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CELEBRATION OF INNOVATION

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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.

I. Introduction

I'm excited to be here to honor the amazing publications from the last year. More than 1300 articles submitted! Yep, and I read every last one of them. In all seriousness, I am honored to be in the company of people at the forefront of our profession, who care deeply about the law and how the law can best be used to protect citizens and push our economy (and our society) forward. At root, tonight's event is a celebration of innovation. I consider everyone in this room to be participants in and contributors to the great—and uniquely American—tradition of innovation.

The thing that distinguishes America from the countries that came before it—and the thing that continues to make America truly exceptional—is our relentless drive to innovate. In America, if you don't like something, you fix it! If you think that you can do something better, you build it! Now I love country music and baseball and apple pie, but the thing that makes America, America, is this deep, unyielding commitment to innovation. This is why the world's best companies are born in America. This is why people come here from around the world to make new things. And this is why each year American innovators come up with something new that is beyond our wildest imaginations.

II. American Exceptionalism

I want to highlight just two examples of exceptional American innovators. First, I want to talk about Thomas Edison. Every schoolchild learns about Thomas Edison and the invention of the lightbulb, but the true breadth of his contributions is difficult to fathom. After working for six years as a low-level telegraph operator as a young man, Edison invented the quadruplex telegraph, a machine capable of sending four messages at the same time.¹ Western Union, at the time, dominated the telegraph industry.² Western Union's rivals, who were desperate for a competitive edge, purchased Edison's quadruplex for \$100,000, one of the largest payments for an invention at that point in history.³ This may have been the first "big tech" M&A deal.

Years after selling the quadruplex, Edison established Menlo Park where he went on to develop the phonograph, the motion-picture camera, and the lightbulb,⁴ forever changing the world. Edison died nearly 100 years ago, but his story shares many elements with the papers submitted to concurrences this year: technology transactions, nascent competition, communications networks and network effects, and mass media. He was truly ahead of his time.

Second, for a more modern version, consider David Sacks. Born in Cape Town, South Africa, Sacks' family moved to the United States when he was five.⁵ He caught the entrepreneurial bug from his grandfather who started a candy factory.⁶ Sacks joined the workforce in the internet

¹ Thomas Edison, Encyclopedia Britannica (last visited Mar. 26, 2025), <https://www.britannica.com/biography/Thomas-Edison>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Suzanne Herel, *Meet the Boss: David Sacks, CEO of Yammer*, SFGATE (Feb. 22, 2012), <https://www.sfgate.com/business/meettheboss/article/meet-the-boss-david-sacks-ceo-of-yammer-3347271.php>.

⁶ *Id.*

age. He was on the team that evolved into PayPal.⁷ When eBay acquired PayPal, Sacks was just 30 years old and continued to aggressively innovate.⁸ He co-founded Yammer, a private social network for businesses that four years later sold to Microsoft for \$1.2 billion.⁹ After that, Sacks founded the venture capital firm Craft Ventures that is shaping the B2B software industry.¹⁰

To me, the most notable thing about these American entrepreneurial success stories is the fact that people like Edison and Sacks didn't create one amazing product and then rest on their laurels. No, they continued to innovate over and over again.

It is no surprise that the setting for these stories is America. We have set up our laws, and our economy, and our society to encourage this sort of innovation. Our bankruptcy laws are set up so that entrepreneurs are not overly punished for swinging for the fences. Our competition laws do not envision a vast regulatory scheme like our European friends. They exist so that enforcers can clear the path for firms to vigorously compete.

Julian Simon said: "The ultimate resource is people—especially skilled, spirited, and hopeful young people endowed with liberty—who will exert their wills and imaginations for their own benefits, and so inevitably they will benefit the rest of us as well."¹¹ And this is the American dream: coming from nothing and then making something entirely new that catapults society and the economy forward. And that is why I also love American antitrust law: it's all about supporting this American ideal of innovation, driving the economy forward, and fostering an environment where new ideas thrive—where innovators are incentivized to continue creating.

III. Innovative Scholarship: Hospital Mergers as a Case Study

So, what about antitrust economists and lawyers? How do you innovate? We may not be building new consumer products, but you have contributed to this great tradition of innovations through your submissions to Concurrences. As you help enforcers and courts more accurately identify anticompetitive conduct and effects, you are pushing the field forward so that we—the citizens, the consumers, the investors—can benefit from competitive markets.

One of my favorite examples of scholarship changing the tide of antitrust enforcement comes from hospital mergers. In the 80s and 90s, the agencies successfully blocked several mergers using the methodology developed by Professor Ken Elzinga and Professor Thomas Hogarty.¹² But then, from 1994 to 1999, the agencies lost six straight challenges to hospital mergers—four by the FTC and two by the DOJ.¹³ The primary issue was geographic market

⁷ Craft, Bio of David Sacks (last visited Mar. 26, 2025), <https://www.craftventures.com/team/david-sacks>.

⁸ *Id.*; see also Herel, *supra* note 5.

⁹ Frederic Lardinois, *Microsoft Completes its \$1.2B Yammer Acquisition*, TECHCRUNCH (Jul. 19, 2012), <https://techcrunch.com/2012/07/19/microsoft-completes-its-1-2b-yammer-acquisition/>.

¹⁰ David Sacks, *Announcing \$1.3 Billion for Craft Ventures IV and Growth II*, MEDIUM (Nov. 9, 2023), <https://medium.com/craft-ventures/announcing-1-3-billion-for-craft-ventures-iv-and-growth-ii-19ae15e705bc>.

¹¹ JULIAN L. SIMON, *THE STATE OF HUMANITY* 27 (1995).

¹² Cory Capps et al., *The Continuing Saga of Hospital Merger Enforcement*, 82 *Antitrust L. J.* 441, 442 (2019) (citing Kenneth Elzinga & Thomas Hogarty, *The Problem of Geographic Market Definition: The Case of Coal*, 23 *ANTITRUST BULL.* 1, 2 (1978); Kenneth Elzinga & Thomas Hogarty, *The Problem of Geographic Market Delineation in Antitrust Suits*, 18 *ANTITRUST BULL.* 45, 45 (1973)).

¹³ *Id.* at 443.

definition, which had been based upon how far patients would travel to receive care at a hospital.¹⁴ In response to the brutal losing streak, for nearly ten years the agencies challenged only one hospital merger.¹⁵

Who came to the rescue? Antitrust and economic scholarship! A series of economic studies changed the way the agencies thought about competition and hospital mergers. A 1993 article by David Dranove, Mark Shanley, and William White was instrumental.¹⁶ They emphasized the importance of payors in the competitive process, rather than just patients.¹⁷ And then in 2000, Greg Vistnes explained that hospital competition occurs in two stages: where the hospitals first compete for “in-network” status with payors, and second where patients choose their hospital from the set of “in-network” hospitals.¹⁸ Scholarship in subsequent years introduced additional concepts, including willingness to pay, which analyzes the desirability of a payor’s network with and without a hospital being in-network.¹⁹

Throughout the early 2000s, scholars, the FTC, and the DOJ, studied past hospital mergers to better understand competition between hospitals.²⁰ As many of you know, following this incredible scholarship, the FTC, since 2010, has been remarkably successful at challenging hospitals mergers. During this time, the FTC has blocked 12 hospital mergers, including four victories in the circuit courts.²¹

What does this mean? It is just one example of how the people in this room play a critical role in protecting Americans. Through your hard work and ingenuity, your scholarship empowers the FTC to protect competition and consumers. So tonight, I thank all of you. Thank you for your ongoing scholarship, thought-leading innovation, and critical role in creating and protecting competitive outcomes. As we move forward, I have no doubt Americans will continue to see incredible innovation, and I have no doubt that antitrust scholarship will continue to play a critical role in American exceptionalism.

¹⁴ *Id.* at 443.

¹⁵ *Id.* at 443-44.

¹⁶ *Id.* at 444 (citing David Dranove et al., *Price and Concentration in Hospital Markets: The Switch from Patient-Driven to Payer-Driven Competition*, 36 J.L. & ECON. 179 (1993)).

¹⁷ Capps et al., *supra* note 12 at 444.

¹⁸ *Id.* at 444-45 (citing Gregory Vistnes, *Hospitals, Mergers, and Two-State Competition*, 67 ANTITRUST L.J. 671, 672 (2000)).

¹⁹ *Id.* at 445 (summarizing work by Town, Vistnes, Capps, Dranove, and Satterthwaite).

²⁰ *Id.* at 445-47.

²¹ *Fed. Trade Comm'n v. Hackensack Meridian Health, Inc.*, 30 F.4th 160 (3d Cir. 2022); *Fed. Trade Comm'n v. Advoc. Health Care Network*, 841 F.3d 460 (7th Cir. 2016); *Fed. Trade Comm'n v. Penn State Hershey Med. Ctr.*, 838 F.3d 327 (3d Cir. 2016); *Penn State Hershey Med. Ctr.*, 838 F.3d 327 (3d Cir. 2016); *Saint Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's Health Sys., Ltd.*, 778 F.3d 775 (9th Cir. 2015).