Department of Justice

STATEMENT OF

ROGER ALFORD
PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY, AND CONSUMER RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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 Members of the Subcommittee, thank you for inviting me to testify today on the important topic of antitrust and deregulation. I have testified before this Committee on several occasions as a Law Professor at Notre Dame Law School, but this is the first time I have had the opportunity to testify before you on behalf of the United States Department of Justice. So today marks a special opportunity to discuss America First Antitrust and I am grateful for your invitation. It is an honor to work with Assistant Attorney General Gail Slater and the wonderful attorneys, economists, and staff at the Antitrust Division.

Under the leadership of AAG Gail Slater we are at an inflection point in the history of antitrust enforcement. At the Department of Justice, we are committed to vigorous antitrust enforcement based on conservative principles of individual liberty, free markets, respect for the precedent, and strong support for deregulation.[1] The topic of this hearing and my testimony today focuses on the last point of the relationship between antitrust and deregulation.

At the Antitrust Division, we believe in free markets. Free markets stimulate investment, economic opportunity, and growth. They power our future and they strengthen America's global competitiveness. The Supreme Court has described that fundamental principle of our capitalist democracy as *the* founding premise of the Antitrust laws. "[T]he unrestrained interaction of competitive forces," the Court said in *Northern Pacific*, best allocates our economic resources and delivers "the lowest prices, the highest quality and

[1] Gail Slater, Assistant Att'y Gen., U.S. Dep't of Just. Antitrust Div., *Address at University of Notre Dame Law School* (Apr. 28, 2025), https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-first-antitrust-address-university-notre.

the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions."[2]

Today's hearing underscores the importance of the first few words in that quote. The "unrestrained interaction of competitive forces." *Free* markets. Anticompetitive regulations definitionally restrain the competitive process that we rely on to maximize consumer welfare. They sap our economy of dynamism and threaten our future global competitiveness.

1. The Antitrust Division is a Law Enforcer and Competition Advocate that Opposes Both Private and Public Restraints on the Free Market

The Antitrust Division opposes both private conduct and public regulations that threaten American competition and competitiveness. We are not regulators ourselves. We are law enforcers and competition advocates. As the Supreme Court said in a 2015 case striking down collusive rules that limited market access for teeth whitening services, enforcement of "[f]ederal antitrust law is a central safeguard for the Nation's free market structures."[3] By enforcing the Sherman Act, we stop cartels and monopolists from exploiting their power to act as governors of their industries who impose rules and policies that stifle competition. Our ongoing cases against Google, for example, attack a series of exclusionary abuses through which Google has served as a regulatory czar of internet search and advertising technology markets.[4] Courts have declared Google a serial monopolist.[5]

In prior cases, we stood up for farmers who were forbidden from repairing their own tractors.[6] We supported tech entrepreneurs excluded from competition in browsers and operating systems.[7] And we opened telephone markets to enable innovators forbidden from inventing and selling the next generation of technology.[8] We have an important ongoing case against a software company that has organized a collusive conspiracy among landlords, enabling it to act as the central price planner of rental housing markets.[9]

In a filing we argued just two weeks ago, we opposed arguments defending an alleged conspiracy among asset managers to effectively impose ESG regulations on the coal industry, depressing output and raising prices for consumers.[10] The case has a remarkable

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[2] *N. Pac. Ry. Co v. United States*, 356 U.S. 1, 4 (1958).
[3] *N.C.. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 502 (2015).
[4] *See United States v. Google LLC*, 747 F. Supp. 3d 1 (D.D.C. 2024) ("Google Search"); *United States v. Google LLC*, 1:23-cv-108, 2025 WL 1132012 (E.D. Va. Apr. 17, 2025) ("Google AdTech").
[5] *See* Google AdTech.
[6] Statement of Interest of the United States, *In re: Deere & Co. Repair Servs. Antitrust Litig.*, 3:22-cv-50188 (N.D. Ill. Feb. 14, 2023), https://www.justice.gov/atr/case-document/file/1568686/dl?inline.
[7] *See United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001).
[8] *See United States v. AT&T Co.*, 552 F. Supp. 131 (D.D.C. 1982).
[9] *See* Statement of Interest of the United States & Mem. of Law in Supp., *In re: RealPage Rental Software Litigation*, 23-MD-3071 (M.D. Tenn. Nov. 15, 2023), https://www.justice.gov/d9/2023-11/418053.pdf, https://www.justice.gov/d9/2023-11/418053a.pdf.
[10] *See* Statement of Interest of the United States, *Texas v. BlackRock*, 24-cv-00437 (E.D. Tex. May 22, 2025), https://www.justice.gov/atr/media/1401251/dl?inline.

parallel with West Virginia's win in *West Virginia v. EPA*[11], as Texas alleges powerful firms sought to impose similar anticompetitive constraints on coal companies to those the Supreme Court found to have been unconstitutionally imposed by the EPA.

Powerful firms engage in private control of the market because they have an incentive through cartels or monopoly abuse to exclude competition to protect their profit centers. But their anticompetitive incentives do not end with attempts to self-regulate their industries. They also have incentives to lobby the government and capture regulatory processes in order to raise barriers to entry and build moats around their castles. Public regulation can be a powerful exclusionary tool. Market failure comes in many forms, and we should be concerned about the distorting impact of both government and corporate abuse of power.

There is a massive ecosystem of consultants and lobbyists who push regulatory agencies toward imposing durable rules and regulations that stifle the free market. It is an astonishing fact that lobbying of the federal government is at an all-time high, exceeding $4.5 billion in 2024.[12] Precisely what are corporations and their surrogates receiving as a return on that investment? Members of this Committee and their staff are on the front lines of responding to the crushing burden of corporate lobbyists seeking public favor to distort the marketplace.

For too long, regulatory agencies' approach to rulemaking has favored powerful interests who can afford to cozy up to regulators and to flood comment dockets under the APA with self-interested filings. There are far too many anticompetitive regulations on the books.

America First antitrust enforcement is wary of the abuse of power in the hands of the government or business. It embraces free markets and competition on the merits. It is skeptical of government intervention in the markets. But it is also skeptical of corporate power, especially the kind that colludes with the government to harm consumers through the passage of anticompetitive regulations. AAG Slater has therefore directed the Antitrust Division to work to counterbalance private interests and serve as a competition advocate. As she explained in a recent address at Notre Dame Law School—

> "Corporate lobbyists using their power to undermine free markets is ubiquitous in our system, and small but powerful groups can dominate regulatory processes at the expense of the diffuse interests of individual citizens. The alliance of Big Business and Big Government must be broken."[13]

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[11] *West Virginia v. EPA*, 577 U.S. 1126 (2016).
[12] BLOOMBERG GOVERNMENT, *10th Annual Top-Performing Lobbying Firms Report*, 2024-Top-Performing-Lobbying-Firms-Report.pdf.
[13] Gail Slater, Assistant Att'y Gen., U.S. Dep't of Just. Antitrust Div., *Address at University of Notre Dame Law School* (Apr. 28, 2025), https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-first-antitrust-address-university-notre.

2. The Trump Administration Has Prioritized Identifying and Revisiting Anticompetitive Regulations that Burden Free Market Competition.

Fortunately, President Trump has taken swift executive action to break the alliance of Big Business and Big Government through a series of deregulatory orders. In his first days on the job, he declared that agencies should "alleviate unnecessary regulatory burdens placed on the American people."[14] He followed that up a few weeks later with a specific direction to all federal agencies to "commence the deconstruction of the overbearing and burdensome administrative state."[15]

President Trump also recognized the critical role that the antitrust agencies can play in supporting these efforts. In an April 9, 2025 Executive Order, he tasked the Federal Trade Commission and the Department of Justice to develop an assessment of anticompetitive regulations and to submit regulations for potential reconsideration to the Office of Management and Budget (OMB).[16]

That work is well under way at our agencies. Both FTC and DOJ have called for public comment on anticompetitive regulations, have started engagement with regulatory agencies, and are preparing a consolidated list for OMB.

The Division's Anticompetitive Regulations Task Force is leading the charge within the Department of Justice to carry out the President's Executive Order. The Antitrust Division has substantial experience with regulated industries and has long contended with the market-distorting effects of anti-competitive regulatory structures. We are leveraging that experience to inform the deregulatory analyses of agencies we are partnering with throughout the federal government.

We received more than four hundred responses to our call for public comment, many with great personal detail, that reveal an economy weighed down by burdensome, and sometimes non-sensical regulations. The comments span the U.S. economy. Many reflect pocketbook issues. We heard from nurses, farmers, home-health aides, truckers, and grocery store owners. Men and women from all walks of life spoke up about the burdens of anticompetitive state and federal laws and regulations.

There are far too many anticompetitive federal and state laws and regulations to mention. For the sake of time, let me list just a few illustrative examples of anticompetitive state laws and regulations. Among the most common complaints we received were those directed at regulations in the healthcare industry. While careful regulatory oversight is important to ensure safe and effective health care, undue—and often unwise—regulation is contributing to the crisis in out-of-control healthcare costs in America.

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[14] Exec. Order No. 14,192, *Unleashing Prosperity Through Deregulation*, 90 FR 9065 (Jan. 31, 2025).
[15] Exec. Order No 14,219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, 90 FR 10583 (Feb. 19, 2025).
[16] Exec. Order No. 14,267, *Reducing Anti-Competitive Regulatory Barriers*, 90 FR 15629 (Apr. 9, 2025).

We heard many stories about healthcare regulations that block healthcare providers from helping people. Rules that stand between patients and their nurses, doctors, and hospitals often start from the assumption that government knows better than professionals trained in caregiving. We should be skeptical of that assumption. Most Americans trust their doctor more than Big Government.

For example, we heard from physicians and patients suffering from state Certificate of Need laws that require medical providers to seek state approval before building new facilities, expanding existing ones, or offering new services. Some of these laws even control whether a provider can legally add hospital beds.[17] By forcing providers to seek approval before they can enter or expand service to a community, such state laws deter entry and suppress competitive supply that would benefit patients. This has the predictable effect of increasing healthcare costs. What's worse, some states allow incumbent providers to challenge the need for expanded services, effectively providing an anti-competitive moat to deter new entry.

State occupational licensing rules can similarly suppress competition. Many states impose onerous licensing requirements that prevent qualified doctors from providing tele-health services across state lines. These rules can be particularly harmful to low-income Americans living in rural areas with limited local medical providers. We have also heard from nurses who are fully competent to provide many necessary medical treatments, but who are prevented from doing so by state licensing and supervision requirements that do little to improve patient outcomes, but much to decrease access to treatment and increase costs.

We have also learned of laws and regulations that impact the housing market. Regulations that make it harder to build, rent, and maintain homes have contributed to an historic housing shortage and affordability crises in this country.

For example, real estate developers face a patchwork of complex and often onerous rent control regimes imposed by state and local governments across the country. While proponents often portray these policies as a way to protect low-income Americans, the effect can be to reduce competition and the supply of new housing stock. Discouraging new development can result in fewer homes and higher rents. The biggest beneficiaries of rent control policies may be higher income Americans who already own a home — further exacerbating generational wealth gaps that impede family formation and healthy communities.

There are burdensome anticompetitive state laws enacted at the behest of real estate lobbyists that prohibit home buyers from receiving commission discounts from their real estate agents, from touring homes without entering into an agent agreement, from receiving à la carte services from their agents, and from viewing For-Sale-By-Owner (FSBO) listings alongside broker listings.

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[17] HEALTH ROUNDS, *Certificate of Need in Alabama – The Time Has Come to Move On To Stoke Innovation and Investment in Alabama* (July 2, 2022), https://alhealthrounds.org/certificate-of-need-in-alabama-has-the-time-come-to-move-on/.

We have heard from ranchers who can't sell livestock across state lines because of rules that block out-of-state competition. To give just one example, it is illegal to sell a package of uncooked bacon in California if it came from a farm that has not been inspected by a California regulator, even if the pig was raised, slaughtered, and processed entirely in a different state.

These and other such state laws and regulations deter competition and have contributed to higher costs for consumers.

Our efforts at promoting a deregulation agenda are not limited to the United States. The United States is at the forefront of advocating for fewer anticompetitive laws and regulations around the world that harm the United States' interests. Last week, AAG Slater and other senior Antitrust Division leaders engaged with competition law enforcers from around the world at the OECD annual meetings to promote free markets. As more countries adopt competition law regimes, global engagement on the de-regulatory impact of vigorous antitrust enforcement is an important competition policy initiative for the United States. These efforts promote lower non-tariff trade barriers that otherwise limit the competitiveness of American businesses (including exporters of all shapes and sizes) and the ability of Americans to access foreign markets. The Antitrust Division's continued engagement with foreign competition enforcers is critical to these efforts to open up — and keep open —foreign markets for American commerce.

3. Competition Enforcement Supports Deregulation by Keeping Free Markets Free.

Often anticompetitive regulations are justified by the perceived need for government intervention to correct market failures. A most basic theory of regulation posits that regulation avoids social costs or externalities for which market failure prevents efficient or equitable private ordering.[18] As this body knows well, it is the hard political work of legislators to make policy tradeoffs, and to enact laws that balance the competing objectives of various interest groups.

But our economy is premised on the idea that the best way of regulating markets, whenever possible, is by letting consumers express their preferences through the give and take of competition.

That is why alongside our regulatory advocacy work, we are also pursuing a robust antitrust enforcement approach designed to protect the free market. Aggressive antitrust enforcement supports a competitive process that enables markets to regulate themselves, providing a bulwark against market power that often leads to regulatory intervention.

In recent decades, we have seen markets tilt toward regulation as they became more concentrated. The poster child here is the regulatory intervention that followed the 2008

[18] R.H. Coase, *The Problem of Social Costs*, 3 J.L. & ECON. 1 (1960).

financial collapse. Financial institutions that were considered "too big to fail" rapidly succumbed to new regulation in the wake of the collapse.

For many, an important question that arose was less about the merits or demerits of the regulations that followed in the wake of 2008, and more about how these financial institutions became "too big to fail" in the first place. Relatedly, many questioned whether these regulations could have been avoided had these markets not become so highly concentrated in the first instance. Finally, they questioned the role antitrust played in allowing this situation to exist.

In a recent speech on this issue, AAG Slater referenced the views of early Antitrust AAG Robert Jackson, who wrote "[t]he antitrust laws represent an effort to avoid detailed government regulation of business by keeping competition in control of prices."[19] Through the antitrust laws, he said, "[i]t was hoped" that the government could "confine its responsibility to seeing that a true competitive economy functions."[20] As Robert Jackson noted then, enforcement of the antitrust laws "is the lowest degree of government control that business can expect."[21] That is the limited role the Antitrust Division pursues in its law enforcement efforts.

We impose government obligations only on parties that violate the law, and only for the limited time necessary to restore competition. In contrast, ex ante regulations cover all parties in an industry for time immemorial, permanently distorting the free market. As AAG Slater has analogized, antitrust is a scalpel, and regulation is a sledgehammer. A sledgehammer is designed to demolish, and the work of identifying and repairing the damage of anticompetitive regulations will take enormous time and effort.

That is why it is critical that we remove anticompetitive government regulations that are harming competition and stifling the dynamism in our economy, and the Antitrust Division looks forward to supporting those efforts.

Thank you for the opportunity to testify today. I welcome any questions.

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[19] Robert H. Jackson, *Should the Antitrust Laws Be Revised?*, 71 U.S. L. REV. 575, 576 (1937) (Address Before the Trade and Commerce Bar Association and Trade Association Executives, Sept. 17, 1937), https://www.roberthjackson.org/wp-content/uploads/2015/01/Should_the_Antitrust_Laws_Be_Revised_.pdf.

[20] *Id.*

[21] *Id.*