

STATEMENT OF
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BEFORE THE
U.S. SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY, AND
CONSUMER RIGHTS

FOR A HEARING ENTITLED
“DEREGULATION & COMPETITION: REDUCING REGULATORY
BURDENS TO UNLOCK INNOVATION AND SPUR NEW ENTRY”

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Chairman Lee, Ranking Member Booker, and distinguished members of the Subcommittee, thank you for holding this antitrust hearing. As a point of personal privilege, I also want to thank the Subcommittee for its long running efforts to make real the benefits of competition, fair dealing, and economic opportunity for the American people. I saw firsthand how that work yielded more support and better resources for the antitrust agencies during my tenure as principal deputy and acting head of the Antitrust Division under President Biden and, before that, as a counsel to President Trump's first head of the Antitrust Division. Today, as a private citizen, I am honored to offer my perspective as the Subcommittee considers the relationship between antitrust enforcement, regulation, and antitrust agency tools to promote vibrant, open, and competitive markets.

I.

Against the backdrop of this hearing, Americans are confronting a painful cost-of-living crisis. Nearly half of renters spend more than one-third of their income on housing.¹ Home ownership increasingly is a luxury of older, wealthier Americans. The median homebuyer is 56 years old (up from age 49 in 2023) and the typical first-time homebuyer is 38 (up substantially since the 1980s when the average first-time homebuyer was in their 20s).² Egg prices are nearly 60 percent higher than they were a year ago³ and car payment defaults and repossessions have reached levels unseen since the 2008 Financial Crisis.⁴ Our fellow Americans increasingly cannot afford their economic independence. For all of us who care deeply and passionately about the American people, as I do, this untenable in a country as extraordinary as ours.

I won't hide my thesis: not every market problem is a competition problem. But deliberate choices about how we structure markets, what rules, if any, will regulate markets, and insufficient antitrust enforcement have created or nurtured abusive monopolies, coercive cartels, and illegal conduct in markets across the U.S. economy. Certain regulations are anticompetitive and should be amended or eliminated. But there is no regulation like the private, unaccountable system of rules that monopolies and cartels impose on our market participation. Reining in their anticompetitive conduct requires a robust government response. Thus, I urge the Subcommittee and the federal antitrust agencies to focus their time and resources on addressing the biggest, most intractable competition problems. In

¹ Samantha Deloya, *Nearly half of US renters spend more than 30% of their income on housing costs*, CNN (Sept. 12, 2024), <https://www.cnn.com/2024/09/12/economy/us-housing-costs-survey/index.html>.

² Daryl Fairweather, *The 2025 housing market for first-time homebuyers: the aging American dream*, Housing Wire (Dec. 17, 2024), <https://www.housingwire.com/articles/the-2025-housing-market-for-first-time-homebuyers/>.

³ Christopher Rugaber, *Eggs in America are now 60% more expensive than they were last year, report shows*, Forbes (March 12, 2025), <https://fortune.com/2025/03/12/egg-prices-inflation-60-more-expensive/>; Megan Cerullo, *Egg prices for consumers fell to 5-month low in May. Here's why.*, CBS News (June 11, 2025), <https://www.cbsnews.com/news/egg-prices-drop-in-may-consumer-price-index/>.

⁴ Claire Ballentine, *Americans Fall Behind on Car Payments at Highest Rate in Decades*, Bloomberg (March 6, 2025), <https://www.bloomberg.com/news/articles/2025-03-06/late-car-loan-payments-auto-delinquencies-spike-to-highest-level-in-decades?>

other words, focus on the problems that affect the most people and the highest volume of commerce.

II.

In matters of antitrust enforcement and competition policy, I acknowledge there is much on which people of goodwill may disagree. But in my experience as an antitrust enforcer and practitioner, it is appropriate for the federal government to be concerned with both public and private regulation. Stated differently, the government can—and should—act when its own rules and regulations create or cement market power. We should be especially concerned when these regulations result from lobbying that leverages economic power into political power to win regulations that cement corporate dominance. The companion problems of lobbying, rent seeking, and agency capture are often downstream of unchecked monopoly power and corporate abuses. At the same time, the government plays a vital role in checking private regulation—that is, systems of anticompetitive restraints and unfair dealing that are imposed on us by monopolies and cartels that prefer to be free from robust competition and ordinary market forces. Often enough, rule-by-monopoly functions as a type of unaccountable, private government and system of taxation unto itself.

In discussions about competition and deregulation, I have sometimes heard arguments that that government can best promote competition by avoiding regulation and fashioning rules altogether. This fundamentally misunderstands market realities and the incentives of private coercive power. When our government, which *is* democratically and constitutionally accountable, decides not to fashion rules of the road, this is also a choice about how to shape the evolution and structural integrity of markets. Where law that is publicly promulgated and equally enforced does not set out market rules, entrenched monopolies and cartels may act to fill the void—sometimes in ways that are unfair, rife with conflicts of interest, and put the interests of a small number of behemoths over those of citizens. From health insurance to big tech to big agriculture, there are myriad examples of dominant corporations imposing a private system of rules and taxes on consumers and market participants. Beyond the first-order harms of such conduct—higher prices, lower quality, less innovation, and artificial scarcity, among others—these abuses erode our economic independence and, with it, the public’s faith in our market economy and democratic institutions.

Congress has long understood the wisdom of competition as the rule of trade. Our best conception and highest ideal of a properly functioning, competitive market is one in which companies win on the merits and the best ideas win out. Where customers choose the products and services that deliver the price and quality that serves their needs and interests. Where labor markets are free, workers are mobile, and companies can compete for talent. Where new entrants and nimble upstarts nip at the heels of dominant incumbents. Where new paradigms are ushered in by technological breakthroughs that benefit from investment. The Supreme Court understood this too. Competition, it explained, “will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest

material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.”⁵

Thus, the core task before us is not the relative merits of regulating competition but to define the proper role of the federal government to safeguard competition. After all, it is the government’s duty to keep the American people safe. That means safeguarding their liberty in all its forms, including economic liberty. The federal government, and the antitrust agencies in particular, should be focused on taking on the most challenging competition problems facing the most people.

Agency leaders may face some superficial temptation to divert their limited resources to focus on deregulatory projects that sound in competition. This work can make agencies look and feel busy. But diverting federal antitrust enforcement dollars also comes at serious opportunity cost. It distracts from the essential core of their missions: antitrust enforcement against illegal mergers, monopolies, conspiracies, and cartels—problems that often cannot be addressed fully or appropriately by states that face even more constrained budgets and private litigants. The Justice Department and Federal Trade Commission are uniquely suited to surface and take on the biggest, most intractable competition problems. I would urge the agencies to focus on these issues. Insufficient enforcement is at least as responsible for markets hobbled by abusive monopolies and conspiracies as anticompetitive regulation.

III.

Over the last several years, the agencies have made substantial gains to put an end to these types of market malfeasance. From successful monopolization trials against Google to pending lawsuits against Agri Stats, Apple, Visa, Ticketmaster, RealPage, UnitedHealth, and more, the Justice Department’s antitrust enforcers have made bold strides to pry open the forces of competition in markets we rely on. The Federal Trade Commission has filed essential cases to challenge right-to-repair restrictions, pharmacy benefit manager (PBM) abuses, and serial acquisitions and rollups in already concentrated healthcare markets, among other cases.

It is an impossibly sad fact that in this country, the ordinary American cannot easily vindicate their economic liberty. We need government to preserve the contestability and resilience of markets. Therefore, I hope the administration will protect the gains antitrust enforcers have made in recent years, while at the same time devoting more resources towards the antitrust crises of the moment, including surveillance pricing, the financialization of healthcare markets by dominant firms, algorithmic collusion schemes, and the skyrocketing costs of housing, education, food, and energy and utilities.

The Justice Department’s ongoing efforts to fashion remedies for Google’s monopolization of internet search, related search advertising, and open web display advertising markets should not only open these markets for investment and innovation while

⁵ *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958).

potentially ensuring that artificial intelligence markets are contestable. On the heels of a recent court decision that held Apple could no longer require consumers and developers to use the company's expensive payment system, which for years had imposed a 30% tax on purchases, we saw innovation and little or no fees on certain app store purchases almost immediately. That is the power of competition.

If the agencies choose to use their competition policy tools to address anticompetitive regulations, they should focus on pain points that affect the most people or the largest volume of commerce. The antitrust agencies recently stood up a task force on anticompetitive regulations and sought the public's input on anticompetitive federal and state regulations that should be eliminated. As of yesterday, nearly one in four public comments express concerns about healthcare markets. The agencies could materially improve the lives of millions of Americans by working with Congress and healthcare regulators at the Department of Health and Human Services (HHS), especially the Centers for Medicare and Medicaid Services (CMS), to revisit rules that limit the ability of the federal government to fully negotiate drug prices. These rules are a form of competition regulation. They could also work together to eliminate rules that restrict people from switching healthcare plans beyond an unduly narrow set of circumstances. This too is a form of red tape and regulation the suppresses consumer choice.

In housing, the administration could work with sector regulators at the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Administration (FHFA) to revisit rules around financing for professional services like brokers and the range of acceptable providers to determine creditworthiness. The agencies could revise merger reporting regulations that exempt institutional investors from Hart-Scott-Rodino Act reporting requirements when they acquire or sell homes.⁶ In the airline industry, which is dominated by the big four airlines, the agencies could work with the Transportation Department to revisit gate and slot usage requirements to prevent the bigger airlines from squeezing out low-cost and ultra-low cost carriers that could otherwise grow and scale their businesses. Examples of burdensome, anticompetitive regulations abound including in the context of big agriculture fertilizer markets, the dairy industry, meat processing markets, independent and community pharmacies that get squeezed by PBMs and health insurers, and more.

Congress also has a critical role to play. Legislators can adopt procompetitive legislation to promote consumer choice, eliminate tying and self-preferencing, bring down prices, and spur entry and innovation. Doing so in a measured way can clarify the rules of the road, give industries certainty, deliver economic benefits to consumers, and avoid expensive, protracted enforcement proceedings. Congress should be particularly concerned when industries seek to avoid federal or state antitrust scrutiny in exchange for some professed non-competition values—issues we see today in the context of artificial intelligence and college sports.

⁶ 16 CFR 802.5.

IV.

In a world of limited resources, the government should focus on addressing the biggest, most intractable problems that affect the most people. More often than not, that means the federal antitrust agencies should focus on their core antitrust enforcement mission. Regulation can be crafted to achieve laudable policy goals (e.g., health, safety, privacy, etc.) without subverting competition. But where the agencies identify anticompetitive regulations that create or cement the power of abusive monopolies, oligopolies, and cartels, it can—and should—amend or eliminate them.

I thank the subcommittee for holding this hearing and look forward to engaging your questions.