



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Prepared Remarks of Commissioner Rebecca Kelly Slaughter*
Hearings on Competition and Consumer Protection in the 21st Century
September 21, 2018

It is so nice to be here today. I am pleased and privileged to be opening our second day of hearings on Competition and Consumer Protection in the 21st Century.

I have long been interested in how and when policy makers tackle complicated questions about the challenges and opportunity posed by new technologies. In fact, as an anthropology major, I wrote my college thesis on the first set of Congressional hearings on genetic engineering in the early 1980s.

I conducted a detailed and sophisticated analysis of the language that members and witnesses used in the hearings and reached a staggering conclusion: everyone came into the hearings with their minds made up. As an anthropology student who had no experience in government at the time, I was shocked by this conclusion. But now, with the benefit of a decade of experience working in Congress under my belt, my insightful deduction feels more like a statement of the staggeringly obvious.

I bring up this story because the hearings we are now convening have a similar backdrop to those genetic engineering hearings in the early eighties: technological innovation has raised serious and important questions of law and policy. And I can understand why those familiar with the ways of Washington might be suspicious that there is a predetermined outcome, or a desire to simply endorse the status quo. However, I believe this moment is different. These hearings are not a project of reaffirming our current policies and practices.

To the contrary, they must be a critical rethink of what we do, how we do it, and what we should do differently or better to advance the FTC's mission of promoting competition and protecting consumers. If at the end of the day we appear to be merely patting ourselves on the back for a job well done thus far, we will have failed.

This is an extremely exciting moment to be at the FTC. Technological innovation is not only affecting our traditional work in both competition and consumer protection, it is blurring the line between our two traditionally distinct missions.

*The views expressed in these remarks are my own and do not necessarily reflect the views of the Federal Trade Commission or any other Commissioner.

As we heard on the first day of these hearings, there is substantial evidence that markets and sectors are becoming increasingly concentrated across the economy. At the same time, they are becoming increasingly technologically dependent. Technology is no longer simply an industry, it is a part of every industry. As a result, it is relevant in more and more matters before the Commission.

Privacy and data security might come to mind first, but consumer protection staff also grapple with the implications of technology when tackling cryptocurrencies, data throttling, online marketing, tech support scams, fintech—and even robocalls.

On the competition side, we have also long had to keep pace with technological advancement. We are seeing more and more mergers and conduct matters with technology-related issues such as data collection, intellectual property, and network effects. And as consumers become data commodities themselves, the nature of competition has been evolving as well.

What is even more interesting to me is how these questions about competition and consumer protection no longer happen in isolation. Addressing a legal question on one side often has profound implications for the other.

Consider a hypothetical merger between two companies that each control substantial consumer data; what are the privacy and security implications of that rollup? Consider also the consequences for consumers when limited competition means there is no meaningful choice about whether to patronize a company that may not prioritize user privacy.

Policy changes on the consumer protection side have competition implications as well – how could effective data portability help facilitate entry and competition while sufficiently protecting privacy? Will new privacy regulations have the unintended consequence of stifling innovation and entrenching incumbents?

The FTC is uniquely well positioned to tackle these issues with thoughtful attention to their interplay. Many other jurisdictions have completely separate agencies to address privacy, consumer protection, and competition.

The FTC is somewhat anomalous by having these issue sets housed under our single umbrella. It is incumbent on us to take advantage of our structure and our expertise to meet this economic moment. In other ways, perhaps we can learn from the contrast with other jurisdictions.

First, the passage and implementation of GDPR across the pond as well as the CCPA closer to home provide excellent natural experiments for us to see how longstanding ideas like the right to be forgotten work in practice. We can also monitor implementation for unintended consequences, including for competition.

At the same time, the European Commission is pursuing high profile competition cases that involve American companies. Of course, they are working with an entirely different set of laws with respect to competition – the abuse of dominance standard, which does not exist in our statutory framework, puts specific burdens on firms that reach a certain market share. As we observe the European cases in practice, we have an opportunity to consider the benefits or risks of changing our statutory standards here.

I hope that these hearings generally, and today's panels specifically, give us a chance to analyze these issues carefully. Chairman Simons noted in his introduction last week that he has an open mind as to what conclusions will be drawn from the hearings, as do I.

This is not, to me, like those genetic engineering hearings I analyzed back in college: I do not approach this with the conclusions preinscribed. This critical self-examination should not lead to a reaffirmation of everything we are already doing. Reflection premised on changing conditions will inevitably uncover areas that are ripe for improvement. It is simply not plausible that a meaningful self-examination will lead to the conclusion that nothing should change.

I am very open minded as to what that change should be, in terms of substance and magnitude. I also think it is important to consider both what should change operationally at the FTC today and what needs to be changed by Congress. Those inquiries are not mutually exclusive: we can both do better with our current toolbox and identify areas where we need to supplement it with additional authority or additional resources.

My mother teases me frequently with the adage “change is hard.” It's funny because it's true, and I think it's particularly true not only for me personally but also for many of us across the legal field who have been professionally raised with the idea that doctrine is developed carefully and thoughtfully over time.

But even though change is hard, it can also be good. Healthy democratic institutions can comfortably acknowledge areas of weakness or prior errors and improve. We can think carefully and also radically at the same time. We must hear and consider new ideas and new voices, and not be wed to the notion that the status quo is any more justified than a departure from it.

Thinking both carefully and radically is nothing new for our first speaker today, whom I have the honor of introducing.

Joseph E. Stiglitz is an extraordinarily accomplished economist who has been at the forefront of major economic policy issues for the past 40 years. His work and achievements are vast, so I will attempt to give you just the highlights.

Professor Stiglitz currently teaches at Columbia University, and he is co-chair of the High-Level Expert Group on the Measurement of Economic Performance and Social Progress at the OECD. He is also the Chief Economist of the Roosevelt Institute. His career has included stints in leadership at the World Bank, the President's Council of Economic Advisers, and the Initiative for Policy Dialogue.

Professor Stiglitz may be best known for his innovative work to create a new branch of economics, “The Economics of Information” and for his analysis of markets with asymmetric information. He has received almost innumerable prizes and accolades, including the Nobel Memorial Prize in Economic Sciences.

And, perhaps most notably, his son once worked for me as a law clerk.

Thank you to Professor Stiglitz and to everyone who is participating in the FTC’s examination of competition and consumer protection in the 21st Century. I also want to thank the FTC staff for their tireless work in planning and carrying out these hearings, and I look forward to lively discussions today that encompass a wide and diverse range of views and perspectives.