Testimony for the Record

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Judiciary Committee

Subcommittee on Competition Policy, Antitrust, and Consumer Rights

for the Hearing

"Examining Competition and Consumer Rights in Housing Markets."

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Chair Klobuchar**,** Ranking Member Lee and members of the Committee, thank you for inviting me to participate in today's hearing, and thank you for your attention to the topic of competition and consumer rights in housing markets, an issue of critical national importance.

My name is Luis Quintero. I am an economist and have spent eight years at Johns Hopkins, where I research housing markets and policy. Beyond my academic research, I have undertaken advisory roles, analyzing urban policies in over 20 countries spanning Eastern Europe, Central Asia, and Latin America for esteemed institutions like the World Bank and the Interamerican Development Group. I would like to state for the record that the opinions expressed herein are my own and do not necessarily reflect the views of The Johns Hopkins University.

In my work, I have documented the increasing consolidation of housing markets in the United States and its detrimental effects on housing affordability, and I am pleased that this Congress is taking a proactive step to incorporate competition in the legislative discussion.

Concentration has been growing since the Great Recession in local housing markets.

Since the housing crisis of 2008, local housing markets have experienced concentration that has left most of the housing production in the hands of few homebuilders. This trend follows the broader long-term trend of declining competition documented in so many sectors of the US economy. Although market consolidation is not the only factor driving the housing affordability problem, it is a critical one that should be considered in any evaluation of how to address it.

Three macro-level events helped trigger the current concentration we observe. First, the hard times of the Great Recession drove many firms to exit the market or reduce their activity for many years. Those who suffered the most were local or regional homebuilders who had more difficulties diversifying the risk by building in many locations. Second, large homebuilders received a massive liquidity boost from stimulus packages in the early 2010s, in the order of $2.4 billion for the largest thirteen homebuilders. These came mainly from the Worker Homeownership and Business Assistance Act of 2009, which allowed large homebuilders to use losses incurred in 2008 or 2009 to recoup taxes paid in the prior five years. Large builders with losses in markets affected by the recession could use these resources to establish a stronger presence in growing markets. Third, many of the homebuilders with activity at a national scale have merged. My work identifies at least twelve mergers that significantly increased the market share for the merging firms. In one of those cases, the merger of Lennar and CalAtlantic, which formed the largest homebuilding company in the country, came to dominate the housing market post-merger in areas where both firms were active pre-merger.

The exit of firms during market busts is common, but the number of firms has not rebounded as markets recovered.

National home price indices declined after 2008 but started recovering in 2011. They have, since 2015, surpassed the peak price levels of 2008. However, this recovery has not been accompanied by an upturn in the number of for-sale building establishments. For-sale builders are down 80% with respect to their peak in 2008, while national prices for homes are up by about 30% with respect to the same period. The competitive market forces that increase supply when prices increase by incentivizing the entry of new suppliers are not being realized in American housing markets.

Estimated concentration numbers are large. Concentration estimates should use relevant market definitions that consider the effective willingness of households to substitute between locations when they buy a home. The whole country is not a single housing market.

Concentration has grown to the point that in the median market, the share of new units produced by the top three firms has reached 80%, increasing 17% since 2007. In the top 25% of most concentrated markets, 88% of new units are produced locally by three homebuilders. Across all markets, I estimate that 56% show concentrations that would fall into the category of highly concentrated (HHI of 2500) as defined by the FTC, from 40% during the Great Recession. The 100 largest home builders in the US accounted in 2022 for about half of all new single-family home sales, up from just over a third two decades ago, with most of these gains coming from increases in the shares of two homebuilders, D.R. Horton, and Lennar. These two firms build more than the rest of the firms in the top ten of homebuilders.

Larger mergers in this sector have most likely not been stopped because regulating authorities may not be defining relevant housing markets narrowly enough.
For example, homebuilding in Oregon is not a threat to the ability of a hypothetical monopolist to impose significant and non-transitory increases in price in Maryland. This is also true when comparing cities in the same state, like Pittsburgh and Philadelphia. As such, housing markets need to be correctly spatially defined to ensure associated statistics, like market shares, are useful to determine how a merger will affect concentration. Work exploring search behavior in online platforms has demonstrated that most households consider only a tight cluster of zip codes with a median distance of 3.2 miles when analyzing a prospective home purchase. Others have examined the nearby places with high price correlation to determine the relevant market size. All these different methodologies point to relevant markets smaller than metropolitan areas or commuting zones. Concentration levels depend on the market definition, of course. However, different definitions show a growth in consolidation over time.

Furthermore, less competition has not pushed homebuilders to innovate. Recent studies have highlighted that the construction industry has seen a decades-long decline in productivity.

We should care about market consolidation because it affects housing supply and affordability.
My estimates point to a causal negative impact of concentration on the total volume of housing produced. This effect indicates that if we had today the levels of competition in local housing markets that we had in 2006, we would have produced $112 billion more in housing, which is equivalent to approximately 160,000 additional housing units being built in a year. This roughly

equals 10% of the private residential fixed investment predicted for 2023. Furthermore, housing price volatility would have declined by over 50%.

We should encourage agencies to enforce competitive policy in housing markets more effectively and ask housing policies to incorporate market structure considerations.
I would like to offer six recommendations for this committee's consideration:

1. Encourage regulatory agencies to be careful in spatially defining local housing markets when revising any actions, such as mergers, that may reduce competition. This may require increasing the resources of antitrust or competition policy agencies.
2. Consider passing legislation that shifts the burden of proof to companies in large-scale mergers, in such a way that they must also show that they cannot exert monopoly power in any of the local spatial markets where they have building activity.
3. Encourage enforcement agencies to request mandatory divestitures when large national homebuilders merge and that results in high concentration in local markets.
4. Encourage the federal government to make increasing competition one of the objectives of its housing policies, such as the Biden-Harris Administration Housing Supply Action Plan. Transfers aimed at increasing housing supply, such as the Low-Income Housing Tax Credits (LIHTCs) should incorporate requirements of a minimum number of homebuilder participants.
5. This encouragement should extend to state-wide policies. Changes in restrictive zoning like those passed in California, Washington, Oregon, and Minneapolis may not result in effective growth in supply if local developers can withhold production by exercising monopoly power.
6. Consider bringing back the Philadelphia National Bank presumption, wherein the Courts established a presumption that a merger that would give one entity a 30 percent market share in the relevant market is presumed anti-competitive. This presumption should be used using relevant spatial definitions of local housing markets.

Thank you and I would be pleased to answer any questions you may have.