



September 12, 2018

Federal Trade Commission
Donald S. Clark
Secretary of the Commission
600 Pennsylvania Avenue, NW, Suite CC-5610
Washington, DC 20580

RE: Competition and Consumer Protection in the 21st Century Hearings, Project Number P181201

Dear Mr. Clark:

The Center for American Progress (CAP) commends the Federal Trade Commission (FTC) for holding hearings to engage with the robust external conversation around competition policy and consumer protection. In the last few years, CAP has observed and highlighted a range of concerning trends that point to decreased competition and rising concentration of economic power. Increased market concentration, supra-normal profits, a decrease in the ratio of investment to profits, and a decline in the net creation of new firms suggest that American markets are less competitive than they were even just a few decades ago. Our research connects a decline in competition to lower incomes for everyday Americans, dulled innovation, less opportunity for small and medium-sized business growth, a rise in consumer protection abuses, and a rise in political rent-seeking.

As you organize your hearings, we encourage you to consider the following recent CAP research and the important issues it raises in relation to competition and consumer protection. In addition, as we produce further relevant analysis, we intend to supplement this record.

- **Competition:** “Reviving Antitrust: Why Our Economy Needs a Progressive Competition Policy” (2016) is CAP’s principal recent report on competition.¹ It outlines trends in the American economy that suggest that our markets are becoming less competitive, illustrates the impact of low competition on our economy, and presents policy recommendations to reinvigorate competition. These recommendations include changing the strategy for merger enforcement by eliminating safe harbor for mergers below a certain HHI threshold, shifting the burden of proof to favor competition, and applying closer scrutiny to vertical agreements and anti-competitive conduct by dominant firms. In addition, together with scholar John Kwoka, we have proposed a

¹ Marc Jarsulic, Ethan Gurwitz, Kate Bahn, and Andy Green, “Reviving Antitrust: Why Our Economy Needs a Progressive Competition Policy,” Center for American Progress, June 29, 2016, available at <https://www.americanprogress.org/issues/economy/reports/2016/06/29/140613/reviving-antitrust/>.

new, data-driven approach to retrospective reviews of mergers in “Evidence-Based Policy in Antitrust: The Need for Ongoing Merger Retrospectives” (2017).²

- **Consumer Protection:** “How a GOLIATH Act Could Restore Consumer Rights” (2018) highlights significant recent high-profile consumer protection abuses and the insufficiency of consumer protection that led to them.³ It lays out a series of recommendations that the FTC should consider, including fortifying a consumer’s rights to make complaints publicly heard, to take companies to court, to appeal to regulators in a public forum, and to meaningful and data-driven rulemaking and enforcement.
- **Workers:** We encourage the FTC to take seriously the implications of concentration and changing economic organization (including “fissured work” and the so-called “gig economy”) on workers’ wages and bargaining power. Growing concentration further tilts labor market power away from workers and towards firms. In addition, as companies continue to both outsource and to classify workers as independent contractors rather than employees, employees’ ability to collectively bargain could be significantly undermined by the inappropriate application of antitrust doctrines. At the same time, heightened risk of unfair and deceptive business practices—including no-poaching and non-compete agreements—arise from contractual arrangements when the relevant labor market appears to increasingly exhibit signs of monopsony. We submit our report “Raising Pay and Providing Benefits for Workers in a Disruptive Economy: State and Local Policies to Support Independent Contractors” (2017), which addresses some of these issues.⁴
- **Agriculture:** “Big Business Rules American Agriculture—and Congress Doesn’t Seem to Care” (2018) highlights increasing concentration in American agriculture and how it adversely impacts consumers, workers, small businesses, and family farms.⁵ The article argues that many of the anticompetitive practices harming everyday Americans could have been prevented through stronger protections for farmers under the Grain Inspection, Packers and Stockyards Administration of the U.S. Department of Agriculture (USDA), many of which were adopted by USDA in 2016 but were reversed by the department in 2017. These rules would have blocked packers and processors from using their market power to abuse small farms by breaking contracts, engaging in retaliation, or withholding information. We encourage the FTC to examine

² John Kwoka and Marc Jarsulic, “Evidence-Based Policy in Antitrust: The Need for Ongoing Merger Retrospectives,” *ProMarket*, April 20, 2017, available at <https://promarket.org/evidence-based-policy-antitrust-need-ongoing-merger-retrospectives/>.

³ Joe Valenti, “How a GOLIATH Act Could Restore Consumer Rights,” Center for American Progress, April 20, 2018, available at <https://www.americanprogress.org/issues/economy/news/2018/04/20/449967/goliath-act-restore-consumer-rights/>.

⁴ Karla Walter and Kate Bahn, “Raising Pay and Providing Benefits for Workers in a Disruptive Economy,” Center for American Progress, October 13, 2017, available at <https://www.americanprogress.org/issues/economy/reports/2017/10/13/440483/raising-pay-providing-benefits-workers-disruptive-economy/>.

⁵ Andrew Schwartz and Ethan Gurwitz, “Big Business Rules American Agriculture—and Congress Doesn’t Seem to Care,” Center for American Progress, May 16, 2018, available at <https://www.americanprogress.org/issues/economy/news/2018/05/16/450990/big-business-rules-american-agriculture-congress-doesnt-seem-care/>.

competition concerns in this sector holistically, utilizing all available investigative and remedial powers for this sector and for surrounding sectors that may have impacts on agriculture and rural America.

- **Technology:** In your examination of technology’s impact on competition and consumer protection, we encourage you to consider questions of monopoly, the relationship between control over data and standard-setting around data, and the value of open data standards as a tool to promote competition and innovation. CAP’s report “Modernizing America’s Workforce Data Architecture” (2017) examines the influence of job data monopolies on labor market information sharing and argues that open data standards must be put into place to improve competition and reduce inefficiencies in the labor market.⁶
- **Corporate Governance:** We urge the FTC to consider the impacts on concentration arising from corporate short-termism and large tax corporate cuts. These twin forces, which play out by driving corporate buybacks and takeovers, have negative implications for the ability of companies to invest for the long-term, treat their workers and the environment fairly, and support productivity-driven economic growth. As corporate profits for the largest companies swell to record levels, it is more important than ever to consider the relationship between insufficient competition and economic growth, job creation, and investment. We include CAP reports that are relevant: “Long-termism or Lemons: The Role of Public Policy in Promoting Long-Term Investments”⁷ (2015), “5 Ways the Senate GOP Tax Bill Will Undermine America’s Economic and National Security”⁸ (2017) and “The Data Do Not Support Supply-Side Economics”⁹ (2018).
- **Financial Regulation:** In addition, we encourage you to look broadly at competition and consumer protection issues across the economy, including in the financial markets. As CAP sets

⁶ Aneesh Chopra and Ethan Gurwitz, “Modernizing America’s Workforce Data Architecture,” Center for American Progress, August 15, 2017, available at

<https://www.americanprogress.org/issues/economy/reports/2017/08/15/437303/modernizing-americas-workforce-data-architecture/>.

⁷ Marc Jarsulic, Brendan Duke, and Michael Madowitz, “Long-Termism or Lemons,” Center for American Progress, October 21, 2015, available at <https://www.americanprogress.org/issues/economy/reports/2015/10/21/123717/long-termism-or-lemons/>.

⁸ Andy Green, “5 Ways the Senate GOP Tax Bill Will Undermine America’s Economic and National Security,” Center for American Progress, November 29, 2017, available at

<https://www.americanprogress.org/issues/economy/news/2017/11/29/443458/5-ways-senate-gop-tax-bill-will-undermine-americas-economic-national-security/>.

⁹ Christian Weller, “The Data Do Not Support Supply-Side Economics,” Center for American Progress, June 21, 2018, available at <https://www.americanprogress.org/issues/economy/news/2018/06/21/452605/data-not-support-supply-side-economics/>.

out in “Resisting Financial Deregulation”¹⁰ (2017) and “Trump’s Dangerous Choice”¹¹ (2017), recent deregulation efforts may increase concentration of economic power in the financial sector. Although these reports are focused on financial regulatory matters, concentration in finance is relevant to the FTC as it may call for additional efforts to ensure that financial sector concentration does not aggravate concentration in other sectors.

- **States:** Lastly, we urge the FTC to consider the role of the states in supporting robust competition and consumer protection. We encourage the FTC to take affirmative steps to support state initiatives like those set forth in our recent report, “Bold Ideas for State Action” (2018), and ensure that any actions it takes does not impede them.¹²

These attached and hyperlinked CAP reports highlight the importance of revitalizing competition and consumer protection laws. We hope that these findings will inform the upcoming hearings, and we would be happy to answer any questions or otherwise participate in the hearings as appropriate.

Sincerely,

Marc Jarsulic
Senior Vice President, Economic Policy

Andy Green
Managing Director, Economic Policy

¹⁰ Gregg Gelzins, Andy Green, and Marc Jarsulic, “Resisting Financial Deregulation,” Center for American Progress, December 4, 2017, available at

<https://www.americanprogress.org/issues/economy/reports/2017/12/04/443611/resisting-financial-deregulation/>.

¹¹ Gregg Gelzins, Ethan Gurwitz, Sarah Edelman, and Joe Valenti, “President Trump’s Dangerous CHOICE,” Center for American Progress, April 19, 2017, available at

<https://www.americanprogress.org/issues/economy/reports/2017/04/19/430601/president-trumps-dangerous-choice/>.

¹² Center for American Progress, “Bold Ideas for State Action,” May 10, 2018, available at

<https://www.americanprogress.org/issues/general/reports/2018/05/10/450580/bold-ideas-state-action/>.