



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
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Prepared Remarks of Chairman Joseph Simons¹
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It is a pleasure to join my esteemed counterparts for this panel. I would also like to thank Bill Kovacic and Cristina Caffarra for moderating today's panel. I am looking forward to what I expect will be a lively discussion.

The virtual nature of this discussion—and this entire conference—is yet another reminder of how powerful technology can be, and how it can change the way we live and work. If you had asked me before this public health crisis started whether we could move the entire FTC into a virtual environment without encountering significant problems, I would have been highly skeptical. But our agency staff has proven that we can handle it—and even thrive. We have carried on our mission without any perceptible drop-off in productivity. In fact, we already have more merger enforcement actions this fiscal year than any year since 2000. As we all become more reliant on technology to carry out ordinary tasks, people are taking a close look at the companies that operate these technologies. And rightly so.

Many of the major technology companies that we rely on to search for answers to our questions, find goods, connect us to friends, and carry out other fundamental tasks dominate their respective domains. Policymakers, academics, and other stakeholders are engaged in a lively

¹ These remarks reflect my own views. They do not necessarily reflect the views of the Commission or any other individual Commissioner.

and thoughtful debate over how we can properly ensure that these large firms do not inappropriately dominate our daily lives. Some people are proposing regulatory solutions designed to curb or change the way these companies compete. I would advise strong caution before adopting any regulatory regime rather than relying on a competition regime. History, at least in the United States, shows that regulatory regimes are often subject to regulatory capture and political influence, resulting in entrenched dominant firms and artificial barriers to new competition. And, of course, when these things happen, you get *less*—not more—competition. My view is that the best way to keep dominant companies in line is through vigorous antitrust enforcement. Thankfully, our antitrust framework is flexible and capable of adapting to the unique business models of these big technology companies. And antitrust law is generally capable of sorting out business practices that benefit consumers from business practices that result in harm.

Of course, that's not to say that antitrust law or even antitrust enforcement has been perfect. Courts and antitrust enforcement agencies have made mistakes—both in terms of overenforcement and underenforcement. But the great thing about U.S. antitrust law is its evolutionary tradition. Through research, self-critical examination, and public dialogue, we have been able to change course when antitrust doctrine has gone down the wrong path. And the FTC, with its unique structure, has served as an invaluable complement to this evolutionary tradition. That's because we not only have enforcement authority, but we also have powerful tools at our disposal that enable us to study markets.

Through our 6(b) authority, we are able to issue special orders to gather information about industries without opening an investigation. Indeed, we currently have a study underway of five major technology companies: Alphabet Inc. (including Google), Amazon, Apple,

Facebook, and Microsoft.² We initiated this study to better understand the acquisitions that some of these technology companies were making that were not subject to premerger reporting requirements. In particular, we are looking at the possible acquisition of nascent or potential competitors at transaction values below our filing thresholds. One potential outcome of this study is that we may decide to issue an additional special order requiring premerger filings for acquisitions by these companies at levels well below the normal statutory thresholds. And, of course, we have the option of taking an enforcement action where warranted.

We also have a robust tradition at the FTC of carrying out merger retrospective studies. Merger retrospectives are a powerful way of engaging in critical self-examination to see if our antitrust enforcement is working correctly. We currently are in the process of making our retrospectives program more robust and more formal, and committing additional resources to the program (although not nearly enough). In addition, we are developing a website that will host links to our retrospective studies and will hopefully encourage others to carry out more of these studies as well. When our new site goes public, I hope all of you will take a look, and consider initiating programs of your own.

Thank you for your attention and I look forward to our discussion.

² FTC Press Release, *FTC to Examine Past Acquisitions by Large Technology Companies* (Feb. 11, 2020), <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-examine-past-acquisitions-large-technology-companies>.