one of the Commission's publicly available social media sites. Restaurants are located in the hallway just outside the conference room. And while we will be providing food during the event, there is also a cafeteria located near the metro entrance that is open until 1:00 P.M. But please do not bring food or drinks into the auditorium except for water. Thank you. And now I am delighted to introduce FTC Commissioner Slaughter.

Speaker 2:

Good morning, everyone. Welcome to the 2024 Enforcers Summit. I want to extend an especially warm welcome to our federal partners today who join us and our international and state enforcement colleagues for the third annual convening of this event. I'm also especially pleased to note that the FTC is now operating with a full commission, and today we will be joined by the FTC's two newest commissioners, Commissioner Melissa Holyoak and Commissioner Andrew Ferguson. I know the staff and my fellow commissioners join me in extending a really warm welcome to Commissioners Holyoak and Ferguson. We very much look forward to working with them, learning from them, and forging common ground. I also want to pass on Chair Khan's regrets that she is unable to join us in person. She's celebrating Eid with her family.

Together with our sister agency, the antitrust Division, we established this summit as a forum for enforcers to discuss shared challenges and to learn from one another. As a greater number of countries have developed and built out their competition regimes, we now have a greater set of experiences and a wider body of expertise that can inform us. This means not only partnership internationally among competition agencies, but also intranational coordination to broaden the agencies with whom we share our important work. A prime motivation in hosting this summit is to learn from the valuable experiences of our counterparts, both from the tremendous work being done overseas and the vanguard work our state attorneys general are doing bringing innovative lawsuits to challenge unlawful practices.

Now, I'm from New York City, and one thing you can always count on New Yorkers for is to be direct. So I would like to take a moment to address head-on the idea that there is something somehow improper about US government agencies working constructively and collaboratively with our partner enforcers in the states and in foreign governments. Let's start with some fundamental principles. First, every government has the right and the responsibility to target illegal conduct that violates the laws of its jurisdiction. That includes US agencies enforcing US law against foreign enterprises that operate within our borders, and for example, EU agencies enforcing EU law against foreign, including US, enterprises that operate within their borders. Those laws are different, and we are, of course, each bound by the parameters of our own laws.

Second, it is in the interest of both nation states and their commercial markets for there to be consistency and harmony in our legal regimes. It is not good for international business enterprises to deal with contradictory legal systems in different parts of the globe. That creates uncertainty, compliance challenges, and myriad layers of complexity. So given these principles, what to make of the various allegations that US officials have been somehow nefariously colluding with European officials to "punish" US companies? I find the entire allegation rather confusing. As my colleague Maria Coppola, Director of our Office of International Affairs, has extensively documented, the push for international cooperation came primarily from the US legal and business community. The idea that today foreign law enforcers should grant a special exemption to large multinational US-based businesses that operate in their markets is almost as absurd as the idea that US law enforcers should somehow exempt US-based companies from law enforcement in order to protect our national interests.

Our obligation is the same as that of our international partners, to enforce the law as written without fear or favor. That is what I am proud to have done at the FTC, and that is what I am proud for all of us to continue to do. The counter-narrative is that we, and by extension our foreign counterparts, should be protecting national champions. This is an idea I reject entirely. But that is not because I want foreign-owned enterprises dominating US markets. To the contrary, I envision a universe of vibrant competition. Competition pushes companies to solve problems, innovate, and provide great products. Competition pushes companies to care about their reputation and respond when products go awry.

Our national security is better protected in a resilient market made up of multiple players. And it would be wonderful if US policy supported the proliferation of multiple competitive domestic players. But I guarantee we will suffer if we try to immunize US companies from compliance with the law because we want to protect a national champion. I used to work in the national security space and early on I learned an axiom that stuck with me. If you have two, you have one. If you have one, you have none. National security experts understand the benefit of resiliency, and as competition professionals, we should all understand it as well.

So this morning, in conversation and in partnership, we will focus on two topics. The first is a whole-of-government approach to competition policy. We are tremendously fortunate to have an all-star cast with us today, Secretary Vilsack, Ambassador Tai, Chairs Gensler and Obermann and Director Chopra. We are so fortunate to have you with us and to be able to showcase for our counterparts how agencies across the federal government are taking aggressive steps to bolster competition that is hobbled by consolidation, concentration, and other roadblocks, resulting in higher prices, lower wages, declining entrepreneurship, growing inequality, and a less vibrant democracy.

But even as we draw from outside the FTC to discuss the whole-of-government approach to competition, I encourage everyone not to sleep on the important whole-of-agency approach that is happening within the FTC. When I first arrived at the agency six years ago, I was surprised by how the FTC had evolved to treat its two missions: competition and consumer protection, as siloed from one another. This never made sense to me because fundamentally I believe consumer protection law is an important competition guardrail. Consumer protection law, at its best ensures that honest businesses are competing fairly to provide the best products, services, and innovation to the market without gaining a competitive edge through deception or unfairness. To that end, our consumer protection and competition missions work hand in hand with each other, and I'm extremely proud of the ways in which the agency has worked to develop this cross-mission thinking over the time I've been here and especially in the last few years.

The second topic we will tackle this morning is one to which probably every person in this room can relate, both as an enforcer but also as a human who exists in the world. Across the US and throughout the globe, high and rising food prices are a deep concern. Widespread, substantial, and sustained shortages in 2020 contributed to the situation in which we find ourselves today. There are real questions as to whether the high prices of the grocery store are not simply mirroring higher costs but rather reflect higher profits for those retailers. Marked by brittle supply chains, there is also substantial evidence that the food supply chain has become increasingly concentrated over the last several decades and that this concentration may be contributing to the concerning trend in profit margins.

Both the FTC and DOJ, often in cooperation with state AGs and other federal agencies, have prioritized addressing anti-competitive conduct and mergers occurring up and down the food supply chain, including cases and investigations involving pesticide manufacturers, food processors, food distributors, restaurants and supermarkets. Today's discussion will allow us to share experiences both about how we are responding to food price inflation as well as broader enforcement and advocacy activities across the food supply chain.

The food supply chain discussion reflects an important and live conversation throughout competition policy circles. How do we redirect markets from a focus on short-term profits and prices to long-term durability? This is not just about food. This concept is echoed throughout our economy. The technological innovations that made possible just-in-time shipping, for example, also created vulnerabilities that imperil us not only in commercial markets but also in our national security. As we think about building economic policy going forward, how can we balance providing the best value to market participants in the short term with ensuring those markets continue to persist in the long term in the face of the kinds of previously unimaginable world events we have seen in recent years?

If we have learned anything, it is that short-term only is a short-sighted approach. The Enforcers Summit today is being live-streamed publicly, providing the public open access and insight into these discussions among enforcers. This afternoon, international and state competition enforcers from nearly 25 jurisdictions and 30 states will continue these discussions in closed door sessions. In addition to the topics raised in this morning's plenary sessions, enforcers will share experiences, strategies, and successes in our efforts to address healthcare costs, better detect cartels, and foster competition in the AI stack. The day we'll close with a candid discussion among enforcers on some of the challenges they may be facing, including undertaking legal reforms, horizon scanning, improving competition advocacy, and handling resource constraints.

Today's summit is an all-hands-on-deck effort to promote fair competition across sectors and invites close collaboration among enforcers and among regulators and antitrust enforcers. I'd like to particularly recognize the work of the FDC and DOJ staff and pulling today's summit together, especially Cynthia Lagdameo and Patty Brink. As we refocus on using the full anti-monopoly toolkit available to enforcers, we are eager to identify ways to further strengthen collaboration and use our tools in complementary ways, including to bolster deterrence. So again, we're so excited to have our enforcement partners here today and really looking forward to today's discussion. With that, I will turn it over to a pre-recorded video of Chair Khan and AAG Kanter. Thank you.

Khan:

Hello, everybody. I'm so sorry that I'm not able to join the summit this year in person, but I'm so grateful to have the chance to at least virtually share what's been top of mind for us at the Federal Trade Commission and the Antitrust Division at the Justice Department. The Enforcer Summit has been such an invaluable forum for federal, state, and international enforcers to come together and learn from one another. And since last year, I know we've all been hard at work to deliver on our respective mandates, so there's an enormous amount to discuss.

I'm so glad to be here with my partner and friend, Assistant Attorney General Kanter. So let's kick it off by diving into the 2023 Merger Guidelines, which were just a true Herculean effort by the exceptional teams at DOJ and FTC. So why don't you kick it off and share with us just how the guidelines reinvigorate the rule of law and address blind spots.

Jonathan Kanter:

Thank you so much, Chair Khan, and it's really a pleasure to be with you and to be here with so many great enforcers. Although your voice is a little scratchy, your words are mighty, so we are thrilled, Chair Khan, that we can have this conversation today. And we are equally thrilled to have worked with our partners at the FTC on the 2023 Merger Guidelines. We are really proud of the work product, and we think it embodies some really important and significant principles.

First and foremost, the Merger Guidelines start with a really important question of how does competition work in this particular market when we evaluate a merger and making sure that we are protecting competition, the competitive process because it results in so many wonderful benefits for society in whether that's a better wage for a worker or a lower price for a consumer, more opportunity for information to be shared among citizens, which is so critical to the political discourse.

And so it's an important first question. We talk about in the Merger Guidelines that we develop how antitrust in the United States Merger Review is a risk assessment. And so what we're trying to do is we're trying to assess the likelihood that the merger may be substantially less in competition or tend to create a monopoly and really focusing on that risk assessment. Other important principles in the Merger Guidelines that we put forward in this most recent draft is fidelity of the law. Ultimately we're law enforcers, both the FTC and the DOJ enforce the Clayton Act to make sure that we are preventing anti-competitive and illegal mergers. That process has to be driven by the law itself, and that includes the words of Congress and the statute, but it also includes relevant and binding Supreme Court precedent. We talk specifically and refer specifically to that precedent, including giant cases that remain binding precedent such as Brown Shoe and Philadelphia National Bank.

Finally, I think it's a way of introduction. The updated guidelines really think a lot about making sure that we're meeting market realities. We've learned so much about how markets function, and markets have changed so considerably even in the last 15 or 20 years, and making sure that we are thinking about areas such as platform, economics, monopsony, zero price markets, all of these important disciplines have found their way into animating how we approach the guidelines. But I would be really interested, Chair Khan in understanding your view on particularly areas where you feel like the guidelines may have filled important gaps or added additions that are critical to understanding markets as we face them today.

Khan:

Yeah, I mean as you noted, this was just an effort whose North Star was both fidelity to the law and market realities. And on both of those fronts, I think the new document really equips us to make sure we're fully addressing mergers where they risk to substantially lessen competition or create a monopoly, and really protect Americans from those harms.

Two areas that are really key in terms of areas the previous guidelines had not explicitly talked about are labor markets and acquisitions involving platforms. And so on the labor market front, the antitrust laws protect everybody. That includes consumers, but it also includes workers. And so we wanted to make sure that we were being very explicit in the guidelines that, A, we will absolutely assess and analyze labor markets and try to understand are mergers at risk of reducing competition for workers in ways that will harm those workers. There are different ways that mergers can do that. It can increase the merging firm's power to cut or freeze pay, slash benefits, or degrade working conditions. We also got comments from workers and worker organizations noting that even beyond pay there are factors that really make a difference to workers' lives like whether they're going to have predictable schedules and examples of how previous mergers gave companies power in ways that upended people's stability of scheduling.

The FTC also recently filed a lawsuit to block Kroger's acquisition of Albertsons, the largest proposed supermarket merger in US history. That case is currently in administrative adjudication, so I'm limited in what I can say, but the complaint itself alleges both that the merger could lead to higher grocery prices and substantially lessen competition in ways that'll harm consumers, but also that it would harm workers and unionized workers in particular.

Second, the guidelines lay out very clearly how enforcers will assess acquisitions involving platforms, which is an area, as AAG Kanter noted, that has just been an enormous one of learning and experience. And so the guidelines note, for example, that in platform markets and in digital markets oftentimes the biggest threats and most significant threats to incumbent platforms could come not from direct replicas of those platforms, but from adjacent markets, from markets that are adjacent to and sometimes rely on the incumbent platforms. And so we need to be really multi-dimensional in how we're understanding the competition implications. We know, for example, that a merger may be lessening competition on the platform, for the platform, or to ultimately replace the platform. And those are all dynamics that we need to be keeping in mind.

We also talk about if a platform is able to merge with a company that would result in a lessening of competition, specific ways that that could harm the public and harm the market. And just one example here is the FTC sued to block IQVIA, which was the world's largest healthcare data provider, from acquiring Propel Media. The complaint noted that the deal would eliminate not just head-to-head competition between the companies, but that it also would've enabled IQVIA to degrade rivals' access to key data sets, which is a key mechanism and lever that incumbent platforms can use to disadvantage or cut off or degrade competitors.

The last blind spot I'll mention briefly is how the guidelines address serial acquisitions, which is new for the guidelines. And so across sectors we've seen how firms have deployed roll-up strategies to incrementally consolidate a market. The guidelines clarified that enforcers can assess an overall pattern of serial acquisitions or examine it as part of an industry trend rather than just having to look at each deal in silo. One really exciting part of the process, I know AAG Kanter for both of us, was just the uniquely wide breadth of public engagement that we received, thousands of public comments, listening sessions that you and I did together. I would love to hear what really stood out for you during that process.

Jonathan Kanter:

Thanks so much. Yes, the process was extraordinarily educational and robust. We not only did what we did in the past, which is make sure that we hear from scholars and antitrust law practitioners, but we expanded outside the beltway. We opened our doors both literally and figuratively to people who are affected on a daily basis by harm to competition and by concentration of corporate power. And so we heard from farmers, we heard from healthcare workers, we heard from people who are trying to start businesses and cannot do so because they find their way to market blocked by concentrated power.

The willingness of people to speak up in their own names, in their own voices was something that we rarely see or have rarely seen to date in the work we do in antitrust, but something now that we're seeing almost on a daily basis. It's really important because what it does is it explains how the work we do affects people, how it affects their daily lives, how it affects opportunities for upward mobility, which is so important, how it affects the flow of information, how it affects the ability of a farmer in a rural community to build a way of life or sustain a way of life that has, for example, been the reality of a family farmer for generations.

And so what struck me was the sophistication and the willingness of the public more broadly to engage. I have to say that as we crafted our merger guidelines, those comments, those values, those observations were top of mind for all of us and I think played an enormous role in figuring out the direction we were going to go, because we have to make sure that we are not just looking at things in a laboratory. We have to make sure that we're not thinking about competition in the textbook sense, but we have to understand how the decisions that we make regarding law enforcement have real effects on real people.

I'd be curious to your reactions to some of the public responses and some of the listening sessions and some of the comments that we got from people, particularly those that we don't normally hear from.

Khan:

Yeah, I mean, I was just similarly blown away by the level of engagement across sectors and really some common themes that emerged showing and just underscoring the point that when illegal mergers are allowed to go through, people really hurt. There's a lot of suffering out there, a lot of challenges that people are facing in their day-to-day lives because of consolidation that hasn't always been checked, especially on the front end when we're reviewing mergers. And so making sure that we get it absolutely right is critical to make sure that people are able to afford the products that they need and make a stable living and live in communities that are not hollowed out by far away absentee firms, but are actually thriving.

And there were just so much commonality we heard be it from healthcare workers, be it from artists and musicians, be it from farmers as you noted. That whole set of comments just were incredibly important in informing us and I think is part of a broader level of public engagement that both of our agencies have seen over the last couple of years where it's clear that people are really connecting the dots between antitrust, which has sometimes been seen as somewhat arcane, and their own day-to-day lives and how antitrust enforcement can be the difference between whether somebody's driving five miles to go to a hospital or 100 miles, whether somebody's able to easily switch jobs when they have a better opportunity or instead whether they're locked into their employer. And so it just really underscores the enormous responsibility that both of our agencies have to really get it right. I was just so thrilled and pleased of the work of our agencies and landing this document in such a strong place.

I'll just say I've been so blown away by and endlessly inspired by the work coming out of the Antitrust Division. It's just so clear that you and your entire team is fighting every day to vigorously protect the

American people. I'm just curious, I mean, there's so much to choose from, but are there particular wins or successes or projects that you're proud of from this past year?

Jonathan Kanter:

Well, thank you for that. The feeling is most certainly mutual. I will say that it feels like every week or sometimes multiple times a week we have the opportunity to congratulate one another and our teams on another success or victory at our respective agencies. And so it's wonderful to see the hard work of our teams and the important work that we're all doing together paying off. In fact, just this past Friday we had an exciting victory at the DC Circuit, an appellate victory, in a case involving real estate and our efforts to ensure that we are keeping the cost of buying a home down for people throughout our country. And it's such an important area of the economy.

We've seen and I'm so thrilled with the work that our team has done to secure victories from, for example, we won not just one but two airline mergers that we blocked successfully in court after complete trials. Americans throughout the country are concerned about both the price and the quality of air travel. And so the teams did an extraordinary work to block two airline transactions. We blocked the merger of book publishers that would have resulted in labor concerns, monopsony concerns, reducing the amount of money that professional authors can get for their original works. We've taken steps in healthcare. I'm really excited about a criminal resolution which not only resulted in the largest fine ever, over $200 million for a purely domestic cartel, but we also had historic firsts, the first time ever that we're aware of that we were able to successfully result in a breakup, a divestiture of assets in response to a criminal antitrust violation and also $50 million in this instance in free pharmaceuticals for people in need. These are outcomes that are making differences for real people and holding wrongdoers accountable.

Similarly, we had a result involving poultry process plant workers who received over $90 million in direct restitution for harm to competition. We've brought cases and seen success in matters involving even e-sports and e-sports players. We blocked six cases involving criminal labor antitrust violations. I'm also really thrilled with our really extensive work that we've done in our statements of interest and amicus program, a lot of that alongside you and your colleagues at the Federal Trade Commission, including numerous statements of interest and amicus briefs in housing cases involving real estate costs and also some significant work that we've done together to help advocate for enforcement of the law properly with respect to algorithmic collusion, including in areas relating to rental prices. These are issues that affect real people.

I guess I would also add that we've seen an historic rate of anti-competitive mergers being abandoned. It's in areas across the economy, everything from ocean shipping where we successfully stepped in the way and caused the abandonment of two significant mergers, but one just a couple of weeks ago involving lettuce and salad, kitchen table staples that people in this instance spend five to $6 billion a year and where prices would've gone up but for our challenging of the acquisition and forcing it to abandon. We've seen this across so many different parts of our economy, including tech, healthcare, and agriculture. And so I am really, really proud of the work that our team has done. I think it's quite clear that the commission has been firing on all cylinders as well. I'd love to hear about some of the incredible efforts and strides that you've been making over the commission, I'm sure the audience would as well, and some of the significant achievements.

Khan:

Yeah, I mean, one area of focus that continues to be a real priority for us, as it is for you I know, is healthcare given just the life or death stakes of whether people can afford their medicine, afford hospital care, what the quality of that care looks like. So we've really been doubling down on our work in healthcare, and over the last year alone have had really important successes stopping anti-competitive mergers in the pharmaceutical industry and overall making sure that we're really understanding what is the business strategy that's driving some of these pharma mergers, looking beyond just are there direct overlaps and understanding what's happening in the pipeline if these acquisitions go through, are there ways that these incumbents would be able to forestall or thwart competition in the future that would've benefited Americans? So we were really glad to, for the first time in over a decade, have sued to block two separate pharma mergers.

We've also been continuing, as has long been true at the FTC, of scrutinizing hospital mergers. There's a lot of research showing that hospital consolidation has led not just to higher prices for Americans, but also lower quality. And so we've successfully enforced the law and resulted in mergers being halted in states as broad as Rhode Island to Utah to New Jersey to Connecticut. And so that's been really exciting work.

We've also been scrutinizing the role of private equity in healthcare markets since we've just heard an enormous amount of concern, particularly from healthcare workers, about just what some of the effects can be when you have private equity firms entering healthcare markets. Private capital, of course, can be an important source of capital for these markets, but sometimes when you see firms that are focused on short-term outcomes and some of these strip and flip models, that can have a pretty devastating outcome. And so the FTC last year sued a set of companies that we allege had rolled up anesthesiology practices in Texas. We named both the anesthesiology company, but also the private equity partners because we allege that they had systematically bought out the largest anesthesiology providers across the state of Texas and then jacked up prices, resulting in Texas patients and businesses paying millions of dollars more effectively for the same service.

The last thing I'll note is we've been scrutinizing patent abuse in pharmaceuticals and challenged a whole set of bogus patents on medical devices like inhalers and EpiPens, which successfully resulted in several of those companies delisting their patents and recently announcing that they're going to maximize how much Americans are paying out of pocket to just $35, which is going to make a really big difference for people who rely on inhalers to breathe and have been paying anywhere from 500 to $800 a month sometimes just to get an inhaler, even though they've been around for decades. I know that's been a victory that we're all really proud of.

I'll just say I know for both of our agencies, working closely with state-level partners has been crucial. Could you just share a little bit about how DOJ has been approaching these partnerships and doubling down on them?

Jonathan Kanter:

Yeah, that's great. I would just reiterate, in terms of healthcare, I think you and I and our agencies have been quite clear that healthcare and competition in healthcare is often the difference between life and death. It is so important, and we are going to

Jonathan Kanter:

... continue collectively to be vigorous and deliberate in our pursuit of making sure that we are addressing all aspects of the healthcare system, such an important priority. So as our work with State Attorneys General, we have stood up a new state relations unit and I know we have many of our state partners with us here today. And when I first came into this job, I had an opportunity to meet with states and talked about how state enforcement predates federal enforcement. And it is such an important part of the work we do and they are such critical partners. So we've invested and we will continue to invest in building out our state relations capacity and making sure that we are continuing to work alongside. We've seen important cases originate from our state partners and we've even had the opportunity to join them in some of those cases. So it's really, really important.

I will add because we have so many international enforcers with us today as well, that we've done the same thing with our international enforcers. Obviously we are US law enforcement agencies and our obligation is to make sure that we are enforcing US law for the benefit of the US public, but we do live in a global economy and making sure that we have the opportunity to learn from each other and coordinate in ways that allow us to be more efficient and effective in our investigations is something that's really important so we're really pleased. Across in our entire program, including our criminal enforcement program, where we've had the opportunity to coordinate and collaborate as appropriate with our colleagues abroad.

But interestingly, and I think this has been a feature of the administration is that our work has been really impressive at the DOJ and at the FTC to work alongside our state partners and work alongside our international competition enforcement partners. But one of the areas where we've started to do a lot of important work is working with our other federal government partners in a whole of government approach. And I'm just curious to understand a little bit more about how the commission has been able to use that as a force multiplier.

Khan:

So as you know, the executive order that President Biden signed in 2021 was just a remarkable document and very clearly set out that the DOJ and FTC have critical tools to be promoting competition, but we're not the only ones. There's a whole fabric of federal agencies that are either knowingly or sometimes unknowingly shaping competition in markets. So that document was clear that we really need to make sure we're all rowing in the same direction and working closely together. And it's been really terrific to be following through on that and steepening our relationship with other agencies. Just to give a couple of examples, the FTC reviews mergers in the defense industrial space. This is an area that's seen a lot of consolidation over the last couple of decades. Early in my tenure, we reviewed the proposed acquisition by Lockheed of Aerojet. We worked extraordinarily closely with the Defense Department to make sure we were fully understanding how they would be affected, how our military would be affected, how US taxpayers would be affected.

We've also been deepening our relationship with the Department of Labor and the National Relations Board to better protect workers and make labor markets more competitive in practice. That has meant that we're able to share information, conduct cross-training for each agency and partner on investigative efforts within each agency's authority. Lastly, I know both the DOJ and FTC have been working to file comments with other agencies when they're undertaking rulemakings to make sure that we're sharing our perspective about how some of their work could be affecting competition, be it at USDA or FERC or other agencies that are overseeing specific sectors. So that's really been a terrific area of shared cooperation. And I think that's all we have time for today. AAG Kanter, was there anything else you wanted to share?

Jonathan Kanter:

No. Just to say that it's been an extraordinary run and it's been terrific working. We talk about cooperation with the Federal Trade Commission. I've had the privilege of practicing this area for a long time, and I don't think I've ever known a time when the relationship between the Antitrust Division and the FTC has ever been stronger and the collaboration has ever been better. And I'm really thrilled. It is consistent with the whole of government approach. It's consistent with making sure that we are working together, handing love to ensure that we're protecting competition for the benefit of the entire economy and entire US population. So it's been a true pleasure and partnership working with you Chair Khan, working with the agencies and I know our teams have enjoyed really a renewed and wonderful relationship, and I think that only adds to our effectiveness. So thank you on behalf of the Antitrust Division and also we look forward to an exciting year ahead.

Khan:

Couldn't agree more. It's just such an honor to be doing this work alongside you and all of the dedicated professionals at the Antitrust Division.

Jonathan Kanter:

Awesome. So thanks everyone. Thank you Chair Khan, and thanks everyone for being here today and we look forward to an exciting and engaging day of conversation.

Khan:

Thanks so much.

Jonathan Kanter:

Yeah, go for it. Hello again everybody. It's wonderful to see so many familiar faces in the room and certainly I am sure we're joined by many wonderful people and members of our community online. In 2021, President Biden signed an executive order promoting competition in the American economy, which called for a whole of government approach to competition policy. I can say safely that it is the most important and most impactful document regarding competition policy, certainly in my lifetime. And it has generated extraordinary benefits already, but pioneered a whole of government approach to competition policy. One that has not only made a huge impact but has transformed the way we think about competition policy in the United States and has generated an extraordinary gathering of people today. I think for those in the antitrust community to see the extraordinary distinguished panel that we have today speaks volumes.

They all need very little introduction. So I will just introduce them by name and then we'll get right into it because I'm sure everyone here is particularly interested in hearing from them. First to my left is the Secretary of United States, Secretary of Agriculture, Thomas Vilsack. We have Ambassador Katherine Tai of the US Trade Representative. Director of the CFPB, Rohit Chopra, former FTC Commissioner. Chairman of the Securities Exchange Commission, Gary Gensler. And then last, but certainly not least, Chair of the Surface Transportation Board, Martin Oberman. So thank you all for being with us today.

I think it'd be wonderful just to start at the outset and explain to us how you think about competition policy in the context of your agency and your mission. Secretary Vilsack, maybe you can kick us off.

Thomas Vilsack:

Well, I think it's critically important. We've lost 544,970 farms since Bob Bergland, he was Secretary of Agriculture, raised concerns about the consolidation of farm land. And what we've seen over the course of the last 40 years is a consolidation of just about everything connected to agriculture, which means it's very hard for small and mid-sized farming operations to have a shot until this administration came along. We not only have a whole of government opportunity, we've worked very closely with the Department of Justice in a partnership that I think has resulted in fair opportunities for farmers, ranchers and producers and for rural America. But we also see this as a whole of USDA. We've basically patterned that process within USDA.

We've looked at our regulations, we've looked at our investments, and we've also looked at opportunities for partnership. Partners, for example, not only with the Department of Justice and with the other agencies that are represented here today, but also State Attorney General. And an opportunity to essentially work in partnership and provide resources for greater enforcement at the state and local level. So whole of government means quite a bit to us, and we've seen the benefits and the results of it.

Jonathan Kanter:

Wonderful. Ambassador Tai.

Katherine Tai:

So we begin with the tenets of President Biden's vision for the American economy, which is it is an economy that will be strengthened and invigorated by building from the middle out and from the bottom up. And the competition piece of this, obviously there are three main pillars to the Biden economics approach. There's investments in America that we haven't made in a very long time, which we are making right now. There's empowering and educating our workers who are the backbone of our economy. And then the third pillar is competition. We talk about competition policy in policy circles, and I think it's very apparent to us what that means. But I think when we break it down, what it really means is what we're trying to do through all of our economic efforts and all of the economic disciplines is to create more economic opportunities, to democratize economic opportunity.

And for us at USTR, it's really that bottom up, middle out vision that's in opposition to a trickle down approach. And this is particularly important for us at USTR because the trickle down approach has really informed our processes as well as our mindset for the past many decades. Where the assumption was that if you formulated trade policies and executed them in a way that benefited the largest American economic stakeholders, the most well-resourced, the most savvy, that that would naturally be a proxy for the interests of those stakeholders workers and the communities that they work in. And what we've seen over time is the limitation of that trickle-down approach domestically and also internationally. So what that means for us at USTR is both through our process in terms of how we engage with our stakeholders, which stakeholders, we are now trying to bring to the table. Traditionally maybe unseen, underappreciated, underheard stakeholders, to the policies themselves. We were asking the question, how do we create policies? What should those policies look like if they are to benefit a broader set of stakeholders, a set of stakeholders that includes smalls, mediums startups, and individuals.

Jonathan Kanter:

Director Chopra.

Rohit Chopra:

Thank you again for hosting this. It's really great to see a lot of my former FTC colleagues here, as well as those from the international enforcement agencies. I've gotten a chance to note, let me just build on what Secretary Vilsack and Ambassador Tai have said. That I think we're looking at competition now, not just as this thing to the side, but as a core part of how we want to build the economy, and also how we want people to feel they have power in it. I think when I think about our work at the CFPB, competition just feels so fundamental to people's lives. What is the rate they're going to be able to get their mortgage at? How much are they going to have to pay on their credit card? The things that are so much about the monthly bills. And I think we see in so many sectors of the economy that people basically feel bullied or coerced into paying junk fees, into paying much more for something that a competitive market would normally serve.

So we actually at the CFPB have a very clear statutory command from Congress to make sure markets are fair, transparent, and competitive. So we're trying to think of all the ways in which people are spending, tapping, swiping, borrowing, and how can we shift billions and billions of dollars back to them using all sorts of tools. We've really rethought our approach to regulations. We've really rethought how we're looking and diagnosing problems in markets. And at the end of the day, we now see this as a fundamental tenet of how the agency will address its work, I think now and into the future.

Jonathan Kanter:

Thank you. Chair Gensler.

Gary Gensler:

Well, thank you. And I want to thank Chair Khan and Jonathan of course for chairing this, but bringing us all together. Competition's at the core of what we do at the Securities and Exchange Commission. You might say, "Wait, wait, why is that?" Well, look, in the 1930s, we were set up because there was a collapse in trust in our capital markets. And President Roosevelt and Congress worked to make sure we were a disclosure agency that you get the information you need to make an investment decision. And also they addressed integrity. Deeply, there was a problem, deep problems in the capital markets at the time. But actually President Ford 40 years later came back and infused in our statute, not once, not twice, but in 20 different places, competition. And the problem was, and President Ford understood this in the '70s.

The problem was that finance tends towards centralization. And that's been true since antiquity. That's a structural thing about the advantages that come from having centrality in the capital markets where the pricing of financial assets happen. And also at the time in the '70s, by the way, we had fixed commissions and we had a whole problem with the New York Stock Exchange and so forth. So that mandate helps the American public. Our clients are 330 million Americans, the investors, and the issuers, because they're issuing through the mortgage market, they're issuing their student loans ultimately through the capital markets, or they're starting small businesses, or they work for a big business that access the capital markets. So from President Ford's work, interestingly during President Clinton's time in 1996, Congress came back and said, "Every rulemaking we do, every major thing we do, we have to look at efficiency, competition and capital formation. Think about that.

Congress didn't just, not just President Ford, but President Clinton came back and said efficiency in competition. So we're infused with it. We're working for the American public to update competition in the equity market, which by the way is about $50 or 55 trillion in size. That's a stock market. We're doing it in the US Treasury markets. That's how we fund our government. But you want to lower those funding costs. We're doing it in something called private funds, which believe it or not, are larger than the entire banking system. Hedge funds, private equity and so forth. So it's infused right in our mandate because Congress and presidents told us it had to be and we take it seriously.

Jonathan Kanter:

Thank you. Chairman Oberman.

Martin Oberman:

Thank you, Jonathan. First, because I'm going to be retiring soon, I'm entitled to go a little off script, and I think we'd be remiss if we didn't congratulate Chairman Kahn for her brilliant performance on John Stewart...

Jonathan Kanter:

Absolutely.

Martin Oberman:

She was able to condense a lot of what we're all doing up here in very understandable terms. I was very impressed and very jealous. So I have the honor with all due respect of being in the body that regulates the most professional monopolists in the country.

Gary Gensler:

So you weren't going to compete with us?

Martin Oberman:

Yeah. No, I'm way ahead. They've been at it for 200 years ever since we're formed and of course, their abuse in part of the farmers led to the creation of the first administrative agency in the country's history, the Interstate Commerce Commission. We are the successor of course, to that commission. The railroad industry had fallen on hard times by 1980. It was way over-regulated and many railroads had gone into dear bankruptcy. So the Congress passed the famous Staggers Act, which was substantially deregulatory, that also encouraged consolidation. And there was some merit to that. But this pendulum has swung way too far. So when I think about competition, of course, it's the lack of competition in our industry. We've went from between 40 and 70 large railroads, depending on how you count them, to only six railroads now that cover all of the United States and Canada. Which means that for a very significant percentage of rail shippers, they are captive to one railroad.

Sometime in the early 2000s after the last big consolidation, Wall Street had discovered that the railroads had become monopolies or at best duopolies across much of the country and realize that those situations could be exploited. And that's precisely what's happened over the last 10 to 15 years. The railroads have acted like monopolists always act. They have raised prices, cut services, and done this and greatly jacked up profits largely by greatly reducing their workforce. The big railroads have fired about 30% of their workers in the last decade, 45,000 people. Rail service has greatly deteriorated.

Now we're supposed to emphasize competition. It's in our statute. But it's very hard to have competition where the barriers of entry are almost insurmountable. Nobody's going to build a new railroad, so we have to push as much as we can. We don't like to overregulate. The railroads say, "You should let the market determine things." And I say, "Yes, the market is the ideal way to determine things, but for that to happen, you have to have a market." And for most places there aren't any. So those are the issues we confront, and I'll talk a little bit more about the specifics of what we have been accomplishing and what needs to be accomplished. But we should keep in mind 40% of all long-distance freight in this country moves on rail. The economy cannot survive without rail. The average consumer doesn't know about it. They don't buy a carload of grain, they buy a loaf of bread. But the way the railroads handle a carload of grain goes directly to what that loaf of bread costs, and we have to keep an eye on that.

I will say that as a chairman of an independent agency, and Gary, of course you are too, we have a little bit different relationship to the White House's executive order. But the good coincidence for me is that my views on these for competition in the rail industry were totally parallel to what the President was trying to do. So we've been able, I think, to work very much in tandem, and I think this competition council has been a very reinforcing force throughout government. It really helps the momentum inside my agency. I think it helps me in my leadership role to push everybody towards emphasizing improving competition. So it's been a significant event.

Jonathan Kanter:

Thank you. It's truly remarkable hearing all of you. The administration and the whole of government approach is an incredibly coherent and sophisticated way to think about competition policy, and it affects farmers, it affects our equities markets, it affects trade, junk fees, the OG monopolists, the railroads. And it is truly, I think, exceptional to experience what we're hearing from all of you today, which is that this is a common thread. It is a common animating theme that goes into policymaking across our government. Along those lines, and along the lines of what Chairman Oberman was discussing regarding the executive order and the Competition Council, I thought it might be interesting to hear from all of you about your views of the Competition Council, the opportunity to work together with agencies across the government, and how you think it has changed, if at all, your approach and the government's approach to thinking about competition policy. Secretary Vilsack.

Thomas Vilsack:

Well, Jonathan, I think it's created more juice in our efforts, the opportunity to work collaboratively with the Department of Justice on the farmerfairness.gov website, encouraging farmers to let us know when they think there is something going on in the marketplace that isn't quite right. And this has led to the prosecution of several successful opportunities between our two agencies to give farmers a better shake and a better opportunity. An opportunity for us to work with the US Trade and Patent Office. That might seem strange to people, but in the seed business, there's been a consolidation of seed companies and maybe the way in which the patent laws have been used, may have allowed them to essentially expand their power in the marketplace. Now we're working collaboratively with the Patent and Trade Office. So the farmer's voice is being heard when patents are being reviewed. This gives us an opportunity I think to expand significantly the opportunities in this space.

And then I think the Competition Council has actually created competition within the departments and agencies of government. We'd like to maybe do one better than say, our friends over here at the Consumer Finance. We like to maybe have a product of the US label that basically allows folks to understand that appreciate when they're buying something and it says product to the US, it actually means it, that everything was done with that animal. Everything processing, grazing and so forth was all done in the US. So I think it's created this opportunity for a little healthy competition within the council, and it has certainly encouraged us to continue to look for ways in which we can invest in expanding opportunity as well.

Jonathan Kanter:

Wonderful. Ambassador Tai.

Katherine Tai:

Well, what's really interesting is this whole of government approach. I think you see it across the board and it means something a little bit different for each of us, but when you look at it in a whole, it's comprehensive and consistent. From the USTR perspective, I think the really important part of where we plug in is this middle-out bottom-up economic growth model, seeing that it is a guiding principle for our domestic economy. But that it is also a guiding principle for how we engage in international economic relations and policy. That what we are trying to do, the Biden vision is how do we not only build and strengthen our middle class here at home, but how do we do that in partnership with other markets in other countries at the same time. In terms of the consolidation and concentration that we see in our domestic market, that the domestic competition enforcers are taking on so admirably and so clearly.

The international market is marked by similar dynamics of concentration and consolidation that have similar harms for consumers, workers, economic growth models. I think that what is very clear to us is just as in the domestic context, what our anti-monopoly champions are doing is to try to fight for security and liberty. So are we doing that in the international context? If you look at the supply chain challenges that we have today marked by concentration and consolidation on the supply side, the fragilities that we are encountering every single month it feels like, that gives us a lot of inspiration to carry over a lot of the principles from the domestic competition fight into the international context. Similarly, and this is an area where Secretary Vilsack and I worked together quite a bit. We also see the challenges of monopsony, not just monopolies on the supply side, but where you are beholden to consumer consolidation and power.

And in that regard, a lot of what we are doing in partnership with USDA is a concerted push for diversification of export markets for our farmers, and also a championing of not just the big corporate interests in the United States, but the smalls and the mediums, the specialty crop growers, and looking for opportunities to create more export access for them.

Gary Gensler:

It's just my turn now.

Jonathan Kanter:

This, yeah, we have a script, although I promise we will go off script.

Gary Gensler:

I want to do a little hat tip, not just to the president, but also to two individuals that run the council. Brian Deese was the head of the National Economic Council and now Lael Brainard who chair this council. And Brian understood the role of a council sometimes is just convening mechanism. When the White House gets us all together and as Secretary Vilsack said, it creates a little healthy competition. You got to get into a room once every three or five months or so and do the one-page like, what did my cabinet department or SEC or Rohit, accomplish? So there was a little bit of... And Brian and Lael have been good at that little bit of healthy competition amongst the agencies. I'd say that's positive.

Number two is I've learned a lot from my colleagues. I mean, every time Secretary Vilsack or Director Chopra tells us about their doing, I'm saying they are great messaging people too. With all respect, you can't move policy in Washington unless you can explain it to the American public. And Secretary of Vilsack and Rohit would come in and then Brian would give them compliments. And I would think, yeah, I've got to be able to connect with the American public on what we're doing here at the SEC, which is a more technical piece of it. But on the serious stuff of the council, I'd say we've had really lively conversations, whether with the Federal Trade Commission, with other agencies, the Justice Department about competition in the US capital markets which have benefited us. And one topic that we have had somewhat on the sides of the council, but we've talked a lot about is concentration in cloud provision and in artificial intelligence. And before Bruce Reed stood up his AI Council, we were talking about AI because what we have is supply chain risk there too.

We have supply chain risk, just the top three cloud providers in the US, you know their names. Well, the top two, 75% of finance uses the top two. And if artificial intelligence is built on top of that, and that's exactly what we're seeing, we will see economic rents, we will also see financial stability events also. And the challenge is, with the first time that I got a chance to talk about this with colleagues across the government, the whole of government, was in a Brian Deese meeting around that council. So I just mentioned sometimes it's just colliding on important topics of the change in technology.

Jonathan Kanter:

And an important opportunity to learn from each other, which is critical to our respective missions. As part of the work regarding the executive order, maybe some of you can help animate that work by highlighting specific achievements or areas of collaboration, I think that speak for the benefits of the executive order and the whole of government approach. And maybe Director Chopra, you can kick us off.

Rohit Chopra:

Yeah, sure. So having previously served as in Antitrust enforcer, it's really just stark to see the shift away and the page turning that we've all done. There used to be this view and it was so silly, you would hear people in the Antitrust world say, "We're not regulators," as if that was some compliment to themselves. In reality, all of this is about markets, creating the opportunities for markets. I think when we harken back in the US, so much of the way we've accelerated competitive intensity is actually through rules, SEC rules about the capital markets. One of the best examples, 20, 30 years ago, our communications regulator, the FCC, issues an order saying people can take their wireless phone number with them when they switch to a new provider. These are rules. So what we've all thought about are what are the rules we can do to jumpstart lots of competitive intensity on so many different sectors?

So the assistant AG and I have talked about this one a lot. The CFPB, I've proposed some rules on open banking. The idea that you as a consumer can switch more seamlessly without so much bureaucracy and red tape. If you're getting treated poorly by your credit card company or your bank, we will provide the ways to fire them. We will provide new ways for you to take your data with you so that you are able to get better products underwritten to you at lower prices. We want to harness digitization to help people, not just to create new monopolies. I think that's a core part of what we're thinking. I think also there's a lot of work when it comes to bank mergers. There's been work we've been doing across the banking regulators with the Justice Department and others to really put a stop to this creep of consolidation where if you look in the US, so many of those banks in rural areas and towns have just totally disappeared. And guess what happens right after, lower farm lending, lower small business lending, and the community goes down with them.

So we've actually restored a sense of rigor and analysis rather than just lazily assuming bigger is better. It's such an important shift that I think is really underpinning so much of our work. I also want to just add that it's been so good for the economic policy world here in the US but also overseas. We've always known agriculture, trade, financial regulation, all key pillars of an economic policy. Now these Antitrust enforcers are no longer seen as a side dish or seen off in the wilderness. They're at the table and part of a core way of conducting economic policymaking, and I think that really has been a fundamental shift that I hope we'll see around the world as well.

Jonathan Kanter:

Fascinating. Chairman Oberman, maybe you could talk a little bit about some of the work that you've done in collaboration with other agencies under the executive order.

Martin Oberman:

Thanks, Jonathan. First I have to say that I was just informed that my first remarks, my microphone was turned off, so I now have a different microphone.

Jonathan Kanter:

Martin Oberman:

It's

Jonathan Kanter:

I was sorry about that.

Martin Oberman:

Oh, it's okay. It reminds me of when I was first elected to the city council 49 years ago, and Mayor Daley didn't like what I was saying, he would cut off my microphone. Now that I'm ending my career, it's coming back, but...

Gary Gensler:

Your remarks were excellent. I don't think Jonathan cut you off.

Martin Oberman:

No, I don't think Jonathan-

Jonathan Kanter:

I can assure you I had nothing to do with that, sir.

Martin Oberman:

I hope this is a working microphone. So it may sound surprising that one of our most important accomplishments I think in the last two or three years has been to actually approve what I think is almost certain to be the last of the major railroad mergers, a merger between the Canadian Pacific and the Kansas City Southern. Now, part of that is because the statutes under which we operate give the Surface Transportation board sole legal authority on ruling on railroad mergers. It's unlike I think any other industry, even Jonathan doesn't get to review it, but he does get to file briefs with us, which they did, which were extraordinarily helpful and were important in the work that we did. But it was an important merger because those two railroads were the smallest of the large railroads and separately, they were not providing the kind of leverage and offsetting power against the much, much larger railroads.

Plus this merger enabled these two railroads to offer for the first time single line rail service from Canada through the United States and New Mexico, and particularly with the on-shoring and near-shoring effort that we're going to be seeing I think in the next few years. Having that kind of seamless rail service is very important. But most importantly for purposes of competition, what's happened since that merger, is that other large railroads have made arrangements for their own interline service. They're not merging, but railroads always work together to offer competing service for that single line service between Canada and the United States and Mexico. These were opportunities that were sitting out there to be taken for decades and none of the railroads were Stimulated to deal with them because they didn't have to. Once the CP KCS merger began to show the benefits of that service, we've now seen several other competing lines to move traffic in similar areas, and it's really been helpful in an industry which has almost no competition.

So ironically, what we did in that merger I think really helped. We also do have very strong conditioning authority and we put in very stringent conditions on the CP KCS merger to keep open all pre-existing Gateways. In other words, wherever shippers had opportunities to interchange with other railroads, which might be cut off by this merger, those are required to be kept open permanently on commercially reasonable terms, a very important condition. And we instituted a seven-year post-merger monitoring period, the longest in history that's ever happened in a railroad merger. So I think that was really a significant achievement to try to protect what competition we can.

A couple of other things to mention, because we can't, in all cases create competition, we found in the spring of 2022, because of all of this decrease in workforce and cutting back on services and raising prices, that rail service had reached crisis proportions in this country and it was really severely affecting the economy. And we held a series of public hearings that called the railroad executives in along with other stakeholders and held them accountable in sort of a public obsession of calling them to count, which has really never happened at the STB before.

And as a result of that, instituted for the last two years, detailed bi-weekly and monthly reporting on hiring, what were they going to do to replace these lost crews and equally importantly, what were their goals to restore service, to improve levels? And as a result of that, things have significantly improved over the last two years. They still have a long way to go, but if you can't improve service by having actual competition, this comes into regulatory effect. Nobody wants to be regulated. We'd rather not regulate them, but if they can't grow up and behave properly by themselves, we are there. I'm going to say for the next moment that talk about further competitive access efforts because these are ongoing and they're not quite done yet, but those are a couple of the main things, Jonathan.

Jonathan Kanter:

Great. So we've had the opportunity to talk a little bit about how we've been able to utilize the competition council, the executive order to promote a more competitive economy using a whole of government approach. Be helpful to think a little bit about now, what does the road ahead look like, for example, the next six months and maybe Secretary Vilsack, you can kick it off and help us understand what you're thinking about going forward.

Thomas Vilsack:

Jonathan, I'm the first person to actually have come back to the Department of Agriculture job for having served the Obama administration, and I understand and appreciate that what was made can be unmade. So it's I think incredibly important for us to continue to build the momentum. So that means more work on the Packers and Stockyards Act, which is probably one of our fundamental tools for trying to balance the relationship between integrators and poultry producers, for example. A marketplace that has become incredibly efficient but very unfair to producers. We've worked with the Department of Justice to formulate rules and regulations that provide for greater transparency to focus on acts of discrimination and retaliation, and basically provide farmers a better opportunity to protect themselves in that marketplace. I think we have to go a bit further. I think the system for our poultry producers has to be reformed and has to be structured in a way that really does provide better balance.

I think we have to address prior court cases that have made it very difficult for farmers who themselves have been hurt by actions of the integrator, but perhaps the industry as a whole has not. I think there's work to be done in that space. I think there's also work to be done in creating more competition just generally. We found out during the pandemic that while our processing operations were incredibly efficient, they weren't particularly resilient. If there was a disruption in one or two plants across the country, it caused havoc. So we've been investing resources at the President's direction to expand processing capacity so that small and independently owned operators now have an opportunity to offer services so that it's not just the big four packing facilities that have controlled the market for so very, very long.

So it's a continuation, a building on the foundation that's been set the last three years, and then basically making sure that we do a good job of to Gary's point of messaging to people why this is important to them so that we can avoid riders and appropriations bills so we can avoid restricting our resources dedicated to this effort, or we can hopefully strengthen our case when and if any of our rules and regulations are challenged.

Jonathan Kanter:

Thank you. Yeah, it's worth noting that prior to the executive order and our work together, our two agencies, to my knowledge, the Antitrust division of the Justice Department had never brought a Packers and Stockyards Act case before. And then you came along and the executive order came along and we worked together and we've now broken that seal. And I think it's really important going forward that this is a tool to protect farmers and just by the agencies working together, we can do a better job, we can do more. And I have to say, when I travel around the country and I speak with people about their experiences and their relationship to competition policy, there's no constituency that understands it better than farmers. They live and breathe this, not just with respect to their own business, but the havoc that it's wreaked on their local communities, whether it's in banking or in healthcare, retail. And so making sure that we are preserving a vibrant economy for rural Americans and farming communities and family-owned farms is so central to everything we're all doing.

Thomas Vilsack:

I can assure you the Cook case that we worked on collaboratively together and as well as the Wayne Sanderson merger sent a very strong message, and I think it will obviously result in a much better market opportunity for farmers.

Jonathan Kanter:

I agree. I agree. Chairman Oberman, I think it'd be great to hear from you about what the road ahead looks like in light of the exceptional work that you've done to establish a framework for leadership going forward.

Martin Oberman:

The thing I want to address first is a concept called reciprocal switching. Embodied in our statutes, the Congress encapsulated the concept of reciprocal switching, which has been something that railroads have done since the beginning, and that is railroads handing off service one to the other. But what it really means in this context is where you have a shipper that is captive, sole served by one railroad, but another railroad could service that shipper if it could have access to the incumbent railroad's tracks that go into the plant. And it used to be a hundred years ago, railroads did this regularly, but as they consolidated, they realized that their monopoly power was much greater if they didn't allow access to other railroads. So there's a statute which under certain circumstances allows the board to order these reciprocal switching arrangements. And so you can see where it immediately provides for competition where there was no competition.

Unfortunately, in 1985, our predecessor, the ICC enacted a regulation limiting how switching could be ordered, which basically ended it. There have been no reciprocal switching orders in over 40 years. About 14 years ago, shipping organizations petitioned our board to enact a rule to loosen this up, and it's been looked at, acted on, thought about for the last 14 years. I have made it my highest regulatory priority, and we are nearing the end. We issued a revised NPRM last September that will focus on providing reciprocal switching to shippers who can show that the railroad that's serving them has fallen below certain preset service metrics on time performance and metrics of that nature. Because it's impossible to run a large business if you can't know when your raw materials are coming in or when your finished product is going out because you're waiting for the railroad. So we've undertaken a tremendous amount of work already.

I'm bringing this rule to fruition, cannot tell you what's going to be in it because it hasn't been voted on yet, but the direction will be to provide for the availability, more accessible availability of reciprocal switching. In these cases where service has really fallen below the preset standards, that's crucial. There are other aspects of the way railroads interact with each other, which have for time immemorial been very, very restrictive that the board can explore under our rulemaking powers. They're complex, and it's my view that going forward, the board after we get experience with reciprocal switching, should be exploring these other ways of providing what's generally referred to as competitive access. The other thing that I want to focus on that's going to be really important for the economy in general, but for our board in particular, is that Wall Street pressures on railroads despite the efforts we've instituted to offset some of those pressures to maintain workforce levels and service levels at higher standards are still there.

Last year, activist investors forced out the CEO of Union Pacific, which is the largest railroad and instituted a well-known cost cutter who started work last August as the CEO and immediately began furloughing workers and cutting back on infrastructure spending, both of which are very much needed if the economy is going to grow. And he's answering to the shareholders who put him in there. About two months ago, another act of... Well, actually starting last fall, but it became public about two months ago, another activist group's in the news a lot, it's called Ancora Hedge Fund, is launching a proxy battle to take over Norfolk Southern, one of the four major US railroads and wants to install. And it's really, they're not disguising it. Cost cutters, to run the railroad, cut back on the growth. The current CEO is under fire because when he came in two years ago, he said, "We're not going to do it this way anymore. We're going to keep resilient workforce, we're going to invest in our railroad and we're going to expand. We will make more profits, but be patient. It will take time."

Wall Street is saying, "We don't want to be patient. We can take profits out of the railroad immediately if you cut your workforce." These battles are going to keep going. I've actually talked to Gary about why doesn't he do something about this, it's Wall Street? But he said, "Well, we redo disclosure. We don't regulate what they can do if they take control." And of course, that's right. So those are the things we're going to have to keep a close eye on going forward. I think there may be more hearings, more accountability, but I think to the extent these forces continue, and I'll say something about this in my closing remarks, the country really needs to grapple with this because the railroad industry is too important for the economy. We can't function without it.

Jonathan Kanter:

Chair Gensler, maybe you want to talk a little bit about what the road ahead looks like for promoting competition using your work at the SEC?

Gary Gensler:

Look, I want to say something that probably captures all of our agencies is that being pro competition is not only pro consumer and investor, but it's pro business. I think I can say this, we're all capitalists, and yet finance does tend towards centralization. It's about the economics of networks, and it's something that the Federal Trade Commission and all of us deal with in big tech companies. I know Secretary Vilsack, you deal with it because there's network effects and obviously the monopoly tendencies of railroads. So the work that we're doing looking forward, we've been working very closely with the US Department of Treasury and the Federal Reserve around the US Treasury market. That's how we as a nation fund ourselves, but ensuring that there's good competition there. And part of it is not very easy to explain, but it's about the plumbing of the Treasury market called central clearing.

We finished a rule last fall, but we've got to make sure it gets implemented over the next two years and it will help promote what's called all-to-all trading. So if everybody can come in and trade with each other, there's more competition in that marketplace. Also, the road ahead for us is in the stock market. So tens of millions of Americans buy and sell stocks for their own well-being and though they're looking at it thinking they have a zero commission, there's a lot of costs behind the scenes. And if you place a retail order today, if you just place what's called a market order on a retail app today, 90% chance it goes to a handful, three or four wholesalers. They're different than your wholesalers, secretary. But it goes to three or four wholesalers, it doesn't go to the lit stock market. And so how to ensure that there's still competition, on any given day, a third to a half of our stock trading in the US is not on the lit exchanges.

It's in what's called colloquially the dark market. So those are some of the bigger projects we're working on, working with our colleagues at Treasury and the Federal Reserve to ensure this greater competition in the US Treasury market and working in the equity markets. And I will say if we lower the cost in either, it helps companies as well. It may not help the dealers in the middle, but when I was on Wall Street, I was on Wall Street for 18 years, there was a saying, "Darkness is their friend." That was what we knew. Volatility was our friend as well. And lack of competition was our friend, the dealers in the middle. And it doesn't matter whether you're a diamond dealer, an auto dealer, a loan dealer, or a stock dealer, you don't want competition. But competition is really good for the economy, for companies, for investors.

Rohit Chopra:

Yeah, Jonathan, we're all using different technical terms, but in some ways what the sector regulators are doing is very similar. It's looking and making switching easier, whether you're a consumer, whether you're an investor, it's making sure that there are not gatekeeper abuses. It is trying-

Gary Gensler:

And economic rents.

Rohit Chopra:

Yeah. And that's the core of it. So we are all using different words for it. We're all using different legal tools, but I think this is what we're trying to do is create some consistency of a paradigm of what we're trying to achieve and use a whole bunch of statutes, old and new to do it.

Jonathan Kanter:

Yeah, it's so true. And this goes to the coherent and sophisticated approach. I mean, the antitrust enforcement agencies we're thinking deeply about intermediaries, you said gatekeepers, and how that gatekeeper power, that intermediary power is stifling opportunity in all different sides of the market.

That's increasingly something that we're encountering in our work across a wide range of industries, including so many network industries. It really is a common theme that is coming up in a lot of what we're hearing today, but a lot of our respective work with respect to competition. So true. We have an incredible assembly of international enforcers who think about competition policy around the world. And Ambassador Tai, maybe you can talk a little bit to this audience about the experiences that you've had with competition policy that you think are particularly resonant for our colleagues abroad.

Katherine Tai:

This is really wonderful opportunity to talk about where I've had the most interesting and fruitful conversations with people like yourself, with Lena, with Rohit. It's interesting because a competition policy, antitrust enforcement think for you all your jurisdiction is over the domestic market and what's happening inside our domestic market. And for trade policy, we pick up at the border that interaction between the domestic market and other international markets. And what's interesting for me is in the translating of concepts from your work trying to create economic opportunity to our work domestically to our work, connecting that to the global, one of the really important highlights is that with respect to consolidation, concentration, monopolistic behavior, that it's not just companies that can exhibit this kind of behavior, but also countries. So that I think is informing a lot of our perspective in terms of addressing global economic distortions, whether it's the distortions of overcapacity and overproduction that Secretary Yellen is talking about this week in last couple of days in Beijing to this debate around state champions.

State champions, I think for some of our largest companies and monopolists, oligopolists, oftentimes in the international trade conversation, what they will say is, well, we are having to compete against large company, large country, large companies in those large countries. They're state champions, we have to compete against your best bet United States is to get behind us. We can be your state champions and that this is the way you should take on that international economic competition. I think the most important part of our work together and this connection between the international trade conversation and policy perspective and the more domestically focused pro-competition economic policy conversation is that state champions are no one's friend.

That state champions, no matter which state is backing that particular champion, is snuffing out opportunity for the smalls and the mediums and everybody who is going to be a part of the middle out, bottom up approach. And I think that in terms of my message to enforcers from international jurisdictions, one of the ways in which we are considering changing the shape of international trade policy is to allow for international trade policy to preserve more space for you antitrust enforcers to do your work within your jurisdictions. Because at the end of the day, everything is connected. And what we are trying to do both for ourselves and also in terms of an international economic policy shift in perspective, is to enable each other to create that middle out, bottom up growth.

Jonathan Kanter:

Yeah. So true. And avoiding that race to the bottom where at the end of the day, here domestically in the United States, we are innovating, we are our best when we are creating opportunities. We are best when the opportunity to compete and thrive as a business is spread throughout the country to all segments of our society, regardless of where they reside or what industry they reside in. And so our national champion in a sense is being an open, competitive, thriving market that has room for everybody to compete and succeed. And it's such an important point. Director Chopra, I wonder if you have any observations that you think are useful to share with our international enforcers.

Rohit Chopra:

Yeah, I think a very important case study was always... In 2019, Facebook had proposed creating a new currency Libra. And actually it wasn't the privacy regulators, it wasn't the antitrust enforcers who were able to put it down. It was actually the central banks. It was other conduct enforcers and more. So the lesson there is so many of you are probably on a treadmill of merger review and constant litigation. It's so important that we all deepen our ties between the sector regulators and the enforcers. Assistant AG, Kanter and I, we have formed a new agreement. We will be referring potentially criminal conduct that is more appropriate for them to deal with. We have so much insight into some of the anti-competitive mischief that goes on to be able to share and be able to work together. So I think deepening that collaboration is one. The second thing is I think here in the US we've really over the past few years have taken a dramatic turn from thinking about markets through economic textbooks and more toward financial reality.

I think when you looked at some of the old ways of analysis, we were suffering quite a bit in the US on private equity roll-ups in the healthcare space, lots of different types of financial instrumentation throughout sectors of the economy. And it didn't really compute for our antitrust agencies. And now I'm seeing a fundamental shift to looking at real-world financial experiences, lived experiences of workers and suppliers. So I think that analytical shift is just really made a big difference.

And then finally, I just want to share, digital markets are really lurching and digital concentration lurching in to so much, including agriculture, financial markets. Chair Gensler talked about the extreme concentration we're seeing in cloud service providers. We see it in so many sectors. I think tackling AI, tackling all of this concentration, it's not just one set of tools, it's all of these tools. So as I reflect, the CFPB published a report about the future of payments and talked about Apple and Google's regulations, we now have seen the United States file a complaint addressing some of those same issues. So I think all of us need to think about the various tools we have and have a real agenda of promoting competition using rules and enforcement together.

Jonathan Kanter:

So like all of our panelists to maybe spend a few moments just sharing any final observations or thoughts? Secretary Vilsack.

Thomas Vilsack:

Yeah, I was prepared to talk a little bit about a particular case that we were engaged in, but as listening to this panel discussion, I'm going to go in a much different direction. I love it. I think what I would add to this conversation is that I think all of this has raised an awareness on the part of ordinary Americans. They are now more sensitive on these issues because of the collective work of the various agencies. And the example I would give, I had a friend of mine who decided to go to the NCAA tournament in Omaha, decided to get some tickets on Ticketmaster. The tickets were quite expensive, 400 and some dollars to see the games. He didn't have any problem having spent the 400 bucks for the ticket, but he couldn't quite understand what the service charge of 140 bucks was from Ticketmaster. Now, I couldn't answer that question because it wasn't agriculture related, but it occurred to me this is a more informed consumer. And I think as we see more informed farmers, as we see more informed investors, as we see more informed folks in export or dealing with railroads, I think we're going to see a groundswell of continued support for the actions that we've talked about here this morning.

Jonathan Kanter:

Absolutely. Well said. Ambassador Tai.

Katherine Tai:

So many of the conversations I'm in remind me that what's old is new again. And a lot of what we are doing in advancing President Biden's vision is to take another crack at President Roosevelt FDR's vision. In those years after World War II, which were so critical to the shaping of today's world order, economic and otherwise, the Bretton Woods System was articulated as an opportunity for economic liberalization. But for President Roosevelt, he also wanted to make sure that that liberalization didn't lead to rent-seeking consolidation, the creation of monopolists who would exploit workers and extort opportunities.

And so that original Bretton Woods vision actually had anti- monopoly as a component, had workers' rights as a component. Now we all know that in the years since, this system has worked well, but the lack of strong anti-monopoly, the lack of strong worker provisions has led us down a path where we have more often seen that race to the bottom than not and has led us to this particular point. So channeling President Biden and his pointing out really profoundly that the world we live in right now is one of multiple inflection points. I think that with all of the anxiety that comes with the uncertainty that we encounter, there is an enormous hope in doing again, re-imagining our economic order domestically and internationally and getting it right this time.

Jonathan Kanter:

Director [inaudible 01:40:29].

Rohit Chopra:

It's hard to follow that one.

Jonathan Kanter:

Yes.

Rohit Chopra:

Secretary Vilsack just mentioned yesterday and today we have two major college basketball championships. So lots of people, whether you like it or not, are betting on it. And I was just reflecting six or seven years ago, the two major betting platforms proposed to merge here. And you think to yourself it was so egregiously illegal, but there was a sense you could just get away with it in the US. There was no sense of deterrence at all. Boardrooms were repeatedly engaged in illegal mergers, illegal conduct, and they just perceived that nothing would happen.

And maybe occasionally they get stopped, but it was worth it. I think we're now thinking a lot more about deterring from the start. I think you're seeing that a lot of the worst abuses in banking, I think we're deterring them, mergers deterring them. Because we don't have the resources to just constantly go after crime and then catch and release. Now there are sanctions, now we're being clear about what will happen. And particularly when it comes to repeat offenders, we are changing the way we are doing business. It's not just a monetary fine and you still profit in the end. So that reorientation, I think is instilling a bit more trust that for Americans, the law means something again. And I think that's really just incredibly important.

Jonathan Kanter:

And when you hear these consistent messages from across the government, from the leading officials in their respective areas, it speaks volumes about the importance of this policy. And it speaks volumes to would-be wrongdoers and it impacts deterrence in such a meaningful way. Chair Gensler.

Gary Gensler:

Well, it's hard to compete with this. I said I had at least remarkable message policy and political actors too. But to connect Secretary Vilsack, I think it might just be a 25% charge, 140 bucks. But you can pass that on to your friends. But when I think of finance, I think of it like an hourglass. And there's people who have money and people that need money, people that have risk, and people that are willing to bear risk. And the financial market sits at the neck of the hourglass. And when trillions, literally trillions of dollars are flowing through the hourglass on any given day of risk and money, if you're a gatekeeper, you want to be right at that choke point, right at the neck of the hourglass, which is probably what this Ticketmaster or whomever could take. Or the betting parlors, which are now electronic betting parlors.

By the way, the original securities laws were competing with state gaming laws for a reason. So look, I want to just close by... Look, it started with President Biden with an executive order, setting up a competition council and with Brian and [inaudible 01:43:51] and so forth. But convening us, even convening us today that Lena and Jonathan did. I've learned a lot just on this panel because we learn from each other. I had to disappoint Marty that the US Securities and Exchange Commission can't help them quite stop a proxy battle or anything. We're merit neutral. Marty, I want to say that for all the lawyers here, but we're not investor neutral. We're not competition neutral and we're not issuer neutral. And we're going to continue at the SEC to lean in and events like this reminds me of the importance of that.

Jonathan Kanter:

Yeah. And for our last...

Martin Oberman:

... locomotives and so forth. Competition would be the best way to set the market and to balance those costs between the rail customers and the railroads. Unfortunately, as I said earlier, we're never going to have more railroads, so there has to be some regulatory force moderating these things. I am not the first person, rail executives much smarter than me, have said for years, if the railroads keep pushing in the direction they're going in, they're going to bring down more regulation from the STB and more from the Congress. The way things are going, I fear that we are heading in that direction.

I think my closing observation would be the railroad industry is still operating under a 45-year-old statute that was enacted when 40 to 70 railroads were going bankrupt. We now have six railroads making millions and millions and millions of dollars a year in profits. I think it's time to reevaluate what the overall economic regulatory structure looks like, both at the administrative agency level, at the STB, and by Congress. Having said that, railroad economics are extraordinarily complex, so to quote an old saw, I preach moderation. Moderation in everything. However, including moderation. We need to take some action.

Finally, I cannot leave any discussion, even though this is mostly about economics, without mentioning the environment. As railroads cut back on service, more freight goes on the highways, more greenhouse gases go into the air. Railroads, if they would increase their service, they could remove thousands of truckloads. The merger we approved promises to take 64,000 trucks off the highways just from that one transaction annually. Calculate the millions of tons of CO2 that are not getting put into the atmosphere, and you realize even more how important railroads are to the well-being of not only our country, but to the planet.

Thank you. It's been an honor really of my whole career to be on at the STB and to be involved with the Competition Council, so thank you.

Jonathan Kanter:

Well, on behalf of the Department of Justice and the Federal Trade Commission, I just want to thank this extraordinary group of our nation's leaders, hearing directly from the sources and hearing directly from them as to why competition policy is so important to all the work that we do. It's an honor to have you all here. Thank you again on behalf of both of our agencies.

Speaker 3:

Thank you.

Speaker 4:

We will now be moving to a short break, about 10 or 15 minutes. [inaudible 01:50:35] outside.

Alvaro Bedoya - Moderator:

All right. Welcome back from the break folks. Good morning to you all. That was a terrific first panel to get us started, and now we're going to turn to the food supply chain. So everyone worries about food prices, particularly when it is poor and working people who bear the brunt of those high prices. And there's a lot of evidence that concentration in the food supply chain contributes to those high prices. So as a result, the Federal Trade Commission and Department of Justice have brought cases ranging from investigations into pesticide manufacturers, food distribution, food processing, restaurants, and as well of course as grocery stores, retailers.

Today this star-studded panel will focus on potentially anticompetitive conduct and mergers up and down that supply chain. So I'll introduce them and we'll get started. To my left, Zach Biesanz is Senior Enforcement Counsel for the Minnesota State Attorney General. To his left, Commissioner Matthew Boswell of the Canadian Competition Bureau. Andy Green is Senior Advisor for Fair and Competitive Markets at the US Department of Agriculture. Michael Kades is Deputy Assistant Attorney General for the United States Department of Justice Antitrust Division. Chair Ravneet Kaur is head of the Competition Commission of India, and Schonette Walker is Chief of the Antitrust Division for the Maryland State Attorney General. So to get ourselves started, we have a large panel and lots of ground to cover. I want to start with this top-level question. So the COVID-19 pandemic taught us some hard lessons about the importance of resilience in food supply chains. And so I'd love to start with a broad question of, now post-pandemic, what are your jurisdictions focused on? And we'll just go right down the row, Zach.

Zach Biesanz:

Sure. We, in the last six months to a year, we filed suit against a company called Agri Stats that facilitates information exchange among processors of broiler chickens, pork and turkey, where we filed suit with DOJ and with five other states bringing claims under section one for the agreements. And in the complaint, there's just a wonderful slide that Agri Stats used to promote its product, where you've got four people pulling a rope together to pull a dollar sign up a profit line. And I think that pretty well encapsulates the themes of our complaint.

We also, with the Federal Trade Commission, filed a suit against two manufacturers of pesticides alleging that their loyalty programs and the associated rebates are anticompetitive, in that they exclude competition from generic pesticide manufacturers. And that's with the FTC and nine additional states. We've also been investigating beef pricing, which we saw take a major surge through the pandemic. And we've got a couple of investigations going on into various agricultural inputs.

Alvaro Bedoya - Moderator:

Excellent. Mr. Boswell.

Matthew Boswell:

Okay. Good morning everybody. Just want to say at the outset, huge thanks to the FTC and DOJ for putting this Enforcers event together. It's a real pleasure to be here for the third time. So not surprisingly, the food industry, the food supply chain has been a key area of focus for us at the Bureau for some time. And certainly '24,'25, in our Annual Plan, we've set out very clearly that we're going to prioritize investigations in this particular area, including retail grocery, and the food supply sector generally. I think food inflation in Canada throughout the pandemic was an issue that truly galvanized Canadians to call for more competition in our economy. We saw grocery prices increasing at the fastest rate in 40 years, outpacing inflation in the country. So let me talk about just a couple of things that we have done or are doing.

Last year we engaged in and published in June of '23, a retail grocery market study. And that was very timely given the concerns in the Canadian economy about food prices. We came out quite strongly that Canada was in desperate need of more competition in the grocery sector. For a variety of reasons, including high levels of concentration that had been over 30 years increasing, not just in grocery, but in the whole food supply chain, we've been looking over the last five years, very carefully at mergers throughout the food supply chain. And in fact, we have one right now between two grain companies that's on our table.

We're also working with international partners, people here today, on a supply chain working group, our cartels team's looking at that. We're continuing an investigation that's been going on for some time into allegations of longstanding price fixing in our bread industry in Canada and on the retail side as well. Last summer we got a criminal guilty plea in that area from one of Canada's two big bread manufacturers, bakers, $50 million fine for price fixing over an extensive period of time.

And I suppose the last thing, and I know I'm probably burning up too much time, and it ties to the last panel, which was excellent, is we have tremendous public restraints on competition in the food sector in Canada in addition to throughout our economy. And we are advocating, we are focusing our efforts tremendously on the advocacy side to tackle the regulatory barriers to competition that we have in Canada. We have interprovincial trade barriers, we have an agriculture supply management system. So the Bureau is all over the map trying to tackle these food supply chain issues.

Alvaro Bedoya - Moderator:

Excellent. Thank you. Andy.

Andrew Green:

Thank you so much Commissioner and the FTC and DOJ for having me and this wonderful panel. The shock of the pandemic really brought home for everyone across the food and agricultural supply chain, just how problematic the bottlenecks' concentration, lack of competition have become. And how that harms everyone across the industry from the farmer whose price of cattle has collapsed to the worker who can't get beef on the shelves, to the working family that can't get beef on the shelves, to everybody in between. And so we at USDA have been taking, like the secretary mentioned on the last panel, a whole of USDA, a whole of government approach to this.

And there are, I'll put them into three big buckets. Number one, we have been taking our supply chain resiliency tools that Congress granted us and investing a billion dollars in new meat and poultry processing capacity to increase the choice that farmers and ranchers have at the local level and more channels to the consumer in the grocery store. We have been investing $900 million in a new domestic sustainable fertilizer capacity and more to support a transition, a food system transition from a concentrated system that is extremely efficient in a very short-term way, but not resilient over to the shocks and hence not efficient over a long-term way. So major investments we've been making on behalf of the American people.

A second major area has been the revitalization of our antitrust fair market regulatory and enforcement toolkit and real appreciation and credit to our partner, the Department of Justice, Mr. Kades, who's sitting with me. As well as our partners at the FTC and the State Attorney's General, helping us do this where we have some old tools, the secretary mentioned them, The Packers and Stockyards Act, that give us the authority to help protect farmers, ranchers, workers, working families, all that livestock and poultry supply chain. And we are modernizing our rules with shining a spotlight on contracting practices to empower our poultry growers, tackling, prohibiting retaliation and a range of other market abuses. We've got a number of other rules coming to enhance our ability to tackle unfair practices across the sector.

And the third area I'll say, is sort of an alignment of our broader set of programs. And USDA, and this is really the huge credit to the competition council and the President Biden's executive order on competition, we do a lot and we have to think about how we align our programs to that competition mission. And so this includes, for example, we've stood up a seed liaison to help make sure that we can be the farmer's voice within USDA and across the federal government at the patent office and other places to make sure that seeds, the seed structures are working in ways that support competition and fairness to farmers.

We've been doing more to align our consumer labeling so that product USA, in many ways inspired by the FTC's great work on Made in USA, aligns with what the consumer thinks when they walk into a store and buy some beef. So a lot, we're doing a lot more to be done because although inflation has come down dramatically, it was 0% last month, 2% year-on-year compared to 11% high in 2022. We've got to learn the lesson that concentration, that bottleneck is something that we can't let sustain.

Alvaro Bedoya - Moderator:

Absolutely. Thank you. Michael.

Michael Kades:

Thank you. And it's always a pleasure to come back to the FTC, which was, my DOJ colleagues won't like this, it was always home for me for two decades of my career. What I would say is, what we learned from the pandemic is what any farmer or rancher or anyone in the agricultural industry has been saying for 20 years. Which is, we made a bet in the 80s and we lost. And what I mean by that is, beginning of the 80s there was this, not just in Ag, but I'm going to focus on Ag obviously, there was this idea that the key was if we just were the most efficient agricultural producers in the world, exports would explode and everyone would be better off. We look back, I think our farmers are the best in the world. I think our ranchers are the best in the world. If you look at the numbers, we are incredibly successful in exports. But somehow none of that seems to have benefited the people who actually do the work, the ranchers, the factory workers, the farmers.

And that's really important because when problems occur in agriculture they immediately, they have follow-on effects unlike any other industry. I grew up in Wisconsin. There was a period in the late teens where Wisconsin, world's best dairy farmers, was losing two dairy farms a day. When I go home to

Wisconsin and we go up to Northwest Wisconsin, Northeast Wisconsin where the dairy industry is, it doesn't look anything like it used to. It is barren. It looks like some post-apocalyptic TV series on Netflix.

And I want to be clear, I'm not saying antitrust law is about economic growth directly, but when we get things wrong in agriculture, it has this follow-on effect. It's hard to answer the second part of your question because when I look at what we have been doing, everything. We have criminal price fixing cases in the poultry industry. We have information sharing cases that affecting both workers in the plants and the selling of the ultimate product into the marketplace. We have concerns with right to repair, abuse of intellectual property, exclusionary conduct. We've done all of that in the last two years, or I guess three and a half years, and so it's kind of everything.

Alvaro Bedoya - Moderator:

Mm-hmm. Chair Kaur.

Ravneet Kaur:

Thank you Commissioner. So looking at the Indian scenario, the significant share of the household expenditure goes on food and 45% of the people in the country are dependent on agriculture. So when this pandemic came and we had the lockdown, that was a very big hit for the majority of the population of the country. And that's when the government started thinking in terms of expanding the safety nets.

So we had a very big program which was launched by the governments to be able to provide food to everybody. And that covered about 800 million people in the country, were being provided free rations, free food items, which was essential commodities. And that program really brought forward two aspects. One was that, food subsidies was something which was being questioned, which was being looked at. So that process came to an end. The thinking was that we need to have adequate buffer stocks and whatever we need to provide to the farmers for them to be able to produce the food grains, we would continue to support them. That was one major aspect.

The second was there was a big push which has happened in terms of infrastructure and in terms of post-harvest technologies. How can we ensure that the crops, the food grains that we lose because of improper storage or improper transport, how we can eliminate that? So that has been the focus in the post-pandemic area. And so far we still continue to have the same food rations being provided to 800 million people. So that program has not come to an end. Food prices are going up. So the focus is now on these aspects that how do we build up infrastructure and how do we ensure that you don't have any post-harvest losses or you can minimize them to the maximum extent possible.

Alvaro Bedoya - Moderator:

Thank you. Schonette.

Schonette Walker:

Okay, sure thing. Let me start by saying that these comments that I make are my own comments and they do not necessarily reflect the opinions of my attorney general, put that out there. So with regard to what our office is kind of doing post-pandemic in our focus, I think I could kind of put it in two buckets. What's going on in Ag and then what's going on more consumer facing.

So what's going on in Ag, doing I guess investigations and where it's warranted, bringing cases that address issues of monopsony or monopolies. So to the extent that producers need markets that are not impacted by anticompetitive activities, we'll be investigating those. Whether it be chicken farmers or soybean farmers or what have you, we'll be looking at those markets. Also, we'll be looking at markets for inputs. So providing, I guess, investigatory issues or investigatory efforts where, say for instance, you have seeds or fertilizers or pesticide markets that may be impacted by anticompetitive activities. So we'll be looking at those markets as well and making sure that if enforcement actions need to be taken there that we are involved there.

Also, as many know, the Federal Trade Commission and eight states, plus the District of Columbia, have filed action to enjoin the tie-up of number two and number one retail roasters. So those are pocket book issues. And one of the things that I think we all know, as we all eat, and so grocery issues are top of mind. That's something that my attorney general has been very vocal about and it's something that he has encouraged my office to really be involved in. So those are two issues that we have focused on or are focusing on post-pandemic. And agriculture is a key market in Maryland. I think it's somewhere around 3 billion in 2022, in terms of cash receipts. It's about 1.3% of our GDP, so it's a very important market for us. And we have, I guess the edict to make sure that those markets are running efficiently and non-collusively or without harm.

Alvaro Bedoya - Moderator:

Excellent. I'd love to look back a little bit and if a couple of you might share, if there's a particular case or investigation that has been emblematic of your jurisdiction's approach to the food supply chain? And I'd love to start with you Chair Kaur.

Ravneet Kaur:

Okay. So this is the investigations that we've done recently. Is one of the very interesting cases we looked at was with regard to this National Egg Coordination Committee, increasing the prices of egg because that's a very important aspect in the country. Because when you look at protein intake, so there is a focus on that, that through the public distribution system you get all your rice, wheat, sugar, basic essential commodities, but you don't get any proteins intake for that purpose. So that became a cause of concern that this committee is undertaking cartelization and enabling people, the egg producers to fix prices.

So this matter was investigated and we did have a finding which said that they are in some ways also influencing the prices. Because what they're giving out is information with regard to egg prices in different parts of the country, is enabling the producers to charge prices which are similar. So they were required to cease and desist from that activity and to also have a competition compliance program where they would encourage people to adopt practices which are not anticompetitive. So that was one recent action which happened.

Alvaro Bedoya - Moderator:

Excellent. Why don't we go next to Andy, and then Michael.

Andrew Green:

We are doing a lot on rulemaking and so I'm going to say, I'm going to give you a rulemaking example. Although I think that I'm going to perhaps leave to my colleague, Mr. Kades, some of the cases that I'm also extremely proud of. We've done a number of them, landmark cases. But the two rule makings that we have finalized are really, really important for our sector.

The first one provides transparency to the whole contracting process and the operation of contracts for poultry growers. If you think about this sector... I don't know, most people probably don't know this-

Alvaro Bedoya - Moderator:

It's big in Maryland.

Andrew Green:

It's very big in Maryland. But the chickens are not bought and sold on the open market. The last one was bought and sold in the Delmarva Peninsula in 1968 or 1969. The chicken company owns the chicken all the way from genetics to the grocery store shelves. And the only place where it doesn't is the grow out stage that the farmer or the poultry grower who takes on the loans, obviously owns the farm, owns the land, takes on loans to build a chicken coop, chicken housing, and they grow the chicken out. And they have generally been paid for in a payment system that rewards performance relative to how they do versus their peers and how efficient they are at turning feed into chicken poundage.

And this system has both a vertical integration and that particular payment system has been rife for abuses over a number of years. And we've put in place two rules. One, that again, shines a spotlight, modeled on in some ways on the FTC franchise rule to give those farmers a much better visibility into "Hey, what are the real range of payments and risks they're taking on? What are the real differences in the inputs that they're doing both to empower them but also to shine a spotlight on the market." Which we think, as we know from the SEC and history, has a real prophylactic effect as well.

We also have done a final rule to prohibit discrimination on the basis of who the farmer is, race, sex, et cetera, as well as cooperatives. Retaliation for reporting to the government for exercising contract rights, for seeking to negotiate with a different processor. Tremendous case that our DOJ colleagues helped us bring. So these two rules we think are extremely important final rules and we have more in the pipeline to deliver meaningful on the ground change that our farmers and ranchers need.

Alvaro Bedoya - Moderator:

Excellent. Michael.

Michael Kades:

Yeah, I like sitting next to Andy, so I might just give my three minutes back to him. So I do want to take a little trip through history. I think it's important to understand what's going on now. This is not the first time we have faced serious questions of monopsony power in agriculture markets and market power on the sell side. In fact, way back at the end of the 19th century, the US government tried to enforce Sherman Act violations against the major meat processors. At the time, the five largest meat processors accounted for 80% of all meat processed in the United States. By the way, today it's four, account for 85%. And one of the things they were struggling with was courts seemed very skeptical to the issue. I know that's something none of us as antitrust enforcers have any experience with.

So what happened? Well, it's one of the reasons why the government created the Federal Trade Commission. The first report, the Federal Trade Commission did, massive three-volume juggernaut, was on meat packing. The same day they filed that report the Department of Justice filed a critical consent decree that had the impact of helping to deconcentrate the industry. But Congress wasn't even done then. In 1921, and for those of you who know your history, not the most progressive, liberal Congress ever to sit in the United States Congress. Nevertheless, they passed this law, The Packers and Stockyards Act. And if you look at The Packers and Stockyards Act, what you see, and you think about the time, is somebody sat down and looked at every bad antitrust decision and tried to write around it. That's what we did. The resulting interrelationship of all those forces and cooperation across the government was incredibly successful. By the 1970s, those five meat packers controlled it was either 20 or 30% of the market. So we know what the solution is and it requires a whole of government approach. Just thinking through what the cases the Department of Justice has brought, I'm going to quickly summarize them, but I want to stress two things. One, think about who we're working with and think about what part of the food chain we are actually addressing.

So one of the major issues that farmers face is right to repair, they're not allowed... It's a very concentrated industry and the equipment manufacturers make it much harder for them to fix their equipment. So for a farmer fixing their equipment is exactly the one thing they have always done. They brought a private suit to challenge that policy. The Department of Justice weighed in with an amicus brief. Recently the seventh Circuit agreed and reversed the dismissal. I will have to say in my entire life of speaking, I never got an applause line like I got for just saying, "The Department of Justice filed a brief agreeing with farmers on right to repair," when I was speaking at the National Farmer's Union.

We have cases alleging that workers and poultry processing plants had reduced wages because of information sharing exchange that was going on for 20 years. We also have a case which we're doing with the State of Minnesota. You guys in Agri Stats now?

Schonette Walker:

Uh-uh.

Michael Kades:

Okay. Sorry. That information that my colleague talked about, we have brought not one, but two cases under The Packers and Stockyards Act. The second one involved these chicken growers who, very weak bargaining position, face the processor who said, "Oh, on top of every other way, we control the market, we'll actually penalize you if you take a competitive offer and leave." And so that was really critical for the USDA.

And finally last week or the week before, I think Dole and Fresh Express, not only announced they were banning their merger, but they really nicely blamed the US Department of Justice Antitrust Division. And we will take that blame any day of the week.

Alvaro Bedoya - Moderator:

Excellent. I'd love to turn next to labor and start with you Zach and then turn to you Schonette. This is an area of key interest for the United States Department of Justice FTC as well. We are really focused on how corporate consolidation is affecting wages, it's affecting choices for workers and is affecting the impact, is affecting workers' ability to collectively bargain through organized labor. And I had love to give an opportunity to highlight how your cases and investigations are looking into this and touching upon this, so we'll start with you Zach.

Zach Biesanz:

I don't have a whole lot I can say publicly, but I will say that we are absolutely interested in labor issues in all markets, including agricultural markets. We've been taking a look at some of these issues. Beyond that, I can't say a lot. I do want to give credit to the Washington State Attorney General for that office's attention to, an entirely different end of the food supply chain. No poach agreements in fast food franchise contracts, where I think there are over 200 contracts that they've scrubbed those agreements from. And I think it's greatly contributed to worker mobility and that's something that we're very proud of them for having done.

Alvaro Bedoya - Moderator:

Excellent. Schonette.

Schonette Walker:

And I would echo Zach. So Maryland was involved in bringing settlements with a number of fast food companies, Dunkin', Five Guys, a few others, I think there were seven in total, where there were no poach agreements in their franchise agreements. So when you talk about the food system, it goes from seed to plate, and those are issues that we tend really to focus on because it's important. It's important to our state economies. We have also looked into... Well, I won't say, looked into. There are issues regarding poultry workers and there's publicly available information about wage fixing that has occurred. There's a case in District Court of Maryland, there's been settlements where private plaintiffs have sought redress and are in the process of obtaining redress for workers in these spaces.

In the Maryland AG's office, we look at these matters and we take them seriously. We will investigate matters involving labor wage fixing. We would take that seriously. Seeing how non-competes may be used anticompetitively, seeing how non-solicitation agreements might be used anticompetitively. Labor markets are antitrust markets, so that's the way we view them, not separate and apart, not as a side dish. But they can be markets that where anticompetitive conduct is happening. And again, as I just mentioned a bit ago, in the Kroger-Albertson merger review, one of the markets that we allege will be harmed by the tie-up is the labor market, the union labor market. So that's important for many of our bosses and it's something that we, to the extent

Schonette Walker:

... It's warranted. We put our limited resources to look into those things.

Alvaro Bedoya - Moderator:

Excellent. And I'd be remiss if I didn't say that one thing I'm particularly proud of the commission having worked on together with Department of Justice is issuing merger guidelines that directly address labor expressly for the first time. It's been broadly accepted, as you indicated, that the antitrust law covers monopsony and labor monopsony for years and years, but these guidelines squarely addressed that. And Michael, you mentioned a particularly interesting case on poultry and the impact on wages. I wanted to give you an opportunity to talk a little bit more about that, if you would, and anything else that comes to mind as a priority on labor in food supply chain.

Michael Kades:

Yes, this is an incredibly important issue for the Department of Justice, and in some sense, you can tell that by the resources committed. We have pursued criminal price fixing cases involving poultry workers. Yes, we got one conviction. We have lost some jury trials, but every court has said there's no problem with the theory. We've established that, when employers agree on wages, that, as long as you prove it, it's a criminal violation. The other thing, I believe you're talking about the Koch case, which I talked about a little bit, but let me sort of just expand. It's a really excellent example of whole of government approach, because we looked at it from an antitrust angle. USDA looked at it from a Packers and Stockyards angle.

They eventually referred the case to us, and we then were able to negotiate a settlement. That settlement required Koch Foods to rescind the contracts, required them not to enter it again, it required them to pay the costs of damages that the chicken growers actually suffered. So they had to pay, if the chicken growers had legal fees fighting them, if they had to pay the penalty, they got it back. So I think just right. And so, I think it was a groundbreaking case, and I think it reflects our interest on the workers and the ability to coordinate with other agencies.

Alvaro Bedoya - Moderator:

Excellent. Commissioner Boswell, and then, you.

Matthew Boswell:

You were going to add.

Andrew Green:

I was just going to add how important these cases are from our perspective, which is that, showing up, bringing these cases has an incredibly important deterrent value for a long time. And I don't know if it was noticed, but these were the first, I think AEG Kanter said this, and maybe you said it as well, first two cases, first case that the Department of Justice antitrust division had brought as it was on behalf of the USDA, as a Packers and Stockyards case. And that sends a very, very strong message that this whole of government is working, that the antitrust law and the fair market laws are operating on behalf of farmers, on behalf of ranchers, on behalf of working families across the food supply chain. Because that is the kind of deterrence that is going to make it so that we don't have to bring as many of these cases, you're going to have behavioral changes out there in the market. And so, I really want to thank the Department of Justice and, of course, the other antitrust agencies to helping make that turn point.

Alvaro Bedoya - Moderator:

Excellent. Please.

Matthew Boswell:

Yeah. Can I maybe just take a moment to tell an interesting story, in terms of labor, grocery, and wage fixing, a new wage fixing law, in Canada? During the pandemic, early days of the pandemic, many of our large grocery retails started paying hero pay. And as we moved through the pandemic, at a certain point, several of them right around the same time announced that they were stopping hero pay. And this obviously raised some suspicions, some concerns, what was going on. Parliamentarians got quite intrigued and called in the CEOs of a few of our large grocery retailers, and they said, "Oh yeah, I talked to this CEO about it, and I just told them, as a courtesy, that I was going to cancel it next week."

Alvaro Bedoya - Moderator:

Just as a nice thing to do.

Matthew Boswell:

"As a courtesy."

Michael Kades:

Canadians are notoriously nice curtains.

Matthew Boswell:

Yes. But at the same time, while this whole sort of thing was unfolding, people were turning to the competition bureau and saying, "Well, what are you doing? You should be charging them with criminal activity." And we said, "Whoa, whoa, whoa." 2009, our parliament amended our price fixing provisions and took out the word "purchase." So we didn't have the ability to bring criminal charges for buy-side. So this motivated our parliament so much that, by 2022, they had, in a very short period of time, kind of record period of time in Canada, they had drafted, put a bill in front of our parliament, and added in very specific wage fixing, no poach provisions, because of this whole story related to our grocery sector and the removal of hero pay for people who legitimately deserved it during the days of the pandemic. Anyway, just thought people would find that interesting. Terrific. How the sausage gets made.

Alvaro Bedoya - Moderator:

We've been focusing on traditional enforcement tools, investigations, and cases. I'd love to take a moment to give an opportunity to talk about some of the nontraditional tools, market studies, and things like that, that the jurisdictions and agencies represented here have at their disposal. I'd love to start with you, Chair Kaur, if you would.

Ravneet Kaur:

Okay. We had a very interesting study. Of course, it was some time ago, quite a few years ago, I'd say, that was with regard to onion prices. So the onion prices started going up very rapidly, and there was a [inaudible 03:01:38] cry. "It's bringing too many tears to people's eyes, so you need to look at that. Is there any cartelization in that sector?" So there was a market study, which was done by the commission that time. So we looked at what is happening on the onion prices front, in terms of the prices themselves, the intermediaries, is there any hoarding, stocking, taking place? So what is the reason for the sudden enhancement in prices? So of course, the cartelization was not there. It was basically a case of a crop failure, which is more linked to the weather conditions. And of course, there were some hoarding, stocking of food grains also taking place.

And that's when the commission gave recommendations that, "The government needs to look at how you're going to manage the crop loss, what are you going to do in terms of your post-harvest technologies, improvements in that." And there is, of course, no hoarding on a large scale. However, at the local level, there was some hoarding which was taking place. "So how are you going to ensure that that doesn't take place?" So that, of course, the recommendations were made to the government, and government has taken action on that. Of course, now, again, similar demands are coming after this pandemic, that the food prices are going up, so the commissions should start price monitoring of all prices, both in the agriculture sector and even the key infrastructure inputs, like look at seamen prices, look at various other prices. So that is something which we are thinking of maybe looking at, how do we go about doing some kind of price monitoring without doing market studies, of course, unless they're required?

Alvaro Bedoya - Moderator:

Excellent. Commissioner Boswell, anything to add here?

Matthew Boswell:

Yeah, so in terms of advocacy, as I mentioned earlier, last year, we published the results of a retail grocery market study, where we found a significant lack of competition in our retail grocery sector. We found our independent grocers were finding it more and more challenging to compete, because of very widespread property controls that are in place in Canada and that are authorized under provincial legislation, restrictive covenants preventing independent grocers from going into plazas and et cetera.

Also, independent grocers had to rely on the large grocers, who also controlled wholesale, to a great extent in the country.

We said that international entry would be very beneficial for Canada. We have examples of that. Costco and Walmart have had a positive impact in the country. But even with that, we still have tremendous concentration over the last 30 years, where we used to have eight big domestic players, and down to three. So our, and not surprisingly, our advocacy was very timely. There was a tremendous amount of interest, and we made a series of recommendations really to governments at all levels in Canada in terms of how they could address the serious lack of competition in the retail grocery sector.

And we're seeing now some responses to that, including a bill that was passed in our parliament, just before the end of 2023, that put in a tool for us to address restrictive covenants, property controls. Also put in a tool, quite handily for us, where we finally have the power to compel information during market studies, because once again, the grocery companies weren't... How do we word it in our report? They weren't fully cooperative with our requests for information to be provided voluntarily, and this came out to parliament and they changed our law. So we're using that other side of the house, the advocacy side, to try and achieve pro-competitive outcomes in Canada in this specific area.

Alvaro Bedoya - Moderator:

Your answer reminds me of a phrase that remarkably hasn't come up yet in our conversation, which is food deserts, even though I suspect everyone on stage cares about this profoundly. And I'm wondering if, in Canada, you see the same dynamic play out that we see here in the United States, where independent grocers are far more likely to serve these communities. And they often serve different communities than do the major or the big boxes, and so, they're more likely to serve poor rural Americans and poor urban Americans. And so, do you see that in your work?

Matthew Boswell:

So we're seeing that, and these property controls play a big role in that, where a lease can be entered by a big grocer that says, "Nobody else can come into this plaza and sell food." They're even going so far as to put these restraints on competition, these barriers to competition, on title itself. So even if the grocer moves out of that plaza, the big grocer, nobody can ever go in. So we're looking very carefully at these restrictive covenants in Canada. We actually, it's public, we have an investigation going on into it, but one of the things that comes into play in the consideration is the creation of these food deserts and the harm to communities by having these property controls in place. So yes, it's something we're paying a lot of attention to right now. In fact, we're going to come out with a discussion paper on property controls and the role they play in competition in Canada in probably a couple of weeks. So it is right top of our radar.

Alvaro Bedoya - Moderator:

Excellent. Schonette, did you want to weigh in?

Schonette Walker:

Yeah, absolutely. Just in preparing for this talk, I did some research, and I did find the proliferation of these restrictive covenants in the leasing of former supermarket spaces, which was just intriguing to me, that that would be something that is happening and is happening kind of across the board. But I think that there was, yeah, there's quite a bit of literature on that, and when you talk about non-traditional tools that we have kind of utilized or at least considered in Maryland, there are a number, unfortunately, of food deserts in Maryland. There have been numbers of studies that have discussed that. The Maryland National Parks and Planning Commission did a study in 2015. There was a subsequent study in 2021. University of Maryland has done studies. Johns Hopkins has done studies. Morgan State University has done studies. Prince George's County right down the street is a significant food desert.

Baltimore City is a significant food desert. I think, by some account, nearly half of Baltimore City residents live in a food desert, when you take into account the lack of vehicles or transportation. So that is something that we find problematic, and it's something that we use as a data point in our decisions, in terms of enforcement. Another thing that I found out, I was not aware of this, are food swamps.

Alvaro Bedoya - Moderator:

What's that?

Schonette Walker:

The flip side of a food desert is where you don't have access to grocery stores and fresh produce, etc, there's a proliferation of fast food restaurants, fried foods, all kinds of processed unhealthy food. So you have a situation where you have a desert and a swamp kind of co-mingling with one another, and it is problematic. So you talk about health outcomes, that are related to these swamps. So that's something that I think also just tying into the research and just being aware of what's going on in your states and your jurisdictions, it helps you inform which things you decide to pursue, kind of from an enforcement perspective.

And also, my AG has put priority on hearing from his constituents, in terms of what they're thinking about some of the things that we're doing. He has a survey up on our website about the Kroger and Albertson merger. So he's hearing from people in Maryland what they think. You're a Marylander, so you might want to go and check out the survey. But it's important to just kind of have all these data points. They don't necessarily dictate how decisions are made, but they are definitely things that you can kind of put in your mental toolbox in terms of deciding how to allocate very scarce resources, in terms of enforcement decisions.

Alvaro Bedoya - Moderator:

I have to say that, in the two years since I've been a commissioner, some of the most difficult moments I've had is in talking to folks in food deserts. About two years ago now, we met with the Oglala Lakota Tribal Council in the dairy aisle of our Buche Foods in Pine Ridge, South Dakota, and they were talking about how there were a 13-year-old showing up at the emergency room with ulcers, because they ran out of money halfway through the month. They can only afford soda and chips, or you had kids who were going to school and hoarding food at lunch, because they were the only ones who could bring home food at the end of the day. And I think it is just such a horror, and it is encouraging to know how much the people on the stage and the people in the audience are trying to tackle this issue. Zach, did you want to weigh in on the market studies that you're conducting or this question of food deserts?

Zach Biesanz:

Sure. Our friends at the Department of Agriculture have a new grant that states can apply for funding for market studies and for antitrust enforcement related to agriculture. And so, we're having a lot of internal conversations about which kinds of studies do we think are most interesting and are most likely to bear fruit, so to speak, in terms of pointing us toward potential solutions to encourage competition in these food markets. We've got a variety of efforts in both advocacy and education. On the advocacy front, we testified in front of our legislature last year in full support of a sweeping right to repair law that the legislature passed with a big asterisk on it for farm equipment. And so, we're continuing to have conversations with advocates and organizers who are trying to close that exception.

We also led a group of states in writing comments in support of the Packers and Stockyards Act proposed rule on transparency between chicken processors and growers, and we were pleased to see that rule adopted. We also have developed a pretty robust training program for procurement agents to detect bid rigging and other foul play in a variety of markets, food markets included. And so, we've been going around to state and municipal and county-level purchasers and trying to get them thinking about competition as much as they can, because a lot of their work is to get a contract that meets the needs of the state or municipality or whomever they're working for. And sometimes, competition is a secondary concern for them. It's not front of mind. It's, "Can I get somebody to fill this contract?" And so, getting them thinking about, " Well, what looks like a suspicious bid? What looks like cover bidding? What looks like taking turns?" And that's already brought us some really great leads, and we look forward to bringing our investigations to the point where they're public and we have something exciting to announce.

Alvaro Bedoya - Moderator:

Excellent. So we have about eight minutes left and some change in the panel. And so, I'd love to close, just go across the panel starting with you, Schonette, and coming back down this way, anything that's on the horizon that you want to share or anything else that we haven't addressed today? No one said some of my favorite words, "price discrimination," yet. That hasn't come up. So if someone wants to discuss that, they're welcome to. But otherwise, what's on the horizon? What are you looking out for? What are you looking forward to? Or what are you worried about, that you haven't mentioned yet?

Schonette Walker:

Yeah, I think that, for my office, I like the concept, and it's something that I've personally been working on is kind of the analog to the whole of government. So it's the whole of the AG's office. So there are many kind of cross issues that I think that we'll look at going forward, in terms of talking to the chief of the division that does AG stuff and talking to the chief of the Consumer Protection Division and just kind of really coalescing all of our common issues or common concerns in moving forward with our law enforcement goals.

Alvaro Bedoya - Moderator:

Great. Thank you. Chair Kaur?

Ravneet Kaur:

Yeah. The primary concern for us strangely is digital markets. So that is what is taking most of our time, in fact, and we are focusing on artificial intelligence and doing a market study on that. What can be the impact of that? But when coming to the food markets, as I mentioned, just now, previously, was that our focus now is that we are going to start monitoring prices. So we're going to look at prices, "Is there any cause for concern?" And in case there is something which where we see a spike and we find it somewhat abnormal, then maybe the commission will come in. So our stance on the food sector is currently just keep a watchful eye, be vigilant, and be alert and try to monitor the situation. In case things you find there's some reason for alarm, then of course, the commission will step in.

Alvaro Bedoya - Moderator:

Excellent. Thank you, Chair. Michael?

Michael Kades:

So I would say expect more of the same and more new stuff, because if there's one thing I've learned working for Jonathan Kanter is resources have no limitations. No, I think what you'll see is more cooperation. Last Friday, Minnesota was at the podium with the Department of Justice in our Agri Stats case, which is a case we've mentioned, involves information sharing, increasing food prices. I think you'll see more of that, because these are local markets. And so, there's a real synergy. You're going to continue to see the USDA work with the antitrust division and looking at how to use both antitrust and Packers and Stockyards to fix these problems. More generally, if anything I've said has come through, it's that these are markets with a lot of market power or monopsony power. There is lots of conduct that looks like the abuse of market power or monopsony power, and we will continue to pursue those cases, where we find them and do it aggressively. Thank you. Andy?

Andrew Green:

So tremendous appreciation to that, our partnership with DOJ around that. We have more rules coming in Packers and Stockyards. One of our advantages is to be able to look holistically across that market. And so, we will continue to do that. I want to flag three things for the audience. One is we will be doing more in the label space. Product of USA was one example that we have an ongoing animal raising claims review. So what's an animal raising claim? Grass-fed beef or no antibiotics ever, these are consumer protections under our labeling authorities, but they have a real big impact on, if the market is not honest, that there's no integrity to the label and the verification of it, it's really hard for a producer who's doing the right thing to compete. And so, we have that work coming on the way. Very, very important. And I think you actually are seeing potentially some changes in the markets by market actors already recognizing, "Well, I really need to be honest."

Second thing I wanted to flag is I want to take you up and mention price discrimination on that. We do have a retail report that we are in the process of working on. Packers and Stockyards has really some very interesting historical price discrimination tools in the meat merchandising sector. They haven't been used since 1981 or whatever the last case was. So we are busy thinking about that, looking at that, and really thinking about, how do we make sure that there's market access for small, mid-size farmers, ranchers, processors, the businesses that want to compete in local, regional, and maybe even larger markets with the incumbent players? What role can we do to open up that space? So we have work coming on that front. And then, the third thing I want to underscore is the importance of rebuilding the institutions that I think we all have.

But here at USDA, it's been hit over a number of years. USDA's Packers and Stockyards division was 40% smaller by number of people in 2020 than it was in 2010. And that's thanks to flat budgets during that period. We've been very fortunate to get an important increase from Congress. We are using that as wisely as we possibly can, but it's a long-term effort to rebuild the skills, the capacity, the instincts, the knowledge base. And it's a partnership, of course, with the antitrust enforcers, our states, but also with academics, with others out there in practice who might think about coming and joining and working with us or writing that next report in economics or the next law review that's going to be impactful and helping us think about these markets. So if I can leave anything, it's a call for those out in the audience to invest in thinking about competition as something that's important to your lives, to your research, and to the next generation of leadership that we'd all like to be able to offer the American people.

Alvaro Bedoya - Moderator:

Terrific. Thank you. Commissioner Boswell?

Matthew Boswell:

I'll be real quick, because I've already alluded to it. Property controls is the number one on the horizon for us in this area. The investigation we have going now, the discussion paper and hearing from Canadians on that and finally enforcing, when it comes into force, a new provision that is specifically targeted, add that. And just as a final word, I think, thanks to the international competition community for the work that we've been able to do with folks around the world, on, for example, our grocery market study, the collaboration cooperation, the talking about issues that are common across borders. We've seen these property control issues in multiple different jurisdictions and worked with them, talked to them, how they're tackling it. So I think it's just a final sort of plug for us to continue as a international group to work together and to help each other get up the learning curve faster. So we'll continue to do that going forward.

Alvaro Bedoya - Moderator:

Excellent. Thank you. Zach?

Zach Biesanz:

I think I've already alluded to unspecified investigations into labor and ag inputs and future market studies. I guess I want to say that or acknowledge that bonds among states are, I think, tighter than ever. And cooperation between the state governments and the federal government in the antitrust space has been really unprecedented. It's been terrific, and I think it's continuing to get better.

Alvaro Bedoya - Moderator:

Terrific. One very quick closing reflection and then, two rounds of gratitude that I want to ask you to join me in. The first is just what's at stake here. I shared about that visit to Pine Ridge, the other visit with Secretary Vilsack being here I'll share is another eye-opening meeting like that I had with corn growers and cattlemen in Iowa. And these are grown men and women with tears in their eyes talking about how they used to have a dozen and a half places to buy seeds from, and now, they have two, maybe. They used to have two or three places to process their cattle, and now, they have one. And the impact that has on them, their families, all the way down, as a number of you said, in the food chain, is just extraordinary.

And so, the efforts that are being described here are absolutely terrific, and I'm grateful for them. Folks, everyone here has been very kind in thanking me for this. I'm not the one to thank. Our Office of International Affairs here at FTC is leading our side of it. If you could join me in a round applause for them and the Department of Justice in putting this together, I'd be grateful. And lastly, for our extraordinary panelists, if you please join me in thanking them. Thank you all. I believe, if I'm not mistaken, we are turning to lunch. Is that right, Patty?

Patty:

Yes, that is right.

Alvaro Bedoya - Moderator:

Excellent.

Patty:

So speaking of the food supply chain, [inaudible 03:24:13], unfortunately, we can't accommodate everyone for lunch. Lunch is really only for the people who are pre-registered for the afternoon closed door sessions. We're going to be moving directly across the way. You'll see it, and there are, sorry for the detail, but there are two stations. They both have the same things. [inaudible 03:24:34] yourself and get yourself situated at a table. We're going to be keeping lunch a little short, because we're trying to...