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Office of Commissioner
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Antitrust for Digital Markets

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Thank you for the invitation to speak today. It is a privilege to have the opportunity to address the topic of antitrust in digital markets and to participate at today's forum with colleagues who are working through some of the most cutting-edge legal issues of our time.

When it comes to digital markets, we face a moment that is both familiar and new. Familiar, because many of the challenges confronting us echo debates that have existed since the earliest days of the Sherman Act. New, because the scale and speed of technological change are transforming markets in ways that test how the law should be applied.

Yet there is a temptation in some of these discussions to declare that antitrust enforcement is obsolete. That our existing tools cannot keep up with the pace of technological change, and that the antitrust laws are an impediment to economic progress. That narrative is not new, but it is commonplace in many antitrust circles.

My goal today is to push back on that narrative. But doing so requires stepping back from individual cases and focusing on broader questions: What legal principles should guide our approach to digital markets? What do those principles imply for merger enforcement and remedies? And how should we approach emerging technologies?

The central point I want to leave you with is simple: while markets evolve, the core principles of competition law—and the obligations of those charged with enforcing it—do not.

I. Antitrust as a Law Enforcement Framework

When we discuss antitrust enforcement in digital markets, it is useful to remember that many of the questions we face today have clear historical precedents.

Technological revolutions are not new. Railroads, electricity, automobiles, telecommunications, and the internet each transformed markets in profound ways. Each wave of innovation raised concerns about concentration, the accumulation of economic power, and restraints on competition.

Antitrust law developed in response to the challenges of industrialization. The language of the antitrust statutes was derived and informed by the American common law tradition,[1] which

[1] *See* Standard Oil Co. v. United States, 221 U.S. 1, 49–62 (1911).

allowed courts to address unfair and restrictive business practices through case-by-case adjudication.[2] As the Supreme Court has explained, the antitrust laws establish "a charter of freedom" with a "generality and adaptability comparable to that found to be desirable in constitutional provisions" and requires "vigilance in the detection and frustration of all efforts unduly to restrain the free course of interstate commerce."[3]

Despite this tradition, some argue that the antitrust laws are a purely technocratic exercise that tasks courts with calculating with precision whether commercial practices "maximize" economic efficiency or output.[4] But even setting aside the fact that this approach goes well beyond the institutional capacities of courts and has operated to drive up the costs of antitrust compliance and litigation over the last several decades, this view has no foundation in the structure, history, language, or statutory scheme animating the antitrust laws.[5]

The goal of antitrust enforcement is not to engineer the economy or micromanage market outcomes. Instead, the antitrust laws establish a law-enforcement framework that is aimed at identifying and curbing accumulations and abuses of economic power, which harm the process through which firms compete to create value and innovate to win over trading partners.[6] It is the focus on the welfare of real people—consumers—that is and should remain the focus of antitrust enforcement.[7]

Artificial intelligence, digital platforms, and data-driven markets may present new factual settings. But the governing principles are long-standing and can be readily applied across different markets.

II. What the Speed of Market Change Means for Enforcement

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[2] Eastman Kodak Co. v. Image Tech. Servs., Inc., 504 U.S. 451, 467 (1992) ("This Court has preferred to resolve antitrust claims on a case-by-case basis.").

[3] Appalachian Coals, Inc. v. United States, 288 U.S. 344, 359–60 (1933).

[4] *See, e.g.*, ROBERT H. BORK, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF 91 (1st ed. 1993) (1978) ("The whole task of antitrust can be summed up as the effort to improve allocative efficiency without impairing productive efficiency so greatly as to produce either no gain or a net loss in consumer welfare."); Herbert Hovenkamp, *On the Meaning of Antitrust's Consumer Welfare Principle*, NETWORK L. REV. (Jan. 17, 2020), https://www.networklawreview.org/herbert-hovenkamp-meaning-consumer-welfare/ ("*the consumer welfare principle in antitrust should seek out that state of affairs in which output is maximized, consistent with sustainable competition*.").

[5] *See* Mark Meador, *Antitrust Policy for the Conservative* 13–18 (FED. TRADE COMM'N May 1, 2025) [hereinafter *Antitrust Policy for the Conservative*], https://www.ftc.gov/system/files/ftc_gov/pdf/antitrust-policy-for-the-conservative-meador.pdf.

[6] Mark Meador, *Antitrust Myth Busting* 1 (FED. TRADE COMM'N May 5, 2025) [hereinafter *Antitrust Myth Busting*], https://www.ftc.gov/system/files/ftc_gov/pdf/meador-antitrust-myth-busting-remarks-5.5.25.pdf ("Not only is the enforcement of the antitrust laws not regulation, when properly undertaken antitrust enforcement can prevent the need for regulation in the first place."); Ohio v. Am. Express Co., 585 U.S. 529, 541 (2018) (quoting Leegin Creative Leather Prods. v. PSKS, Inc., 551 U.S. 877, 886 (2007)) ("The goal is to 'distinguis[h] between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer's best interest.'").

[7] *Antitrust Policy for the Conservative*, *supra* note 5, at 22 ("[W]hat we mean by 'consumer' is that class of persons whose business is courted by the alleged monopolist, their trading partners. The conduct at issue in an antitrust case should be evaluated through the lens of how it affects *their* welfare.").

With this background, let's address a common claim made about digital markets: that the pace of innovation makes antitrust enforcement not just difficult, but counterproductive.

The argument is familiar. Markets move quickly. By the time an investigation or litigation concludes, the market has changed. Enforcement, the argument goes, risks addressing problems that no longer exist, and ultimately the market will correct itself.

This critique has some force as an argument for equipping agencies with more funding and considering proposals that would address evidentiary challenges that impede more efficient enforcement. What it does not support is abdicating the obligation to enforce the law.

The speed of technological change can amplify competitive harm. Conduct that entrenches platform advantages, forecloses entry, or creates durable data advantages can compound rapidly. Network effects, path dependence, and feedback loops can act to further entrench dominance. The longer such conduct persists, the harder it becomes to restore competition and the greater the need may be for relief, including structural remedies. Urgency in markets should translate into urgency in enforcement, particularly during periods of technological transition.

The argument about "self-correction" also obfuscates the problem that antitrust law seeks to correct. If a firm gains a dominant position through better products or lower prices, that is not an antitrust concern. In this situation, entry or the absence of entry are lawful and ordinary market responses. Neither can be said to be addressing a problem requiring correction in the legal sense, as it is not the role of courts to ensure that the marketplace conforms to an economist's model of perfect competition.

Rather, the relevant antitrust question is whether that position is acquired or maintained through collusive or exclusionary conduct. In that setting, the issue to be addressed is the unlawful conduct itself, which is a problem that can only be corrected through law enforcement.[8]

Innovation is often invoked in these debates, but too frequently as a vague, all-purpose defense rather than a concrete economic consideration.[9] The fact that firms can point to breakthroughs they made in one area of their business does not excuse practices that foreclose access to alternatives in another part of their business. Innovation matters, but only insofar as evidence can be put forward that the challenged conduct itself is the driving force behind that innovation.

These challenges identified here remain constant even as the technological environment evolves. Artificial intelligence provides a clear example.

AI has the potential to transform industries—from healthcare and logistics to finance and scientific research. Innovation is occurring at extraordinary speed. At the same time, the development of AI raises familiar competition concerns: new technologies being used to facilitate unlawful agreements, efforts to unduly restrict access to critical data inputs and compute resources, and the leveraging of a dominant position to limit entry opportunities.

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[8] *See* Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 448 (1993) ("[The Sherman Act] directs itself only against conduct that unfairly tends to destroy competition").
[9] *See Antitrust Myth Busting*, *supra* note 6, at 2–3.

There is also an opportunity here for enforcement agencies. Advances in artificial intelligence and data analytics can significantly improve investigative speed and accuracy. Tools that accelerate document review, economic analysis, and market mapping can reduce the time required to build cases. Rather than requiring changes in substantive legal standards, technological advancements can improve the efficiency with which those standards are applied.

Accordingly, the appropriate response is neither heavy-handed regulation nor reflexive deference to scale. It is the application of established antitrust principles to distinguish between conduct that creates value through competition and conduct that appropriates value by restricting it.

III. Merger Enforcement in Digital Markets

Mergers play a central role in the modern economy. They can create efficiencies, combine complementary capabilities, and enable firms to bring new products to market. But mergers in some cases present competitive concerns. Transactions that eliminate direct competition or raise barriers to entry can harm consumers and limit the benefits of innovation. These concerns are particularly pronounced in digital markets, where acquisition activity has been both frequent and strategically significant over the past few decades.

One pressing area relates to the treatment of acquisitions by dominant technology platforms of nascent competitors. Rather than deploying acquired new technologies at scale, transactions may operate as a pretext for shelving or foreclosing access to emerging alternatives. Higher post-transaction switching costs or limits on interoperability can further heighten concerns, particularly where market or monopoly power in legacy markets operates to shape the quantity and quality of innovation incentives in emerging ones.

A common rejoinder to stricter scrutiny of such acquisitions is that entrepreneurs need viable exit options, and that acquisition by a large platform is often the intended outcome from the moment a startup is conceived. While these claims should be taken seriously and are scrutinized during the premerger review process, it is not dispositive. Acquisition by a dominant incumbent is not the only exit available to entrepreneurs; IPOs and acquisitions by adjacent firms or non-market leaders can present fewer competitive concerns. Moreover, a permissive approach carries its own distortionary effects on innovation. Where entrepreneurs and investors know that the most likely and lucrative outcome is acquisition by a dominant firm, capital flows toward innovations that appeal to those existing incumbents. The result, in turn, may be fewer paradigm-shifting innovations that tend to promote competition and a greater number of incremental developments that have the tendency to entrench already dominant firms.

Another emerging concern arises in the context of "acqui-hires."[10] In these arrangements, dominant firms acquire key talent from startups without formally acquiring the company. The competitive harm is functionally similar to cases involving nascent acquisitions: a potential rival disappears, its capabilities are folded into an incumbent, and the market may see fewer break-through innovations.

[10] *See* Mark Meador, *Keynote Address at the Tech Antitrust Conference* 3–4 (FED. TRADE COMM'N Jan. 15, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/meador-concurrences-keynote.pdf.

What makes acqui-hires particularly challenging from an enforcement standpoint is their structure; arrangements can be designed to fall below premerger notification thresholds, limiting the opportunity for advance review. That makes it even more important to look past formal transaction labels and assess whether a deal, however packaged, forecloses competition and constrains access to the specialized talent on which dynamic markets depend. It also highlights the importance of providing avenues for third parties to bring these issues to the agency's attention and the confidentiality protections afforded to complainants when they do come forward during investigations.

Another longstanding challenge arises from the cumulative effects of acquisitions over time. Individual transactions may appear modest when viewed in isolation, each one defensible on its own. But antitrust law takes a holistic approach that elevates substance over form.[11] In this regard, it is necessary to analyze acquisitions as part of an overall course of conduct, which may also implicate other contractual arrangements, such as exclusive dealing or non-compete provisions, that the parties have already secured or are better positioned to pursue as a result of the acquisition. These arrangements, in turn, may raise yet additional competitive concerns.

IV. Questions That Arise in the Context of Remedies in Merger Review

Remedies remain an essential part of the merger-enforcement toolkit. They allow the agencies to address legal concerns quickly, efficiently, and effectively while preserving the benefits of lawful transactions. When properly designed and implemented, remedies enable enforcers to resolve competitive issues without resorting to prolonged litigation, ensuring that markets remain competitive and yield benefits for consumers while businesses can still pursue growth opportunities.

This approach stands in contrast to the prior administration's reflexive skepticism toward remedies. That posture, while often framed as being willing to fight for consumers, ultimately proved counterproductive. By resisting workable solutions, the prior administration prolonged the merger review process and lengthened the timeline for bringing enforcement actions, thereby slowing agencies' ability to respond. In dynamic sectors, where time is of the essence, this kind of rigidity makes it harder to prioritize scarce agency resources and take effective action in policing misconduct that arises in technology markets.

Several of the FTC's recent matters, including Synopsys/Ansys, ACT/Giant Eagle, Valvoline/Greenbrier, and Sevita/BrightSpring, illustrate the continued importance of remedies in practice.[12] In each case, the central question was whether divestitures could fully restore competition in affected markets.

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[11] *See, e.g.*, Duke Energy Carolinas, LLC v. NTE Carolinas II LLC, 111 F.4th 337, 354 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2748 (2026) ("[T]he correct legal standard" requires the court to "take account of all the conduct holistically and determine its effect on potential competition in the relevant market."); FTC v. Deere & Co., No. 25-cv-50017, 2025 LX 172398, at *17–18 (N.D. Ill. June 9, 2025) ("[T]hough courts may start by assessing how conduct fits within a recognized category, they 'should stay focused on the *effect*' the conduct has on competition." (emphasis added) (quoting Viamedia, Inc. v. Comcast Corp., 951 F.3d 429, 453 (7th Cir. 2020))).

[12] Press Release, Fed. Trade Comm'n, FTC to Require Synopsys and Ansys to Divest Assets to Proceed with Merger (May 28, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-require-synopsys-ansys-divest-

When this standard is met, remedies can serve multiple critical functions. They preserve competition, ensuring that consumers continue to benefit from improvements in price, quality, and innovation. They facilitate efficient enforcement, allowing agencies to resolve concerns without expending unnecessary time and resources. And they provide certainty to the business community by assuring that transactions can proceed where parties work with the agencies in a transparent manner to ensure competition is adequately protected.

At the same time, remedies must work in practice. Where meaningful uncertainty remains about whether competition will be restored, that uncertainty should be resolved in favor of competition and consumers. The antitrust laws reflect a clear congressional preference to avoid underenforcement, and that directive must continue to guide both enforcement and settlement decisions.[13]

V. The FTC's Dual Competition-Consumer Protection Mandate

The Federal Trade Commission brings unparalleled expertise in addressing issues presented by digital markets, as its law enforcement program spans both competition and consumer protection. This dual mandate reflects an important reality: competitive harm and consumer harm are often closely linked in these settings.

Consumer protection investigations often reveal practices that affect how consumers receive information, evaluate choices, and interact with powerful firms. Competition investigations often focus on market structure, entry barriers, and adverse price, output, and innovation effects. Fundamentally, both sets of laws are concerned with the same constituency: American consumers.

The functioning of markets depends critically on a respect for legal rules that ensure parties transact on a good faith and voluntary basis. When firms violate those rules or engage in abuses of process that target rivals, the conduct does not simply produce suboptimal outcomes: it distorts the process through which such outcomes emerge and undermines the ability of consumers to make free and informed choices. Whether firms act through deception or economically coercive practices, they are unfair methods that are subject to challenge under Section 5 of the FTC Act.

The overlap between these two domains is particularly evident in digital and platform markets, where conduct that excludes rivals often also harms the users and businesses that depend on the platform. Data practices that undermine privacy can raise barriers to entry or distort competition

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assets-proceed-merger; Press Release, Fed. Trade Comm'n, FTC Approves Final Consent Order in ACT-Giant Eagle Deal (Nov. 19, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/11/ftc-approves-final-consent-order-act-giant-eagle-deal; Press Release, Fed. Trade Comm'n, FTC Requires Divestiture of Oil Change Shops in Valvoline-Greenbriar Deal (Nov. 14, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/11/ftc-requires-divestiture-oil-change-shops-valvoline-greenbriar-deal; Press Release, Fed. Trade Comm'n, FTC Takes Action to Prevent Anticompetitive Healthcare Services Merger (Jan. 30, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/01/ftc-takes-action-prevent-anticompetitive-healthcare-services-merger.

[13] *Antitrust Policy for the Conservative*, *supra* note 5, at 25 ("[A] conservative approach to antitrust law that seeks to follow congressional guidance will be more concerned with avoiding Type II errors than Type I errors.").

within and across platforms. Deceptive practices may impair users' ability to make informed choices among alternatives, or create a "race to the bottom" in which firms degrade quality, protections, or transparency in order to remain competitive. Conflicts of interest further exacerbate these dynamics, as platforms that operate both as intermediaries and market participants may have the incentive and ability to disfavor rival offerings in ways that upset contractual commitments or settled expectations, thereby distorting competition and disadvantaging rivals and users alike.

The FTC is therefore uniquely positioned to address these overlapping concerns. Cases and investigations that sit at the intersection of competition and consumer protection should be treated as opportunities to deploy complementary tools that protect competition and advance consumer welfare.

Conclusion

Let me conclude with a final observation.

Competition policy can be complex and technical. Lawyers argue doctrine. Economists model markets. Agencies and practitioners publish guidance that get debated even further. Academics publish articles that no one reads.

All that work is important. But competition enforcement ultimately serves a broader purpose: it preserves economic conditions that allow markets to function and individuals to innovate in the first place. Maintaining those conditions requires sustained commitment to rigorous law enforcement.

The challenges posed by digital markets and emerging technologies are significant. But the principles guiding antitrust enforcement are well-established.

Our task is to apply those principles consistently and decisively, which requires a clear understanding of our national interest in promoting the values of free enterprise and economic competition in dynamic markets.

Thank you.