

Continuing a Bipartisan Path Forward for Antitrust Enforcement and Reform

Before the Senate Judiciary Committee
Subcommittee on Competition Policy, Antitrust, and Consumer Rights

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Chairman Klobuchar, Ranking Member Lee, and Members of the Subcommittee, thank you for inviting me to testify today. I am here as a conservative antitrust scholar currently at Notre Dame Law School and formerly at the Department of Justice’s Antitrust Division, where I served as a Deputy Assistant Attorney General in the first Trump Administration. My testimony reflects my personal views regarding what antitrust enforcement might look like in the second Trump Administration.

This hearing comes just a few weeks after a presidential election in which voters expressed extraordinary anxiety about the state of the economy. As I discussed in my Senate Testimony last month,¹ the economy was one of the most important issues, if not the most important issue, impacting the outcome of the election. Forty-one percent of voters in the seven swing states ranked the economy as their top concern, far higher than any other concern.² The specific economic issues that were most important to swing state voters were inflation (40%) and household expenses (35%).³ According to national exit polls, of the 32 percent of voters who identified the economy as their most important issue, 80 percent voted for President-elect Trump over Vice President Harris.⁴

¹ New Swing State Voter Study: Economy Takes Center Stage as Top Factor Shaping Election Decisions, Business Wire, (Oct. 15, 2024), <https://www.businesswire.com/news/home/20241015970937/en/New-Swing-State-Voter-Study-Economy-Takes-Center-Stage-as-Top-Factor-Shaping-Election-Decisions> (“when asked which of the biggest issues in this year’s election was the most important, swing state voters ranked their top concerns: economy (41%), healthcare (23%), abortion/reproductive rights (16%), immigration (13%), climate change (7%)”); Swing State Voter Survey 2024: The Economy is Top Priority (Oct. 14, 2024), <https://www.doxo.com/w/insights/swing-state-voter-survey-2024-the-economy-is-top-priority/> (same).

² Roger P. Alford, *Breaking the Visa-Mastercard Duopoly: Bringing Competition and Lower Fees to the Credit Card System*, Senate Judiciary Committee, (Nov. 19, 2024), [https://www.judiciary.senate.gov/imo/media/doc/2024-11-19 - testimony - alford.pdf](https://www.judiciary.senate.gov/imo/media/doc/2024-11-19-%20testimony%20-%20alford.pdf).

³ New Swing State Voter Study: Economy Takes Center Stage as Top Factor Shaping Election Decisions, Business Wire, (Oct. 15, 2024), <https://www.businesswire.com/news/home/20241015970937/en/New-Swing-State-Voter-Study-Economy-Takes-Center-Stage-as-Top-Factor-Shaping-Election-Decisions>; Swing State Voter Survey 2024: The Economy is Top Priority (Oct. 14, 2024), <https://www.doxo.com/w/insights/swing-state-voter-survey-2024-the-economy-is-top-priority/>.

⁴ Election 2024: Exit Polls (Nov. 6, 2024), <https://www.cnn.com/election/2024/exit-polls/national-results/general/president/0>.

Common Sense Economic Populism

If there is one phrase that embodies the emerging Republican Party, it is common sense populism. In economic terms, according to the 2024 Republican Party Platform, “common sense tells us clearly that we must unleash American energy if we want to destroy inflation and rapidly bring down prices.”⁵ Common sense populism seeks to make housing more affordable, reduce the cost of higher education, promote choice and competition in healthcare, and adopt “economic policies that drive down the cost of living and prices for everyday goods and services.”⁶ Common sense populism also seeks to champion innovation in emerging industries and slash anticompetitive regulations “that stifle jobs, freedom, innovation and makes everything more expensive.”⁷

For the past few months, we have had a national debate on the merits of economic populism. It may be fashionable in elite circles on the left and the right to deny, discount, or discredit these impulses. But they are real, and they have had dramatic political consequences. As an emerging party of the working class, Republicans are moving away from their traditional orthodoxies that reflexively support big business, and toward an open discussion about tariffs, unions, and antitrust.⁸

Common sense economic populism is wary of the abuse of power in the hands of the government or business.⁹ It embraces free markets and competition on the merits. It is generally skeptical of government intervention in the markets. But it also is skeptical of corporate power, especially the kind that colludes with the government to harm consumers through the passage of anticompetitive regulations or the blocking of procompetitive regulations. Common sense economic populism recognizes that markets are imperfect, and prone toward concentration and collusion. Therefore, government enforcement of antitrust laws in order to preserve competitive markets are a necessary corrective. So too are procompetitive regulations that facilitate effective competition where the free market or antitrust litigation falls short.

In terms of competition policy, one is reminded of the famous quote of Senator John Sherman. “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 of the necessaries of life. If we would not submit to an emperor we should not submit to an autocrat of trade, with power to prevent competition and to fix the price of any commodity.”¹⁰ That is an apt description of economic populism: skeptical of political abuse of power, skeptical of corporate abuse of power, and especially skeptical when the two work in tandem. That same sentiment is echoed by Senator Mike Lee when he said that “concentrated economic power can be just as dangerous as concentrated political power, and, in fact, one often

⁵ 2024 Republican Party Platform, at 11, 15 https://prod-static.gop.com/media/RNC2024-Platform.pdf?_gl=1*1snhpk9*_gcl_au*MTcyMDI0ODg1MC4xNzIxMDcxMjYy&_ga=2.204336400.1800680583.1721071263-1830010249.1721071262.

⁶ Id. (“Republicans offer a plan to make the American Dream affordable again. We commit to reducing housing, education, and healthcare costs, lowering everyday expenses, and increasing opportunities.”).

⁷ Id.

⁸ Haley Fuchs and Sam Hutton, *Why Business Leaders are Worried about JD Vance*, Politico, (Nov. 3, 2024), <https://www.politico.com/news/2024/11/03/business-leaders-jd-vance-republican-populism-00186981>.

⁹ Common sense economic populism discussed here is distinct from the left-leaning Neo-Brandeis antitrust populism that focuses on the rejection of the consumer welfare standard. Leon B. Greenfield, Perry A. Lange, Nicole Callan, *Antitrust Populism and the Consumer Welfare Standard: What Are We Actually Debating*, 83 *Antitrust L. J.* 393 (2020); Carl Shapiro, *Antitrust In a Time of Populism*, (2017). Barak Orbach, *Antitrust Populism*, 14 *NYU J. L. Bus.* 1 (2017). On the problem of defining antitrust populism, see MACIEJ BERNATT, *POPULISM AND ANTITRUST: THE ILLIBERAL INFLUENCE OF POPULIST GOVERNANCE ON THE COMPETITION LAW SYSTEM*, (2021).

¹⁰ 21 CONG. REC. 2457 (daily ed. Mar. 21, 1890) (statement of Sen. Sherman)).

leads to the other.”¹¹ Trump’s nominee to be FTC Commissioner Mark Meador, recently posted a viral meme of libertarians who are skeptical of tyranny.gov but not tyranny.com.¹² Economic populists share no such confusion.

How will economic populists govern? Although not every Trump appointee is an economic populist, the antitrust leadership in the Trump Administration likely will make good on the promises of common sense economic populism. That approach will align with some previous Republican approaches to antitrust enforcement, but with important differences. That approach also will align with some of the Biden Administration’s approaches to antitrust enforcement, but with important differences. Common sense economic populism is neither Bork nor Brandeis.¹³ Consistent with the values of the working party coalition that forms the base of President Trump’s support, it will set its own course and pursue a path of economic freedom from the abuse of political and corporate power.

Competitive Markets Where It Matters Most

Antitrust enforcement has elements of both push and pull. It has little control over the deals that require merger review, but it has significant discretion in investigating and bringing conduct cases. To the extent it can pick its cases, one should expect that the second Trump Administration will focus on markets that most directly impact the cost of living for the average American. As I said while serving as Deputy Assistant Attorney General in the first Trump Administration, antitrust enforcers should, in Robert Jackson’s words, select cases “in which the offense is the most flagrant, the public harm the greatest, and the proof the most certain.”¹⁴ I expect populist antitrust enforcement in the second Trump Administration will focus on anticompetitive conduct that inflicts the greatest harm on average consumers.

Consumers spend more on housing (33%), transportation (17%), food (13%), insurance (12%), healthcare (8%), and entertainment (5%) than any other category.¹⁵ If Americans spend 88 percent of their expenditures on these six categories, then antitrust enforcers should be especially vigilant to ensure that these markets are competitive. To their credit, the Biden Administration focused on many of these industries, such as challenging landlord and meat processing cartels, suing to block anticompetitive grocery store and airline mergers, challenging illegal PBM prescription drug rebates, and suing ticketing and debit card monopolies. Of course, each case must be considered on its own merits, but one can expect that the Trump Administration will continue along a similar path and go further with respect to some industries such as housing, healthcare, and energy.

Markets Do Not Self-Correct

One can expect that the second Trump Administration will recognize the fallacy that markets self-correct. They will reject the anachronistic Chicago-school notion that we should err toward

¹¹ 167 Cong. Rec. 4520 (daily ed. June 14, 2021) (statement of Sen. Mike Lee), available at <https://www.congress.gov/117/crec/2021/06/14/167/103/CREC-2021-06-14-pt1-PgS4519.pdf>.

¹² Mark Meador, <https://x.com/mrmeador/status/1800334439127642478> (June 10, 2024).

¹³ For a discussion of Robert Bork and Louis Brandeis as conservative and liberal versions of antitrust populism, see Barak Orbach, *Antitrust Populism*, 14 NYU J. L. Bus. 1, 9-11 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2994281.

¹⁴ Roger P. Alford, *The Public Interest Standard and the Dangers of Discrimination*, (May 8, 2018), <https://www.justice.gov/opa/speech/file/1060791/dl>.

¹⁵ Bureau of Labor Statistics, *Consumer Expenditures—2023* (Sept. 25, 2024), <https://www.bls.gov/news.release/cesan.nr0.htm>.

underenforcement because “judicial errors that tolerate baleful practices are self-correcting while erroneous condemnations are not.”¹⁶ By this flawed logic, there is no such thing as market failures, only temporary setbacks.

Today we know that the barriers to entry are real, network effects are common, and markets are prone to tipping and consumer lock-in. The idea that we should intentionally underenforce the antitrust laws because it will all work out in the end ignores the durability of market failure and the harm such failure causes. Conservatives now recognize that the Chicago School has become “a highly successful rationale for industry capture” and that an anti-enforcement bias is “an important vehicle for rent seeking at the expense of consumers, labor, and others who stand to profit from a more competitive economy.”¹⁷

Equally flawed is the notion that erroneous judicial precedents that condemn pro-competitive behavior (or condone anticompetitive behavior) are fixed in stone. The antitrust laws are governed by common law statutes that are *especially* amenable to interpretive correction.¹⁸ As the Supreme Court has underscored, “[j]ust as the common law adapts to modern understanding and greater experience, so too does the Sherman Act’s prohibition on ‘restraint of trade’ evolve to meet the dynamics of present economic conditions.”¹⁹

We should expect that the second Trump Administration will vigorously enforce the antitrust laws and reject the bias accepted in previous Republican Administrations toward underenforcement. There is a strong conservative case for vigorous antitrust enforcement. For example, FTC nominee Mark Meador argues that “conservatives and others who believe in our constitutional order and the rule of law should be deeply troubled by the suggestion that federal law enforcers can decide not to enforce a law simply because they disagree with the policy or outcomes it advances.”²⁰ Anyone who is faithful to the text and history of the antitrust laws must be skeptical of Robert Bork’s agenda to promote a conservative consensus favoring underenforcement.²¹ He was obsessed with intellectual respectability rather than fidelity to the will of Congress.²²

With common sense economic populism as the driving force behind antitrust enforcement, we should assume a rebuttable presumption that the antitrust cases filed by the Biden Administration will be pursued by the Trump Administration. It will do so relying on a broad understanding of the consumer welfare standard, that includes price, output, quality, innovation, or anything else that impacts consumer demand.²³ Of course, each case stands on its own, and only those on the

¹⁶ Frank H. Easterbrook, *The Limits of Antitrust*, 63 Tex. L. Rev. 1, 3 (1984). See Jonathan B. Baker, *Taking the Error Out of “Error Cost” Analysis: What’s Wrong with Antitrust’s Right*, 80 Antitrust L.J. 1 (2015).

¹⁷ Herbert J. Hovenkamp, *Antitrust Error Costs*, 24 U. Penn. J. Bus. L. 293, 349 (2022).

¹⁸ Charles Tyler, *Common Law Statutes*, 99 Notre Dame L. Rev. 6690, 675 (2023); Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1183 (1989).

¹⁹ *Leegin Creative Leather Products, Inc. v. PSKS*, 551 U.S. 877, 899 (2007).

²⁰ Mark Meador, *Not Enforcing the Robinson-Patman Act is Lawless and Likely Harms Consumers*, (July 9, 2024), <https://fedsoc.org/commentary/fedsoc-blog/not-enforcing-the-robinson-patman-act-is-lawless-and-likely-harms-consumers>.

²¹ See, e.g., Herbert Hovenkamp, *The Antitrust Text*, 99 Indiana L.J. 1063 (2023); Daniel A. Crane, *Antitrust Antitextualism*, 96 Notre Dame L. Rev. 1205 (2021); Barack Orbach, *Was the Crisis in Antitrust a Trojan Horse?*, 79 Antitrust L.J. 881, 891-895 (2014); George Priest, *Bork’s Strategy and the Influence of the Chicago School on Modern Antitrust Law*, 57 J.L. & ECON. S1, S12 (2014); Herbert Hovenkamp, *Antitrust’s Protected Classes*, 88 Mich. L. Rev. 1, 22 (1989).

²² See, ROBERT BORK, ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF, 418 (1978) (“The thesis of this book ... has been that modern antitrust has so decayed that the policy is no longer intellectually respectable. Some of it is not respectable as law; more of it is not respectable as economics; and ... a great deal of antitrust is not even respectable as politics.”).

²³ See, e.g., Nicolas Petit & Lazar Radic, *The Necessity of a Consumer Welfare Standard in Antitrust Analysis*, ProMarket, (Dec. 18, 2023), <https://www.promarket.org/2023/12/18/the-necessity-of-a-consumer-welfare-standard-in-antitrust-analysis/>; Alden Abbott, *The Consumer*

inside with access to confidential information and internal memoranda know the true strength and weakness of each case. The best candidates for a change in course are instances in which the Biden Administration has pursued novel enforcement theories with difficult facts that have failed in court.²⁴

Continued Focus on Big Tech Monopolies

One can also expect that the second Trump Administration will focus on Big Tech abuse of monopoly power. The most notable point of bipartisan consensus is vigorous enforcement of antitrust laws to address monopoly abuses. There is a shared commitment among Republicans and Democrats to aggressively investigate and prosecute such cases. That is evident in both the Trump and Biden Administrations' antitrust lawsuits, as well as numerous antitrust lawsuits filed by a broad bipartisan coalition of State Attorneys General.²⁵

As I have written elsewhere, there is strong bipartisan consensus to address Big Tech monopoly abuses.²⁶ A few of those cases began in the first Trump Administration, were then expanded and litigated in the Biden Administration, and will continue to be litigated and defended on appeal in the second Trump Administration. For example, the federal and state AG monopoly cases against Google will continue unabated, with liability and remedy phases either completed in 2024 or coming in 2025. These cases are unusually important to the average consumer because they implicate the collection of personal data, the free flow of information, and the nature of public discourse on the Internet.²⁷ As Justice Thomas put it, "digital platforms provide ... unprecedented ... concentrated control of ... speech in the hands of a few private parties."²⁸

Both Trump and Vance share this general skepticism toward Big Tech. In announcing Gail Slater to lead the DOJ's Antitrust Division, Trump announced that "Big Tech has run wild for years, stifling competition in our most innovative sector and, as we all know, using its market power to crack down on the rights of so many Americans, as well as those of Little Tech!"²⁹ Likewise, Vice President-elect JD Vance has supported breaking up Google. "I think you have to break these companies up. I think they're too big. They've become monopolists. They've become too powerful and, frankly, they became too powerful thanks to government privileges."³⁰ Economic populists are deeply skeptical of corporate abuse of power, and Big Tech monopolies are the best example of such power.

Welfare Standard and Antitrust Enforcement: A Response, ProMarket (Mar. 14, 2022), <https://www.promarket.org/2022/03/14/the-consumer-welfare-standard-and-antitrust-enforcement-properly-understood/>; Leah Samuel and Fiona Scott Morton, *What Economists Mean When They Say "Consumer Welfare Standard,"* ProMarket, (Feb. 16, 2022), <https://www.promarket.org/2022/02/16/consumer-welfare-standard-antitrust-economists/>.

²⁴ See, e.g., *Federal Trade Commission v. Meta Platforms Inc.*, 654 F.Supp.3d 892, 925-941 (N.D. Cal. 2023); *Federal Trade Commission v. Microsoft*, 681 F.Supp.3d 1069, 1090-1100 (N.D. Cal. 2023); *United States v. Patel*, 2022 WL 17404509 (D. Conn. 2022); *United States v. DaVita Inc.*, No. 21-CR-229 (D. Colo. Apr. 20, 2022).

²⁵ Roger P. Alford, *The Bipartisan Consensus on Big Tech*, 71 EMORY L. J. 893 (2022).

²⁶ *Id.*

²⁷ Roger P. Alford, *Competition in the Digital Advertising Ecosystem*, Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights, (June 14, 2023), <https://www.judiciary.senate.gov/imo/media/doc/2023-05-03%20-%20Testimony%20-%20Alford.pdf>; Roger P. Alford, *Breaking the Visa-Mastercard Duopoly: Bringing Competition and Lower Fees to the Credit Card System*, Senate Judiciary Committee, (Nov. 19, 2024), <https://www.judiciary.senate.gov/imo/media/doc/2024-11-19-testimony-alford.pdf>.

²⁸ *Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1221 (2021) (Thomas, J., concurring).

²⁹ Jody Godoy, *Trump Picks Gail Slater to Head Justice Department's Antitrust Division*, (Dec. 4, 2024), <https://www.reuters.com/world/us/trump-picks-gail-slater-lead-justice-departments-antitrust-division-2024-12-04/>; Cecilia Kang, *Trump to Nominate Gail Slater to Lead Justice Department's Antitrust Efforts*, NY Times (Dec. 6, 2024), <https://www.nytimes.com/2024/12/04/us/politics/trump-gail-slater-antitrust-justice-department.html>.

³⁰ Khushita Vasant, *Trump Names Seasoned Enforcers Slater to Steer DOJ Antitrust Enforcement*, MLex, (Dec. 5, 2024).

In her book on antitrust, Senator Amy Klobuchar argues that one of the most important things that the President can do to fix our nation’s problem with monopoly power is to “appoint the most qualified antitrust officials” to lead the Justice Department and the FTC with appointees who “actually believe antitrust laws and enforcement are critical to the health of America’s economy.”³¹ The antitrust experts President Trump just nominated satisfy that criterion. The nominees to head the DOJ’s Antitrust Division Gail Slater, the FTC Chair Andrew Ferguson, and FTC Commissioner Mark Meador can be expected to vigorously pursue the Trump Administration’s stated agenda of curtailing the monopoly power of Big Tech.

Congress can have a constructive role in addressing Big Tech monopolies. It can promote targeted legislation such as the AMERICA Act³² or the American Innovation and Choice Online Act (“AICO Act”).³³ Conservatives support vigorous antitrust enforcement because “better antitrust enforcement means less regulation and thus smaller government.”³⁴ But as I have testified before, procompetitive regulation that is narrow and targeted can complement antitrust litigation against monopoly abuses.³⁵ Legislation to update the antitrust laws for the digital age had a strong bipartisan support, securing supermajority votes out of the Senate Judiciary Committee.³⁶ There is every reason to believe that substantive antitrust legislation had a good chance of passage in the last congressional session but for over \$250 million spent by Big Tech lobbyists to block such measures from even coming to the floor for a vote.³⁷ More lobbying money was spent in the last congressional session to block antitrust reforms than was spent lobbying Obamacare or Dodd-Frank.³⁸ As Senator Josh Hawley stated in his recent book, after observing the enormous influence that Big Tech has in Washington D.C. he was convinced that “the alliance of Big Tech and Big Government must be broken.”³⁹

Fast forward two years and we are reaching a critical moment in Big Tech litigation. It would be extraordinarily helpful for Congress to hold hearings on potential remedies to hold Big Tech accountable. For example, before the remedies phase of the Google ad tech litigation it would be helpful to have congressional hearings to consider whether the remedies in the AMERICA Act are appropriate to address Google’s monopoly abuse.⁴⁰ Similar congressional hearings were held in the 1970s and ‘80s in connection with the DOJ’s lawsuit to breakup of the AT&T monopoly.⁴¹

³¹ AMY KLOBUCHAR, *ANTITRUST: TAKING ON MONOPOLY POWER FROM THE GILDED AGE TO THE DIGITAL AGE*, 282, 312 (2021).

³² AMERICA Act, S.1073, 118th Cong. (Mar 30, 2023).

³³ American Innovation and Choice Online Act, S.2033, 118th Cong. (June 15, 2023).

³⁴ 167 Cong. Rec. 4520 (daily ed. June 14, 2021) (statement of Sen. Mike Lee), available at <https://www.congress.gov/117/crec/2021/06/14/167/103/CREC-2021-06-14-pt1-PgS4519.pdf>.

³⁵ Roger P. Alford, *Competition in the Digital Advertising Ecosystem*, Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights, (June 14, 2023), <https://www.judiciary.senate.gov/imo/media/doc/2023-05-03%20-%20Testimony%20-%20Alford.pdf>.

³⁶ Roger P. Alford, *The Bipartisan Consensus on Big Tech*, 71 EMORY L. J. 893, 904-920 (2022).

³⁷ Rebecca Klar and Karl Evers-Hillstrom, *How Big Tech Fought Antitrust Reform—and Won*, THE HILL, (Dec. 23, 2022); Matt Stoller, *Get Antitrust Legislation Done*, Chuck Schumer, (Dec. 16, 2022), <https://www.thebignewsletter.com/p/get-antitrust-legislation-done-chuck>.

³⁸ Leah Nylen, Bloomberg, Chair’s Showcase, ABA Antitrust Spring Meeting (Mar. 30, 2023).

³⁹ JOSH HAWLEY, *THE TYRANNY OF BIG TECH*, 125-26 (2021).

⁴⁰ If possible, any such congressional hearing should occur before April 2025. A liability decision by the federal district court in the Eastern District of Virginia with respect to the DOJ’s ad tech case against Google is scheduled for late December 2024 or early 2025, with the remedies phase occurring (as needed) shortly thereafter. A liability finding by the federal district court in Washington D.C. with respect to the DOJ’s search case against Google occurred in August 2024, with the remedies hearings before the court scheduled for April 2025. The jury trial before the federal district court in the Eastern District of Texas with respect to the bipartisan coalition of seventeen State Attorneys General’s ad tech case against Google (for which I consult for the state of Texas) is scheduled for April 2025.

⁴¹ *Big Tech and Democracy: The Critical Role of Congress*, (Apr. 2019) <https://www.belfercenter.org/publication/big-tech-and-democracy-critical-role-congress>; Michael Riordan, *The End of AT&T*, <https://memorial.bellsystem.com/the%20end%20of%20ATT.html>; Telecommunications Paced Interrupted, CQ Almanac, <https://library.cqpress.com/cqalmanac/document.php?id=cqa181-1171725>.

Those hearings could also address the unethical manner in which Big Tech companies are defending their monopoly abuse, such as the disturbing trend of Big Tech companies and their lawyers engaging in improper practices such as “sustained, concerted, bad-faith” discovery abuses,⁴² and the corporate policy of using “fake privilege” to shield documents from discovery and destroying evidence subject to litigation holds.⁴³ Congressional hearings could underscore the bipartisan consensus that Big Tech monopoly abuse must be fixed.

Artificial Intelligence and the Looming Threat of China

Artificial intelligence is a useful prism to consider the role of antitrust in emerging technologies. The second Trump Administration has declared that it will withdraw President Biden’s Executive Order on artificial intelligence.⁴⁴ In its place, Republicans would advance policies that will support the development and advancement of AI rooted in vital principles entailing freedom of speech and human flourishing.⁴⁵

While there is no bipartisan consensus on proposed AI regulation⁴⁶—especially proposed regulations that may entrench incumbent power—there is a strong bipartisan consensus that emerging AI markets present significant competition concerns and that government antitrust authorities should closely monitor emerging AI technologies to ensure that Big Tech companies promote competition and do not violate antitrust laws.⁴⁷ Big Tech companies have natural advantages with respect to AI. Among the essential inputs necessary for competitive AI deployment are development frameworks, data, compute infrastructure, and talent.⁴⁸ Gail Slater has expressed particular interest in the role of big data in connection with AI.⁴⁹

⁴² Andrew Goudswaard, *Meta, Law Firm Gibson Dunn Sanctioned in Facebook Privacy Case*, Reuters (Feb. 9, 2023), <https://www.reuters.com/legal/meta-law-firm-gibson-dunn-sanctioned-facebook-privacy-case-2023-02-10/>; Debra Cassens Weiss, *Judge Sanctions Facebook and BigLaw Firm \$925K for “Delay, Misdirection, and Frivolous Arguments,”* ABA Journal (Feb. 13, 2023), <https://www.abajournal.com/web/article/judge-sanctions-facebook-and-biglaw-firm-925k-for-delay-misdirection-and-frivolous-arguments>.

⁴³ See *In re Google Play Store Antitrust Lit.*, MDL Case No. 21-md-02981-JD, 2024 WL 3302068 (N.D. Cal. July 3, 2024) (there was an “ingrained systemic culture of suppression of relevant evidence within Google”); *United States v. Google LLC (“Search”)*, ___ F. Supp. 3d ___, 2024 WL 3647498, at * 134 (D.D.C. Aug. 5, 2024) (The “court is taken aback by the lengths to which Google goes to avoid creating a paper trail for regulators and litigants.”); *In re Google Play Store Antitrust Litig. (“Play”)*, 664 F. Supp. 3d 981, 993 (N.D. Cal. 2023) (Google fell “strikingly short” of its evidence preservation duties and “intended to subvert the discovery process.”); Mike Scarella, *Judge Deciding Google’s Fate in Epic Case is antitrust veteran*, Reuters (Dec. 13, 2023) (Judge Danato describing Google’s destruction of evidence as “the most serious and disturbing evidence I have ever seen in my decade on the bench”); Thomas Barrabi, *Google Blasted as “Negligent” Over Evidence Destruction as Landmark DOJ Antitrust Case Wraps Up*, NY Post (May 3, 2024) (Judge declared that “it is shocking to me that a company would leave it to its employees to decide when to preserve documents.”), <https://nypost.com/2024/05/03/business/google-blasted-as-negligent-over-evidence-destruction-as-landmark-doj-antitrust-case-wraps-up/>; David Streitfeld, *How Google Spent 15 Years Creating a Culture of Concealment*, NY Times (Nov. 20, 2024), <https://www.nytimes.com/2024/11/20/technology/google-antitrust-employee-messages.html>; *New Admin Policy and Compliance Controls for Google Hangout Chats*, Google Workspace Updates (Apr. 8, 2015) (public Google document underscoring ease of clicking two buttons to preserve chat evidence at company-wide level).

⁴⁴ 2024 Republican Party Platform, at 11, 15 https://prod-static.gop.com/media/RNC2024-Platform.pdf?_gl=1*1snhpk9*_gl_au*MTcyMDI0ODg1MC4xNzIxMDcxMjYy&_ga=2.204336400.1800680583.1721071263-1830010249.1721071262; Lance Eliot, *Examining The GOP Position Statement About AI As Noted In The 2024 Republican Platform*, FORBES (July 15, 2024, 3:40 AM), <https://www.forbes.com/sites/lanceeliot/2024/07/12/unpacking-the-gop-two-line-powerfully-packed-position-statement-about-artificial-intelligence-as-revealed-in-the-newly-released-2024-republican-platform/>.

⁴⁵ *Id.*

⁴⁶ Elizabeth Elkind, *‘No consensus’: House backs off of push for large-scale AI regulations*, FOX NEWS (June 17, 2024, 12:11 PM), <https://www.foxnews.com/politics/no-consensus-house-backs-off-push-large-scale-ai-regulations>.

⁴⁷ Megan Poinski, *AI Regulation Has Strong Bipartisan Approval*, FORBES (Apr. 18, 2024, 2:14 PM), <https://www.forbes.com/sites/cio/2024/04/18/ai-regulation-has-strong-bipartisan-approval/>.

⁴⁸ FEDERAL TRADE COMM’N ET AL., JOINT STATEMENT ON COMPETITION IN GENERATIVE AI FOUNDATION MODELS AND AI PRODUCTS at 2 (June 23, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ai-joint-statement.pdf [hereinafter Joint Statement]; see also *FTC, DOJ, and International Enforcers Issue Joint Statement on AI Competition Issues*, FED. TRADE COMM’N (July 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-doj-international-enforcers-issue-joint-statement-ai-competition-issues>.

⁴⁹ Gail Slater, *Why “Big Data” is a Big Deal*, The Regulatory Review (Nov. 6, 2023), <https://www.theregreview.org/2023/11/06/slater-why-big-data-is-a-big-deal/>.

In addition to the essential inputs necessary for successful development and deployment of generative AI applications, Big Tech companies also have complementary assets enabling them to integrate their AI products and services into their existing ecosystems. The Biden Administration has expressed concern over Big Tech’s control over the channels of distribution of AI applications and Big Tech’s ability to entrench or extend their market power in AI-related markets. The development of AI applications is occurring at a time when “large incumbent digital firms already enjoy strong accumulated advantages.”⁵⁰ I would expect that the Trump Administration antitrust leaders would share these concerns.

The intense scrutiny by the Biden Administration regarding mergers and acquisitions has influenced investment strategies in AI-related companies, leading to investment and partnership arrangements as alternatives to traditional mergers and acquisitions.⁵¹ Among the most significant Big Tech investments in AI startups have been partnerships rather than acquisitions. Artificial intelligence represents an emerging industry in which the Trump Administration will seek to balance the concerns about the growing power of Big Tech with the desire to promote American leadership and foster startup AI innovation.⁵²

In addition to the traditional antitrust concerns related to generative AI, there is intense concern that the development of generative AI may pose a natural security threat to the United States. Accordingly, the United States is taking extraordinary steps through export controls⁵³ and CFIUS reviews⁵⁴ to ensure that China does not have access to the U.S. technology to develop generative AI for military purposes. Although it is unlikely that the Trump Administration’s antitrust enforcers will have a direct role in addressing China’s national security threats, it is possible that they could investigate anticompetitive behavior of Chinese companies that control critical minerals that are essential to global semiconductor supply chains and that harm the United States markets.⁵⁵

Continuity and Change with Merger Review

One can expect that the second Trump Administration will continue to carefully scrutinize anticompetitive mergers but modify some of the most controversial aspects of Biden Administration’s merger practices and policies. Challenges to anticompetitive horizontal mergers will continue, as will targeted challenges to vertical mergers where there is strong evidence of foreclosure or raising rivals’ costs. This approach was adopted in the first Trump Administration,

⁵⁰Joint Statement, *supra*, at 2.

⁵¹Roger P. Alford, *The Competitive Landscape of Generative Artificial Intelligence*, 51 J. Leg. ___ (2025) (forthcoming).

⁵² Cat Zakrzewski, *Trump allies draft AI order to launch ‘Manhattan Projects’ for defense*, WASH. POST (July 16, 2024, 2:21 PM), <https://www.washingtonpost.com/technology/2024/07/16/trump-ai-executive-order-regulations-military/> (venture capitalists Marc Andreessen and Ben Horowitz quoting Trump as saying “What he said to us is, ‘AI is very scary, but we absolutely have to win Because if we don’t win then China wins, and that’s a very bad world”).

⁵³ Press Release, Bureau of Industry & Security, Commerce Strengthens Restrictions on Advanced Computing Semiconductors, Semiconductor Manufacturing Equipment, and Supercomputing Items to Countries of Concern (Oct. 17, 2023), <https://www.bis.gov/press-release/commerce-strengthens-restrictions-advanced-computing-semiconductors-semiconductor>.

⁵⁴ Press Release, U.S. Dep’t of Treasury, Treasury Issues Proposed Rule to Implement Executive Order Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern (June 21, 2024), <https://home.treasury.gov/news/press-releases/jy2421>; Larry Sussman, *U.S. to Impose Reverse CFIUS on China*, WIRESCREEN (July 5, 2024), <https://wirescreen.ai/blog/reverse-cfius>.

⁵⁵ Keith Bradsher, *China Tightens its Hold on Minerals Needed to Make Computer Chips*, NY Times, (Oct. 26, 2024), <https://www.nytimes.com/2024/10/26/business/china-critical-minerals-semiconductors.html>; James Hijazi & James Kennedy, *How the United States Handed China its Rare-Earth Monopoly*, Foreign Policy, (Oct. 27, 2020), <https://foreignpolicy.com/2020/10/27/how-the-united-states-handed-china-its-rare-earth-monopoly/>.

and there is no reason to suspect that the second Trump Administration will be less willing to challenge anticompetitive horizontal or vertical mergers through litigation. This also reflects continuity with the Biden Administration.⁵⁶

What likely will change is a reversal of the general skepticism toward mergers and acquisitions. FTC Chair-elect Andrew Ferguson declared that he would “[s]top Lina Khan’s war on mergers. Most mergers benefit Americans and promote the movement of the capital that fuels innovation.”⁵⁷ If nominated, he would “focus FTC resources on the mergers that harm competition and hinder innovation, while permitting mergers that keep capital flowing to innovators.”⁵⁸ Let me offer a few examples of how this may play out.

First, one can expect a change of course from the Biden Administration’s hostility toward consent decrees. In the first Trump Administration, consent decrees were commonly negotiated, with a preference for structural over behavioral remedies.⁵⁹ In the Biden Administration consent decrees were strongly disfavored because, in their view, a simple injunction instead of complex settlements were seen as the surest way to preserve competition.⁶⁰ That is true, of course, only if you win. The Biden Administration’s approach has undermined the possibility of reasonable settlements with merging parties that could address competition concerns through meaningful behavioral and structural remedies. For problematic mergers, the certainty of litigation instead of negotiation dramatically increases uncertainty and transaction costs.

Perhaps the most controversial aspect of the Biden Administration’s merger approach relates to its attitude toward startups and innovation. Innovators have expressed widespread frustration with the Biden Administration’s general hostility toward startup acquisitions.⁶¹ The 2023 Merger Guidelines confirmed the Biden Administration’s skepticism of mergers that involve nascent competitors or potential entrants.⁶² The FTC’s unsuccessful effort to block Meta’s acquisition of virtual reality gaming company Within highlights the difficulty with such theories.⁶³

By contrast, the Trump Administration will balance hostility toward Big Tech with sympathy toward innovators and startups. This means ensuring a viable path for many startups to exit and scale through acquisitions, not just IPOs. A more balanced approach toward merger review recognizes that if startups cannot exit, then they will not be funded. Today there is an “unprecedented log jam of startups ... [because] the VC cycle requires funds get returned and that

⁵⁶ The Biden Administration filed more complaints challenging mergers than the Trump Administration, but the Trump Administration filed more complaints challenging mergers than the second Obama Administration and had more merger consent decrees than the Biden Administration. DAMITT 2024 Annual Report: Minding the Gap in Merger Enforcement, (Jan. 30, 2024), <https://www.dechert.com/knowledge/publication/2024/1/damitt-2023-annual-report--minding-the-gap-in-merger-enforcement.html>.

⁵⁷ Matt Stoller, *Monopoly Round-Up: Trump Lays Out His Antitrust Agenda*, (Dec. 8, 2024), <https://www.thebignewsletter.com/p/monopoly-round-up-trump-lays-out>.

⁵⁸ Id.

⁵⁹ Makan Delrahim, *Antitrust and Deregulation*, (Nov. 16, 2017), <https://www.justice.gov/opa/speech/file/1012086/dl>.

⁶⁰ Jonathan Kanter, *Remarks to the New York State Bar Association Antitrust Section*, (Jan. 24, 2022), https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-antitrust-division-delivers-remarks-new-york#_ftn4.

⁶¹ See, e.g., Christopher Beam, *The Wrath of Khan*, *The Atlantic*, (Aug. 30, 2024), <https://www.theatlantic.com/ideas/archive/2024/08/silicon-valley-lina-khan-antitrust/679655/>. Regarding the statistics on the Biden Administration’s merger challenges and second requests, see John Carroll & Helen Eckert, *Antitrust Under Biden: Taking a Closer Look at the Numbers*, *Antitrust Law Blog* (Sept. 10, 2024), <https://www.antitrustlawblog.com/2024/09/articles/election/antitrust-under-biden-taking-a-closer-look-at-the-numbers/>; DAMITT 2023 Annual Report: Minding the Gap in Merger Enforcement, (Jan. 30, 2024), <https://www.dechert.com/knowledge/publication/2024/1/damitt-2023-annual-report--minding-the-gap-in-merger-enforcement.html>.

⁶² 2023 Merger Guidelines, (Dec. 18, 2023), <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

⁶³ See *Federal Trade Commission v. Meta Platforms Inc.*, 654 F.Supp.3d 892, 925-941 (N.D. Cal. 2023).

part of the cycle has slowed to a trickle.”⁶⁴ Last year had the lowest exit activity for startups in a decade, and the government’s hostility toward acquisitions is perceived to be a fundamental part of the problem.⁶⁵ Those funding and advocating for Little Tech argue that the “American government is now *far* more hostile to new startups than it used to be” by, among other things, “regulatory agencies ... blocking startups from being acquired by the same big companies the government is preferencing in so many other ways.”⁶⁶ Whatever the intentions of Lina Khan and Jonathan Kanter, the received message was general hostility toward innovation.

That may change soon. In announcing the nomination of Gail Slater as head of the Antitrust Division of the DOJ, Trump expressed support for Little Tech, stating that “Big Tech has run wild for years, stifling competition in our most innovative sector and, as we all know, using its market power to crack down on the rights of so many Americans, as well as those of Little Tech!” ... In her new role, Gail will ensure that our competition laws are enforced, both vigorously and fairly, with clear rules that facilitate, rather than stifle, the ingenuity of our greatest companies.”⁶⁷ That succinctly summarizes the new approach toward merger review: skepticism toward Big Tech (and Big Pharma, Big Ag, etc.) but support for startups and innovation that improve the lives of average Americans. When those two positions directly collide—such as Big Tech acquisitions of Little Tech competitors—it is unclear what the new leadership will do.

Dual Enforcement of Antitrust Laws

There is a question mark regarding how the second Trump Administration views the role of the Federal Trade Commission in antitrust enforcement. The Trump Administration has announced that it will establish a Department of Government Efficiency (“DOGE”) with the mandate to “dismantle government bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure federal agencies.”⁶⁸ Without casting aspersions on any of the work of the Federal Trade Commission, there is no doubt that dual enforcement of the antitrust laws is costly and inefficient.

No other country in the world has dual enforcement of antitrust laws similar to the United States.⁶⁹ In recent decades numerous countries, including Brazil, China, France, Portugal, Spain, and the United Kingdom, have undergone major structural reforms to consolidate two or more antitrust enforcement agencies into one.⁷⁰ Given these global trends, it is difficult to argue that two federal agencies are the most effective way to vigorously enforce federal antitrust laws.

⁶⁴ Dion F. Lisle, *Where Have All the Exits Gone?*, Medium (Nov. 18, 2024), <https://medium.com/venturevine/where-have-all-the-exits-gone-43a56c354237>.

⁶⁵ NVCA 2024 Yearbook, 5, 32, 34-35 (2024), <https://nvca.org/wp-content/uploads/2024/05/2024-NVCA-Yearbook.pdf> (“In 2023, there were 999 disclosed exits with a disclosed value of \$61.5 billion. This is the lowest exit count in a decade.... if the government doesn’t adopt a more productive approach to regulating M&A, it will slow down the pace of American innovation for years to come.... The new hostility of the FTC to M&A involving small companies developing specialized niche applications for larger industries has a serious concern for the industry. It has already slowed the pace of new products coming to market as well as prevented the return of significant amounts of liquidity.”).

⁶⁶ Marc Andreessen and Ben Horowitz, *The Little Tech Agenda*, (July 5, 2024), <https://a16z.com/the-little-tech-agenda/>.

⁶⁷ Jody Godoy, *Trump Picks Gail Slater to Head Justice Department’s Antitrust Division*, (Dec. 4, 2024), <https://www.reuters.com/world/us/trump-picks-gail-slater-lead-justice-departments-antitrust-division-2024-12-04/>; Cecilia Kang, *Trump to Nominate Gail Slater to Lead Justice Department’s Antitrust Efforts*, NY Times (Dec. 6, 2024), <https://www.nytimes.com/2024/12/04/us/politics/trump-gail-slater-antitrust-justice-department.html>.

⁶⁸ Statement from President Donald J. Trump, (Nov. 12, 2024), <https://workspaceupdates.googleblog.com/2015/04/new-admin-policy-and-compliance.html>.

⁶⁹ William E. Kovacic, *Symposium Editor’s Essay: Building a Better U.S. Competition Policy Corridor*, 85 Antitrust L. J. 217, 221 (2023) (“The United States stands alone in the world in maintaining two significant national antitrust enforcement authorities.”).

⁷⁰ William E. Kovacic and Mariana Lopez-Galdos, *Lifecycles of Competition Systems: Explaining Variation in the Implementation of New Regimes*, 79 L. & Cont. Prob. 85, 110 (2016); David A. Hyman & William E. Kovacic, *Competition Agency Design: What’s on the Menu?* 8 Eur. Competition J. 527, 528-29 (2012); Angela Huyue Zhang, *Agility Over Stability: China’s Great Reversal in Regulating the Platform Economy*, 63

The most significant problem that arises from dual enforcement of the federal antitrust laws is that the two agencies view themselves as rivals that compete for enforcement authority.⁷¹ Coordination and clearance fights between the institutions are well known. They compete for authority to review proposed mergers, and often questions regarding merger authority are not readily resolved based on the DOJ's and FTC's clearance agreement.⁷² The two agencies also compete for authority in conduct cases, leading to significant delays. In the last Trump Administration, the turf battle over Big Tech is the most notable example, with Senator Mike Lee noting in 2019 that “[w]hat’s evident from this latest institutional tug of war is that the Antitrust Division and the FTC are now actively battling each other to take the lead in pursuing Big Tech.”⁷³ A similar dynamic is evident in the Biden Administration with respect to competing claims to take the lead in investigating companies active in artificial intelligence.⁷⁴ Interagency disputes are also evident in the drafting and adoption of antitrust guidelines, which can take months, sometimes even years, to resolve.

When I worked at the Department of Justice and we had disagreements with other executive agencies, we had an established mechanism for resolving disputes and escalating disagreements up the chain of command, ultimately for resolution by the President. That was a common experience with the Trade Policy Review Group⁷⁵ in negotiations of the United States-Mexico-Canada Free Trade Agreement and discussions regarding various trade remedies. But because the Federal Trade Commission is an independent agency beyond the authority of the President, there is no process to escalate and resolve disputes between the two agencies. The DOJ and the FTC typically find a way to resolve their disagreements, often with significant time and effort. But occasionally they cannot find agreement, as evident in the famous Qualcomm example of “the two Agencies actually argu[ing] against each other on opposite sides of an appeal before the U.S. Court of Appeals for the Ninth Circuit.”⁷⁶

Given the strong support for the FTC among almost all congressional Democrats and many Republicans, it is unlikely that One Agency Act⁷⁷ or the TEAM Act⁷⁸ will gain traction in the

Harv. Int'l L.J. 457, 497-98 (2022); Peter J. Wang, Yizhe Zhang, Qiang Xue, *Looking Ahead: The Integration of Chinese Antimonopoly Enforcement Authorities*, Antitrust Source, (Aug. 2018).

⁷¹ William E. Kovacic, *Symposium Editor's Essay: Building a Better U.S. Competition Policy Corridor*, 85 Antitrust L. J. 217, 221-22 (2023) (“The overlapping policy mandates of the two institutions . . . make them competitors. The rivalry inherent in the dual enforcement design has been a continuing source of interagency tension since the FTC’s creation in 1914.”).

⁷² See Memorandum of Agreement Between the Federal Trade Commission and the Antitrust Division of the United States Department of Justice Concerning Clearance Procedures for Investigations, (Mar. 5, 2002), <https://www.justice.gov/sites/default/files/atr/legacy/2007/07/17/10170.pdf>. Statistically, formal conflicts between the two agencies are rare. United States Government Accountability Office, *Antitrust: DOJ and FTC Jurisdictions Overlap, But Conflicts are Infrequent*, (Jan. 2023), <https://www.gao.gov/assets/820/814486.pdf>. This ignores all the subtle ways in which coordination and securing clearance between the two agencies is difficult and inefficient. Alden Abbott, *Why Trump May Consolidate Antitrust Enforcement*, Forbes (Nov. 21, 2024), <https://www.forbes.com/sites/aldenabbott/2024/11/20/why-trump-may-consolidate-federal-antitrust-enforcement/>.

⁷³ John D. McKinnon & James V. Grimaldi, *Justice Department, FTC Skirmish over Antitrust Turf*, Wall St. J. (Aug. 5, 2019), <https://www.wsj.com/articles/justice-department-ftc-skirmish-over-antitrust-turf-11564997402>.

⁷⁴ Danielle Kaye, *FTC's AI Probe Fails to Resolve Antitrust Enforcer Turf Tussles*, Bloomberg (Jan. 31, 2024), <https://news.bloomberglaw.com/antitrust/ftcs-ai-probe-fails-to-resolve-antitrust-enforcer-turf-tussles>.

⁷⁵ Executive Branch Agencies on the Trade Policy Staff Committee and the Trade Policy Review Group, <https://ustr.gov/about-us/executive-branch-agencies-trade-policy-staff-committee-and-trade-policy-review-group>; Congressional Research Service, *U.S. Trade Policy Functions: Who Does What?*, (Feb. 22, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF11016>.

⁷⁶ 167 Cong. Rec. 4520 (daily ed. June 14, 2021) (statement of Sen. Mike Lee), available at <https://www.congress.gov/117/crec/2021/06/14/167/103/CREC-2021-06-14-pt1-PgS4519.pdf> (“Just recently, the two Agencies actually argued against each other on opposite sides of an appeal before the U.S. Court of Appeals for the Ninth Circuit. This arrangement isn’t working for anyone—anyone, that is, perhaps, except corporations looking for an opportunity to game the system.”).

⁷⁷ One Agency Act, S.633, 117th Congress, (Mar. 9, 2021).

⁷⁸ Tougher Enforcement Against Monopolists Act, S.2039, 117th Congress, (June 14, 2021).

second Trump Administration. But as long as leadership within the FTC and the DOJ take seriously the Trump Administration’s concerns about efficiency and good governance, their policies and practices are likely to minimize conflicts.

As with trade policy,⁷⁹ many of the problems outlined above could be diminished if the DOJ were recognized as having primary responsibility for developing and coordinating the implementation of United States competition policy. This is especially true on international matters where the Executive Branch must speak with one voice. Such an approach is consistent with President Wilson’s original vision of the FTC to serve in a supportive role and “aid the DOJ and the courts in conducting investigations and supervising the dissolution of trusts found to be unlawful.”⁸⁰

Finally, there is the looming question of the FTC’s constitutionality as an independent agency under *Humphrey’s Executor*.⁸¹ The effect of a Supreme Court ruling on that question would transform the FTC from an independent agency to one in which commissioners are no longer insulated from Presidential removal or control.⁸² A salutary development is the FTC Chair-elect Andrew Ferguson’s statement that “The Constitution requires that all federal employees, even the heads of so-called independent agencies, answer to the President.”⁸³ If the other FTC commissioners made similar constitutional commitments of removal at the pleasure of the President, the short-term practical effect would be the same as overruling *Humphrey’s Executor*, aligning the position of the FTC within the Administration with that of the DOJ.

I look forward to taking your questions. Thank you.

⁷⁹ Executive Branch Agencies on the Trade Policy Staff Committee and the Trade Policy Review Group, <https://ustr.gov/about-us/executive-branch-agencies-trade-policy-staff-committee-and-trade-policy-review-group>; Congressional Research Service, *U.S. Trade Policy Functions: Who Does What?*, (Feb. 22, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF11016>.

⁸⁰ Alyson M. Cox, *From Humphrey’s Executor to Seila Law: Ending Dual Federal Antitrust Authority*, 96 *Notre Dame L. Rev.* 395, 417 (2020) citing Ernest Gellhorn, Charles A. James, Richard Pogue & Joe Sims, *Has Antitrust Outgrown Dual Enforcement? A Proposal for Rationalization*, 35 *ANTITRUST BULL.* 695, 715 (1990);

⁸¹ *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935).

⁸² *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197, 220-232 (2020).

⁸³ Matt Stoller, *Monopoly Round-Up: Trump Lays Out His Antitrust Agenda*, (Dec. 8, 2024), <https://www.thebignewsletter.com/p/monopoly-round-up-trump-lays-out>.