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Office of the Chairman

Competition in the 21st Century: Heeding The Rallying Cry for Deregulation

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Thank you for that kind introduction. It's a pleasure to be here in Scotland, which holds a special place in my heart. In case you couldn't tell from my last name, or frankly, what I look like, my ancestors hail from Scotland. My staff can confirm that I maintain an intimate familiarity with the spirits this nation offers as well. To quote the incomparable Rabbie Burns, "O thou, my muse! guid auld Scotch drink!"[1]

But Scotland isn't just from where *my* forefathers hail. Not far from here lies Adam Smith, who is likely more responsible than any other person for why we are here today. It was Smith, after all, who was one of the first men of his time to warn that the monopolist can "sell their commodities much above the natural price, and raise their emoluments, whether they consist in wages or profit, greatly above their natural rate."[2]

There is a through line from Smith's observations on the "free market mechanism" to a recommendation in 2000 by a U.S. working group called the International Competition Policy Advisory Committee—ICPAC for short.[3] The ICPAC's report advised in part that the United States explore a "Global Competition Initiative"—a forum for collaboration and consultation among interested government officials and non-governmental participants on competition law and policy.[4] I'm proud that some of my country's great thinkers helped pave the way for our gathering this week, and that their ideas served as the catalyst for the International Competition Network

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* 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.
[1] Robert Burns, "Scotch Drink" in Poems, Chiefly in the Scottish Dialect (1785).
[2] Adam Smith, An Inquiry Into the Nature and Causes of the Wealth of Nations, Ch. 7 (1776).
[3] Final Report of the International Competition Policy Advisory Committee (Feb. 2000), https://www.justice.gov/atr/final-report.
[4] *Id*. at 281.

("ICN"), which the United States, along with competition law agencies from 13 other jurisdictions, launched in 2001.[5]

We're now well into the third decade of the ICN and it's remarkable to see what the network has accomplished. For example, we have achieved substantial alignment across the globe on the appropriate procedures for antitrust investigations and have elevated the recognition of due process as a critical, shared value in antitrust enforcement.

Today, I'd like to offer my thoughts on what I hope will be yet another value we can share, namely, an enforcement-forward competition framework that promotes innovation and growth. The way we approach competition particularly in digital markets has profound effects on all our nations' futures. Recent revelations about the state of the AI race means that now is a decisive moment for all of us. And the deregulatory rallying cry heard in my country[6]—and which is receiving quarter in some parts of Europe now—is critical to heed.

Competition enforcers around the globe have a friend in the United States. That is not to say we will not have our differences—I will address those shortly. But President Donald Trump and his administration are committed to robust competition-law enforcement. This administration's economic mandate is broad, but it focuses on promoting human flourishing by creating a dynamic business environment. That environment is characterized by increasing innovation, productivity, and growth. The fruits of such an economy will be enjoyed by all Americans, not just the very rich and powerful. It is also focused intensely on the welfare of the American worker. Vigorous and effective competition-law enforcement is a key component of this dynamic and pro-worker economy.

Although I credit Scotland and the United Kingdom with helping birth capitalism, I must give my home country some praise for its long history of understanding the threats posed to human flourishing by monopoly and collusion. The author of our nation's first antitrust statute, Senator John Sherman, declared: "If we will not endure a king as a political power, we should not endure a king over the production, transportation, and sale of any necessities of life."[7] Sherman was a Republican like me. It was, after all the Republican Party, the *conservative* party, that most effectively dealt with the problems presented by trusts. That our nation's most important antitrust law bears the name of a Republican legislator is a point of pride for my party. And my party, as well as this administration, is rediscovering the wisdom of taking competition enforcement seriously.

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[5] Press Release, FTC, U.S. and Foreign Antitrust Officials Launch International Competition Network (Oct. 24, 2001), https://www.ftc.gov/news-events/news/press-releases/2001/10/us-foreign-antitrust-officials-launch-international-competition-network.

[6] See, e.g., Executive Order 14267, Reducing Anti-Competitive Regulatory Barriers (Apr. 9, 2025) ("Anticompetitive Regulations EO"), https://www.whitehouse.gov/presidential-actions/2025/04/reducing-anti-competitive-regulatory-barriers/; Press Release, FTC, FTC Launches Public Inquiry into Anti-Competitive Regulations (Apr. 14, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/04/ftc-launches-public-inquiry-anti-competitive-regulations; Press Release, Dep't of Justice, Justice Department Launches Anticompetitive Regulations Task Force (Mar. 27, 2025), https://www.justice.gov/opa/pr/justice-department-launches-anticompetitive-regulations-task-force.

[7] Statement of Senator John Sherman, 21 Cong. Rec. 2457 (Mar. 21, 1890), https://www.congress.gov/bound-congressional-record/1890/03/21/senate-section.

This rediscovery hinges on a critical insight. The purpose of society is to promote the flourishing of its members. Government tyranny and abuse is a danger to that flourishing. But so are private monopolies and cartels. In some cases, private aggregations of power can match government tyranny as a threat to human flourishing.

This was the experience that led to the creation of the antitrust laws. The trusts wielded tremendous economic power, and could use that power to command higher prices, to reduce output, to drive down wages, to block new and innovative entrants to markets, and to degrade product quality.[8] Monopolies and cartels thus inflict concrete harms on the welfare of consumers and workers, and deny them the opportunity to reach their full potential.

Monopolies and cartels do not inflict merely economic harms. They can inflict social and political harms on society as well. Economic power can be leveraged into political power, and that political power can warp democracy. We have seen this danger play out in the United States with Big Tech. Especially in 2020, platforms with tremendous economic power used that power to censor political speech on critically important topics—the origins of Covid, the efficacy of masks and vaccines, human sexuality, and the 2020 U.S. presidential election.[9] The antitrust laws do not address censorship or political power directly. But by protecting the welfare of consumers and workers, the antitrust laws address economic power. If enforcers are committed to protecting consumers and workers from concrete harms inflicted by the abuse of economic power, they will have the effect of protecting society from powerful firms that would leverage that economic power into political power.

As competition enforcers, we focus every day on the importance of promoting innovation, vibrancy, and competition from the abuse of private power. But I urge you today not to lose sight of the very real fact that government regulation can be the enemy of competition, vibrancy, innovation, and resiliency no less than the unlawful exercise of economic power. Regulation, whether intended or not, can lead to the same kind of threat to human flourishing as the abuse of private power.

Antitrust law has traditionally taken an *ex post*, rather than *ex ante*, approach to enforcement. If business conduct inflicts concrete harms on consumers or workers, and the enforcers can muster sufficient evidence of those harms, then the government acts to protect consumers and workers from that conduct. This approach requires enforcers to identify specific injurious conduct; to gather evidence that the conduct is in fact damaging the welfare of consumers or workers; and to tailor the remedies to the injurious conduct. Unless those conditions are met, antitrust law leaves markets to sort out problems. No, the *ex post* approach will not catch every competition problem. But so long as enforcers are committed to vigorous and courageous enforcement, the precise, tailored *ex post* approach is preferable to the costly dragnet effect of *ex ante* regulation.

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[8] See generally Report of the Committee on General Laws Relative to Combinations Commonly Known as Trusts, S. 112–64, 1st Sess. (N.Y. 1889).

[9] See Concurring Statement of Comm'r Andrew N. Ferguson, *In re FTC v. 1661, Inc. d/b/a GOAT*, Matter No. 2223016 at 1–3 & nn.2–3, 8–9 (Dec. 2, 2024).

My friend and colleague Gail Slater at the U.S. Department of Justice has likened *ex ante* regulation to a sledgehammer, whereas *ex post* antitrust enforcement is a scalpel.[10] Regulations, even when well intentioned, impose serious costs on an economy. I know it has become *de rigeur* in circles like this to raise Mr. Draghi's report,[11] but he is right. Burdensome regulations make it difficult for small businesses to achieve scale.[12] They can kill new, innovative ideas in the cradle.[13] They discourage capital investment.[14] And they can impose second-order effects that compound their costs in ways unimaginable to the regulators.[15]

They pose another problem that should alarm us all as antitrust enforcers. Regulations, even those issued by technocrats, can be a tool by which incumbent firms exclude potential rivals.[16] Regulatory capture is real. I saw it as the senior-most Republican lawyer in the U.S. Senate. Powerful firms will spend tremendous resources convincing legislators and regulators to adopt a suite of rules that have the effect of increasing their rivals' costs, or excluding those rivals entirely.[17] Firms will often present those proposed rules as sensible, reasonable, or necessary. But these proposals are often carefully crafted to promote or insulate monopoly. Even when the regulator believes he is doing the right thing, he is often damaging competition in ways he does not understand.

As Mr. Draghi's report explained, the European regulatory regime has contributed to economic stagnation, dwindling productivity, and high levels of unemployment across Europe.[18] In almost every category by which one might assess competitiveness in an economy, Europe lags in some ways behind the United States.[19] Obviously, the source of the differences between economic outcomes in the United States and Europe is overdetermined. But there is no doubt that Europe's heavy regulatory hand is partially to blame.[20]

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[10] Remarks of Assistant Att'y Gen. Gail Slater, U.S. Dep't of Justice Antitrust Div., at University of Notre Dame Law School, The Conservative Roots of America First Antitrust Enforcement (Apr. 28, 2025), https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-first-antitrust-address-university-notre.

[11] The Draghi Report: A Competitiveness Strategy for Europe (Sept. 9, 2024), https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en.

[12] *Id.* at 69.

[13] *Id.* at 30.

[14] *Id.* at 18.

[15] Patrick McLaughlin & Robert Greene, Working Paper, The Unintended Consequences of Federal Regulatory Accumulation (May 8, 2014), https://www.mercatus.org/media/60066/download?attachment.

[16] George Stigler, The Theory of Economic Regulation, 2 Bell J. Econ. & Mgmt. Sci. 3 (1971); Anticompetitive Regulations EO, *supra* note 6.

[17] Stigler, *supra* note 16, at 3, 5.

[18] The Draghi Report, *supra* note 11, at 8, 18, 30.

[19] *Id.* at 6; see also generally Fredrik Erixon, et al., Policy Brief, If the EU Was a State in the United States (July 2023), https://ecipe.org/wp-content/uploads/2023/07/ECI_23_PolicyBrief_07-2023_LY04.pdf; Fredrik Erixon, et al., Policy Brief, Keeping Up With the US (May 2024), https://ecipe.org/wp-content/uploads/2024/05/ECI_24_PolicyBrief_09-2024_LY07.pdf; Economics: Why Europe is Falling Behind the USA, Polytechnique Insights (June 11, 2024), https://www.polytechnique-insights.com/en/columns/economy/economy-why-europe-is-falling-behind-the-usa/.

[20] The Draghi Report, *supra* note 11, at 30, 34.

Unfortunately, the regulatory impulse has recently seeped into competition law. I think this is a dangerous development. Consider the Digital Markets Act.[21] The law relies on rigid criteria to identify, in the first instance, the companies and their services that are subject to its complex and burdensome rules as designated "gatekeepers."[22] To date, five of the seven gatekeepers are American firms, and only one originated in Europe[23]—a fact that is itself evidence of the heavy costs of regulation on growing a business to scale. The DMA lacks any of the finesse that a typical competition law assessment would entail. It also lacks the tailoring of remedies to the injury. Should the company be deemed in violation, the DMA on its face allows bureaucrats to assess escalating fines of up to a certain percentage of the company's *worldwide* turnover—not their European turnover.[24] Sure, enforcers have discretion to assess fines below the cap. But the law is written in such a way that permits regulators to extend their reach beyond Europe to conduct taking place elsewhere and, as a result, companies will often conform their conduct to European rules beyond European markets. This is the "Brussels Effect" in action.[25]

I do not say this to chide. We all have important lessons to learn from the consequences of our divergent approaches. I've had conversations with some of you about what makes the United States a great innovative powerhouse. We are a nation of risk-taking pioneers—risk-embracing, really. Our innovators exhibit the key quality underpinning the entrepreneurial spirit, meaning they shrug off failure and are unashamed and unafraid to try again. In fact, American society encourages and expects it. That's how new breakthrough ideas come to market. Free-flowing capital certainly helps, as well. Ultimately, businesses that have the capability to transform our lives for the better can grow and succeed in the United States because they face fewer burdensome regulations—and burdensome regulators—than elsewhere.

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[21] Commission Regulation 2022/1925, On Contestable and Fair Markets in the Digital Sector, 2022 O.J. (L. 265) ("Digital Markets Act").

[22] Digital Markets Act, Art. 3.

[23] European Commission, Digital Markets Act, Gatekeepers (last visited May 7, 2025), https://digital-markets-act.ec.europa.eu/gatekeepers_en. The five American firms are Alphabet, Amazon, Meta, Microsoft, and Apple. *Id*. Of the other two gatekeepers, one is Chinese (ByteDance) and one was founded in Europe but is now owned by an American firm (Booking.com). See Booking.com's Parent Company is Officially a Gatekeeper, EU Monopoly Watchdog Says, Fortune (May 13, 2024), https://fortune.com/europe/2024/05/13/booking-european-commission-antitrust-monopoly-core-platform-service/ ("Booking Holdings, the U.S. company that owns Booking.com and a number of other travel websites, has been added to the European Union's list of companies now under heightened digital scrutiny."); About, History, Booking.com (last visited May 7, 2025), https://www.bookingholdings.com/about/history/ (identifying 2005 acquisition of Booking.com as a key milestone).

[24] Digital Markets Act, Art. 30 (1) ("In the non-compliance decision, the Commission may impose on a gatekeeper fines not exceeding 10% of its total worldwide turnover in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with" its DMA obligations); Digital Markets Act, Art. 30 (2) (calling for maximum fines of up to 20% of worldwide turnover for repeat violations); see also European Commission, The Digital Markets Act: Ensuring Fair and Open Digital Markets (last visited May 7, 2025), https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en.

[25] Anu Bradford, The Brussels Effect: How the European Union Rules the World (2020), https://scholarship.law.columbia.edu/books/232 (book description explaining the "Brussels Effect" as "absolv[ing] the EU from playing a direct role in imposing standards, as market forces alone are often sufficient as multinational companies voluntarily extend the EU rule to govern their global operations."); Anu Bradford, *The Brussels Effect*, 107 Nw. U. L. Rev. 1 (2012), https://scholarship.law.columbia.edu/faculty_scholarship/271.

I am also sympathetic to the motivations that contribute to the adoption of competition regulations, particularly in digital markets. Competition law enforcement against Big Tech is difficult and expensive. I know this better than most; for example, it took more than five years from the beginning of the investigation to bring the FTC's current case against Meta[26] to trial. And I am concerned with platforms who collect taxes on innovators, or who maintain monopoly power by steering consumers away from innovative competitors. Both practices can represent serious threats to innovation and growth,[27] and we must pay close attention to them and, where appropriate, enforce the competition laws against them. I am not categorically opposed to regulation, and it is also appropriate for legislators to revisit their laws to clarify or refine prohibited conduct and appropriate remedies. My own country is having debates about whether tailored regulations are necessary in specific markets, or for very specific conduct.[28] These are good debates to have, and there may be circumstances where narrow, tailored regulations are appropriate.

But we should still prefer the scalpel of enforcement to the sledgehammer of regulation. That approach has yielded fruit in the United States. Vigorous enforcement by state and federal authorities, as well as private antitrust suits, have produced important judicial decisions on anticompetitive conduct in digital markets.[29] I therefore remain of the view that vigorous *ex post* enforcement is preferable to regulation.

Instead of chiding, I urge all of us to apply the lessons we have learned from overregulation to the most important question we confront as competition enforcers: what to do about artificial intelligence. AI technology shows remarkable promise. It could be a driving force for innovation, economic growth, and increased productivity for workers in the coming years. It could also pose the first real competitive challenge to Big Tech incumbents in decades. With this nascent technology still in the cradle, I fear that a knee-jerk regulatory response will only squelch innovation, further entrench Big Tech incumbents, and perhaps even ensure that AI innovators move to jurisdictions friendlier to them—but perhaps hostile to our nations and our shared interests.

I fear that if we confront AI with the regulatory sledgehammer, we will break it and deny to our citizens its potential promise. Instead, we must proceed with caution. We ought not to assume the worst possible outcomes from this new technology and regulate on that basis. Instead, as competition enforcers, we should use our trusted law-enforcement tools and watch carefully the development of this new technology. Where we see AI abused to injure the welfare of consumers

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[26] *FTC v. Meta Platforms*, 1:20-cv-03590-JEB (D.D.C.).

[27] See *Epic Games v. Apple*, 559 F. Supp. 3d 898, 1054 (N.D. Cal. 2021), *aff'd in part, rev'd in part*, 67 F.4th 946 (9th Cir. 2023).

[28] See, e.g., Press Release, Rep. Kat Cammack, Rep. Cammack Introduces App Store Freedom Act to Promote Competition & Protect Consumers (May 6, 2025), https://cammack.house.gov/media/press-releases/rep-cammack-introduces-app-store-freedom-act-promote-competition-protect; Press Release, Sen. Mike Lee, The AMERICA Act: Lee Introduces Bill to Protect Digital Advertising Competition (Mar. 30, 2023), https://www.lee.senate.gov/2023/3/the-america-act.

[29] See *United States v. Google*, 747 F. Supp. 3d 1 (D.D.C. 2024); *United States v. Google*, No. 1:23-CV-108 (LMB/JFA), 2025 WL 1132012 (E.D. Va. Apr. 17, 2025); *Epic Games v. Apple*, 67 F.4th 946, 1004 (9th Cir. 2023); Permanent Injunction, *Epic Games v. Google*, 20-cv-05671-JD, ECF No. 702 (N.D. Cal. Oct. 7, 2024).

and workers, we should intervene. But we ought not to assume those outcomes. We should instead let the technology develop and confront problems as they arise, just as competition enforcers have been doing for more than a century.

It is undoubtedly important that policymakers and competition-law enforcers across the globe work together to open avenues for greater investment and innovation in the digital space, especially with respect to AI. If we can work together to unlock the enormous potential of AI by promoting a regulatory environment that permits greater technological and business experimentation, we can all benefit.

The way forward, then, is to recognize that the benefits of the digital revolution are not zero-sum. Provided we come to a shared understanding of the regulatory framework that promotes business dynamism, technological innovation, and the welfare of consumers and workers, the digital revolution provides an exceptional opportunity. Through a shared commitment to a fairer and more open regulatory regime, and a predominantly *ex post* approach by competition enforcers across the globe, we can forge new ways to work together to unlock the full potential of our respective tech sectors, comprised of businesses both big and small, to the common benefit of each of our respective peoples.

I close with a clear message. "America First" does not mean "America alone." The bonds we share predate my nation's founding. In many ways our destinies have always been intertwined, which is precisely what gives me hope for our future. Tomorrow, for example, we will commemorate the eightieth anniversary of our civilization's triumph over the enemies of human flourishing. Today, the stakes for our collective civilization could not be higher. I stand here as a partner with an open hand, and I have little doubt that we will all meet this moment together.

Thank you, and I look forward to continuing our conversations here in Edinburgh.