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Office of the Chair

**Remarks of Chair Lina M. Khan
As Prepared for Delivery
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International Antitrust Law & Policy**

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Thanks so much for the introduction. And thank you to the conference organizers for convening this discussion, with enforcers and practitioners from across the international community. The Federal Trade Commission has long valued and deeply invested in its international partnerships, and we are excited to be building on that tradition. As we face this moment of reassessment and reform in the U.S., and as we navigate common challenges across our jurisdictions, there is tremendous opportunity for shared learning. I am thrilled that Maria Coppola, whom many of you have long known, has recently taken the helm at the FTC's Office of International Affairs. Maria's deep commitment to our international partnerships is second to none, and I am enormously grateful for her leadership at this key time.

In previous speeches to many of you in this audience, I have discussed the need for forward-looking enforcement in a rapidly digitizing economy.¹ Today, however, I want to focus on another core value at the center of the FTC's antitrust agenda: the rule of law. While reform agendas can sometimes be tarred as "radical," at the FTC our project is, in key respects, fundamentally conservative. As we undertake the task of ensuring our tools and frameworks can match new economic realities, we are also deeply grounding this work in statutory text, history, judicial precedent, and congressional intent.

Over the years, there has been extensive discussion of the antitrust revolution that took place forty years ago.² This conversation has tended to focus on the role of the federal judiciary in narrowing the scope and reach of the Sherman Act, and a vast body of research has engaged in a debate about whether the judiciary's interpretation was wrong as a matter of legislative history.

But the judiciary did not act alone. Far less appreciated is the pivotal role that the antitrust agencies themselves played in ushering in a pivotal shift in our approach to antitrust. In

¹ Remarks of Lina M. Khan, Charles River Associates Conference (Mar. 31, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/CRA%20speech.pdf; Keynote Remarks of Lina M. Khan, International Competition Network (May 6, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Remarks%20of%20Chair%20Lina%20M.%20Khan%20at%20the%20ICN%20Conference%20on%20May%206%202022_final.pdf.

² See, e.g., Robert H. Lande, *A Traditional and Textualist Analysis of the Goals of Antitrust: Efficiency, Preventing Theft from Consumers, and Consumer Choice*, 81 *FORDHAM L. REV.* 2349 (2013); Eleanor M. Fox, *Against Goals*, 81 *FORDHAM L. REV.* 2158 (2013); Sanjukta Paul, *Recovering the Moral Economy Foundations of the Sherman Act*, 131 *YALE L.J.* 175 (2021).

many areas of competition enforcement, the agencies' post-1980 retreat did not stem from court setbacks. Rather, agency leaders *chose* not to fully exercise the authority granted to us by Congress. I worry that these decisions set us on a course that departed from the text, structure, and history of the underlying statutes, as well as from controlling law and judicial precedent.³ Indeed, despite the ascendance of textualism, antitrust analysis has been remarkably devoid of actually grappling with the underlying statutory text.⁴ Restoring antitrust to an approach that is fully faithful to the legal authorities that Congress gave us is critical for promoting the rule of law and for ensuring the democratic legitimacy of our work.

To understand how all this played out, it helps to begin with the FTC Act of 1914, the statute that created the Commission itself. The FTC Act poses something of a riddle. At the time it was passed, the Department of Justice already was bringing antitrust cases under the Sherman Act.⁵ Why, then, did the United States need a second agency to enforce competition law?

The answer is that Congress determined the Sherman Act wasn't enough. In the famous *Standard Oil* case, the Supreme Court had announced that it would interpret the Sherman Act using the open-ended "rule of reason." A restraint of trade might be illegal, or it might not; it would depend on whether a federal judge decided it was reasonable. Lawmakers in Congress were alarmed. They worried that the courts' approach delayed resolution of cases, delivered inconsistent and unpredictable results, and gave the judiciary outsized and unchecked interpretive authority.⁶ In light of this deep concern, a 1913 Senate committee report called for legislation "establishing a commission for the better administration of the law."⁷

Congress passed the Federal Trade Commission Act with the explicit goal of avoiding the pitfalls of the Sherman Act. At the heart of the FTC Act is Section 5, which prohibits "unfair methods of competition"—language that marked a clear distinction from the Sherman Act. With this text, Congress distinguished between *fair* and *unfair* methods of competition and charged the

³ See, e.g., Eleanor M. Fox, *Chairman Miller, The Federal Trade Commission, Economics, and Rashomon*, 50 L. CONTEMPORARY PROBLEMS 33 (1988)

⁴ Daniel A. Farber & Brett H. McDonnell, "Is There a Text in This Class?" *The Conflict Between Textualism and Antitrust*, 14 J. CONTEMP. LEGAL ISSUES 619, 621 (2005) ("[A]lthough textualists have sometimes been described as striving 'with missionary zeal to narrow the focus of consideration to the statutory text and its "plain meaning"', this is hardly true in antitrust law." (citation omitted) (quoting David L. Shapiro, *Continuity and Change in Statutory Interpretation*, 67 N.Y.U. L. REV. 921, 922 (1992))).

⁵ The Antitrust Division was not created, however, until after the FTC was established. See Gregory J. Werden, *Establishment of the Antitrust Division of the U.S. Department of Justice*, 92 ST. JOHN'S L. REV. 419 (2018).

⁶ Statement of Chair Lina M. Khan Joined by Commissioner Rohit Chopra and Commissioner Rebecca Kelly Slaughter on the Withdrawal of the Statement of Enforcement Principles Regarding "Unfair Methods of Competition" Under Section 5 of the FTC Act, at 3 (July 1, 2021) [hereinafter "Statement on 2015 Statement Withdrawal"] (citing Neil Averitt, *The Meaning of "Unfair Methods of Competition" in Section 5 of the FTC Act*, 21 B.C. L. REV. 227, 229-240 (1980)),

https://www.ftc.gov/system/files/documents/public_statements/1591498/final_statement_of_chair_khan_joined_by_rc_and_rks_on_section_5_0.pdf.

⁷ *Id.* at 3 ("Likewise, a 1913 Senate committee report lamented that the rule of reason had made it 'impossible to predict' whether courts would condemn many 'practices that seriously interfere with competition, and are plainly opposed to the public welfare,' and thus called for legislation 'establishing a commission for the better administration of the law and to aid in its enforcement.' These concerns spurred the passage of the FTC Act, which created an administrative body that could police unlawful business practices with greater expertise and democratic accountability than courts provided." (citations omitted)).

FTC with fleshing out that distinction based on its expertise. The crucial point is that lawmakers deliberately avoided borrowing language from the Sherman Act or from judicial interpretations of it. They wanted Section 5 to apply to conduct that threatened open and competitive markets even if it did not fall within the four corners of the Sherman Act.⁸

Time and again, the Supreme Court has reaffirmed that Section 5, by its plain text, does not only apply to practices that violate other antitrust laws, such as the Sherman Act.⁹ At the same time, the Court has emphasized the Commission's expertise in competition matters, and consequently awarded "deference"¹⁰ and "great weight"¹¹ to the Commission's determinations that a given method of competition is unfair.

Through the late 1970s, the FTC frequently brought Section 5 cases against conduct that would not necessarily violate the Sherman Act, what we now typically call "standalone" Section 5 cases. Those included invitations to collude;¹² price discrimination claims against buyers not covered by the Clayton Act;¹³ de facto bundling,¹⁴ tying, and exclusive dealing;¹⁵ and a host of other practices.¹⁶

But starting in the 1980s, the Commission backed away from bringing standalone Section 5 cases. Some commentators have suggested that this was because the agency lost a trifecta of cases in the early 1980s¹⁷—and it's true, this series of losses stung and dissuaded agency leaders for years to come. Looking closely at these cases, however, reveals that none of them disputed the Commission's authority or even limited the reach of Section 5. They were simply cases in which courts held that the FTC had not met its factual or evidentiary burden.¹⁸

⁸ *Id.* at 3.

⁹ See, e.g., *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 477, 454 (1986) (noting that unfairness "encompass[es] not only practices that violate the Sherman Act and other antitrust laws, but also practices that the Commission determines are against public policy for other reasons." (internal citations omitted)); *FTC v. Motion Picture Advert. Serv. Co.*, 344 U.S. 392, 394 (1953) (noting that unfair methods of competition "are not confined to those that were illegal at common law or that were condemned by the Sherman Act"); *FTC v. Brown Shoe Co.*, 384 U.S. 316, 321 (1966). Courts have also held that practices deemed to violate Sections 1 and 2 of the Sherman Act are also unfair methods of competition. See, e.g., *Motion Picture Advert.*, 344 U.S. at 395 (conduct fell "within the prohibitions of the Sherman Act and is therefore an 'unfair method of competition' within the meaning of § 5(a) of the Federal Trade Commission Act.").

¹⁰ *Indiana Fed'n of Dentists*, 476 U.S. at 454.

¹¹ *Atl. Refin. Co. v. FTC*, 381 U.S. 357, 368 (1965) (quoting *FTC v. Cement Inst.*, 333 U.S. 683, 720 (1948)).

¹² *FTC v. Cement Inst.*, 333 U.S. 683.

¹³ *Alterman Foods v. FTC*, 497 F.2d 993 (5th Cir. 1974); *Colonial Stores v. FTC*, 450 F.2d 733 (5th Cir. 1971); *R.H. Macy & Co. v. FTC*, 326 F.2d 445 (2d Cir. 1964); *American News Co. v. FTC*, 300 F.2d 104 (2d Cir. 1962); *Grand Union Co. v. FTC*, 300 F.2d 92 (2d Cir. 1962); *In re Foremost-McKesson, Inc.*, 109 F.T.C. 127 (1987).

¹⁴ *Atl. Refin. Co. v. FTC*, 381 U.S. 357.

¹⁵ *Motion Picture Advert.*, 344 U.S. 392.

¹⁶ *Atl. Refin. Co. v. FTC*, 381 U.S. 357.

¹⁷ *Official Airline Guides, Inc. v. Fed. Trade Comm'n*, 630 F.2d 920 (2d Cir. 1980); *Boise Cascade Corp. v. Fed. Trade Comm'n*, 637 F.2d 573 (1980); *E.I. du Pont de Nemours & Co. v. FTC (Ethyl)* 729 F.2d 128 (2d Cir. 1984).

¹⁸ See, e.g., Concurring Opinion of Commissioner Jon Leibowitz in the Matter of Rambus, Inc., Docket No. 9302, at 7 (Aug. 2, 2006),

<https://www.ftc.gov/sites/default/files/documents/cases/2006/08/060802rambusconcurringopinionofcommissionerleibowitz.pdf> ("The decision in each, however, turns primarily on an evidentiary failure to demonstrate that the challenged conduct constituted an effort to acquire market power, tacitly collude, or manipulate price for

The retreat from standalone Section 5 cases reached its height less than a decade ago. In 2015, the Commission announced that the FTC would not bring cases under Section 5 unless they met a framework similar to the rule of reason, including taking into account any potential efficiencies and business justifications.¹⁹

In other words, Congress crafted Section 5 with the specific purpose of expanding the law beyond the Sherman Act and its rule of reason framework. It created the FTC to execute that vision. And yet in 2015 we in effect rejected that clear statutory mandate.

As enforcers, we of course must exercise discretion in deciding what cases to bring and how to use our limited resources. But we cannot simply ignore the text of our governing statutes and our core congressional mandate.²⁰ As former FTC Chair Bill Kovacic explained, “If you pull Section 5 out of the mix of what the Commission does, I think you begin to ask profound questions about whether the institution ought to exist at all.”

To be sure, there are difficult questions involved in determining what constitutes an “unfair method of competition,” and the Commission lost more than a handful of cases during the early stages of articulating its views on the matter. But we must continue to take those challenges head-on, rather than retreat and ignore our statutory obligation. That Section 5 is potentially open-ended is not a reason to ignore it; rather, it is a reason to enforce it with sharp focus, supplemented by guidance, to refine and clarify its meaning and scope. This is no different from how the courts engage with the open-ended nature of the Sherman Act on a daily basis, more than one hundred and thirty years after its enactment. And it certainly should not provide a basis to ignore Congress’s command and avoid the exercise entirely.”²¹

With this background, I believe it is clear that respect for the rule of law requires us to reactivate our standalone Section 5 enforcement program. Shortly after I joined the agency last year, the Commission voted to rescind the 2015 policy statement.²² Since then, one of my top priorities has been the preparation of a policy statement on Section 5 that reflects the statutory text, our institutional structure, the history of the statute, and the case law. I believe that we must take “unfair methods of competition” seriously as a legal standard. I share former Chair Kovacic’s concern that neglecting to do so presents serious risks for the FTC and for the antitrust regime that Congress crafted.

anticompetitive purposes. *None* of these cases significantly constrains the FTC’s authority to apply Section 5 to violations of the policies that underlie the antitrust statutes or that cause actual or incipient antitrust injury.” (emphasis original).

¹⁹ Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act, Fed. Trade Comm’n (Aug. 13, 2015), https://www.ftc.gov/system/files/documents/public_statements/735201/150813section5enforcement.pdf.

²⁰ See, e.g., Opening Remarks by Chairman Kovacic, Workshop on Section 5 of the FTC Act as a Competition Statute (Oct. 17, 2018) [hereinafter Kovacic Remarks at Section 5 Workshop] (transcript available at https://www.ftc.gov/sites/default/files/documents/public_events/section-5-ftc-act-competition-statute/transcript.pdf), at 4 (describing Section 5 as “a critical assumption upon which the agency itself was founded.”).

²¹ *Id.*

²² Statement on 2015 Statement Withdrawal, *supra* note 6.

The Commission is currently considering this policy statement, and I hope that we will be in a position to release it soon. The terrific team that has been leading this work internally has spent months carefully combing through case law and legislative history. I take seriously the mandate that Congress has given the FTC and am hopeful that this policy statement will enable us to more faithfully discharge our statutory obligations.

This same principle of fidelity to the law drives us as we implement new merger guidelines in partnership with our colleagues at the Antitrust Division.

The story of our anti-merger law is similar to that of the FTC Act. In 1948 the Supreme Court decided the *Columbia Steel* case, which held that a clearly anticompetitive merger did not amount to an unreasonable restraint of trade under the Sherman Act.²³ After the case was decided, Congress was urged to introduce a stricter standard of illegality.²⁴ The Senate report stated that: “The committee wishes to make it clear that the bill is not intended to revert to the Sherman Act test. The intent here . . . is to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding.”²⁵

And so Congress passed the Celler-Kefauver Anti-Merger Act of 1950, which amended Section 7 of the Clayton Act, where lawmakers had first set clear limits on acquisitions.²⁶ Combined with the 1950 amendments, the text of Section 7 of the Clayton Act, the legislative history, and Supreme Court interpretations made a number of core principles clear.

Congress, and later the Supreme Court, observed that markets can consolidate rapidly. Congress therefore determined that the antitrust agencies should break these trends at their outset, well before they gathered great momentum.²⁷ The amendments to Section 7 equipped the agencies to block mergers if there was an incipient trend towards concentration or reduced competition.

²³ *United States v. Columbia Steel Co.*, 334 U.S. 495 (1948).

²⁴ A major driver in the passage of the 1950 amendment was the publication in 1947 of the FTC's study on mergers. FED. TRADE COMM'N, THE PRESENT TREND OF CORPORATE MERGERS AND ACQUISITIONS (1947), reprinted as S. DOC. NO. 80-17, at 300-17 (1947). The report was cited extensively by Congress as evidence of the danger to the American economy in unchecked corporate expansions through mergers. 95 CONG. REC. 11500-50 (1949).

²⁵ S. REP. NO. 81-1775, at 4 (1950). See also *Brown Shoe Co.*, 370 U.S. at 316 (“Other considerations cited in support of the bill were the desirability of retaining ‘local control’ over industry and the protection of small businesses. Throughout the recorded discussion may be found examples of Congress' fear not only of accelerated concentration of economic power on economic grounds, but also of the threat to democracy a trend toward concentration was thought to pose.” (citing 95 Cong. Rec. 11486, 11489, 11494-11495, 11498; 96 Cong. Rec. 16444, 16448, 16450, 16452, 16503 (remarks by Representative Celler and Senator Kefauver, and by Representatives Bryson, Keating, and Patman and Senators Murray and Aiken))); *Amending Sections 7 and 11 of the Clayton Act: Hearing on H.R. 988 et seq. Before Subcomm. No. 3 of the Comm. on the Judiciary*, 81st Cong. 12 (1949) (statement of Sen. Estes Kefauver) (“If our democracy is going to survive in this country we must keep competition, and we must see to it that the basic materials and resources of the country are available to any little fellow who wants to go into business.”).

²⁶ Heeding the intent of the 1950 amendments, the Supreme Court warned lower courts not to subvert Congressional intent by engaging in an overly broad economic investigation. See *United States v. Phillipsburg Nat'l Bank & Trust Co.*, 399 U.S. 350, 366 (1970); *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 362 (1963).

²⁷ *Brown Shoe Co.*, 370 U.S. at 317, 322.

Lawmakers' skepticism of mergers was rooted in a core policy view: that often times business expansion through internal corporate growth is superior to growth through acquisition. Internal expansion was more likely to reflect demand for the company's products and to produce increased investment, jobs, and output. Mergers, on the other hand, were more likely to, as the Supreme Court later noted, "reduce available consumer choice while providing no increase in industry capacity, jobs or output."²⁸

Crucially, Congress sought to center the test of illegality on probabilities, not certainties. The text of the law refers to transactions whose effects "may be substantially to lessen competition..."²⁹ Mergers could violate the law even when it was not an absolute certainty that the particular deal in question would reduce competition in an existing market.³⁰ Accordingly, Congress sought for Section 7 to create a strong presumption that certain mergers were illegal.³¹

Finally, Congress determined that an unlawful merger cannot be saved from illegality because it may be deemed beneficial on some ultimate reckoning of economic debits and credits.³² The Supreme Court confirmed this when it held that such a balancing test required a value choice "of such magnitude [that it] is beyond the ordinary limits of judicial competence." In fact, it observed that the value choice had already been made by Congress when, in passing the Anti-Merger Act, it determined that to "preserve our traditionally competitive economy... [by outlawing] anticompetitive mergers, the benign and the malignant alike, fully aware...that some price might have to be paid."³³

Beginning in the 1980s, the antitrust agencies began straying from several of these bedrock principles. Through administrative fiat the Commission effectively sidestepped controlling precedent and the statutory text, including the 1950 amendments. For example, the Commission injected back into merger analysis the "rule of reason," directly contravening Congress by weighing procompetitive benefits against anticompetitive harms.³⁴ And despite Congress' instruction to halt concentration in its incipiency, the Commission held off on bringing

²⁸ *Brown Shoe Co. v. U.S.*, 370 U.S. 294, 345 n.72 (1962).

²⁹ 15 U.S.C. § 18.

³⁰ *United States v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586, 592-595 (1957).

³¹ *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321 at 367 ("[A] merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects.").

³² *Ford Motor Co. v. U.S.*, 405 U.S. 562, 570 (1972) ("It is argued, however, that the acquisition had some beneficial effect in making Autolite a more vigorous and effective competitor against Champion and General Motors than Autolite had been as an independent. But what we said in *United States v. Philadelphia National Bank* disposes of that argument. A merger is not saved from illegality under § 7, we said, 'because, on some ultimate reckoning of social or economic debits and credits, it may be deemed beneficial.'" (citing *United States v. Philadelphia Nat'l Bank*, 374 U.S. at 371)).

³³ *Philadelphia Nat'l Bank*, 374 U.S. at 371.

³⁴ *In re General Motors Corp.*, Docket No. C-3132, 49 Fed. Reg. 18,289 (1984) (final consent order). Jim Miller stated at the time: "In that matter, the Commission evaluated the joint venture's potential for anticompetitive abuse in a market where domestic production was shrinking and one of the major firms—Chrysler—was in serious financial difficulty. On the other side, the Commission considered potential efficiency gains associated with the infusion of improved technology and the competitive benefits..." *60 Minutes with James C. Miller III, Chairman, Federal Trade Commission*, 54 ANTITRUST L.J. 155 (1985).

these cases. As a result, firms were able to consolidate markets until every remaining firm was critical to maintaining even a semblance of competition.

As we pursue our revision of the merger guidelines and as our teams have dug into the controlling legal precedent, I have been struck by the extent to which prior guidance departed from the law. For example, the 1982 guidelines first introduced the notion that efficiencies might justify a merger that was otherwise illegal, despite clear precedent rejecting such a balancing test given the text of the statute.³⁵ The guidelines also deemphasized the role of the structural presumption in horizontal mergers and focused on effects, imposing a standard of proof so high as to effectively ignore the law's focus on probabilities, rather than certainties.³⁶ Subsequent guidelines introduced a new test for the assessment of vertical mergers that did not follow controlling Supreme Court precedent.³⁷ Similarly, the guidelines almost entirely jettisoned market expansion and conglomerate theories.³⁸ This happened despite the fact that, as the Supreme Court had recognized, those theories of harm were squarely within the scope of the statute.³⁹

Even some judges took notice.⁴⁰ In 1986 Judge Posner commented in an opinion affirming a merger case brought by the FTC that the “Commission may have made its task harder (and opinion longer) than strictly necessary...by studiously avoiding reliance on any of the Supreme Court's section 7 decisions from the 1960s...”⁴¹ He observed that this avoidance was strange especially given the fact “[n]one of these decisions has been overruled.”⁴²

Notably, this trend towards a more permissive merger policy was not a purely domestic affair. Through international engagement, the U.S. sought to persuade counterpart agencies around the world to focus primarily on cartel enforcement and horizontal mergers. We

³⁵ 1982 Merger Guidelines, 47 Fed. Reg. 28,493 (1982). *See also* 1984 Merger Guidelines, 49 Fed. Reg. 26,823 (1984). The 1984 DOJ Guidelines increased the number of defenses and added other factors which could reduce the significance of concentration levels from 10 to 14; added a failing division to the failing firm defense; and added an efficiency defense where the 1982 Guidelines had indicated that the DOJ would consider efficiency claims only in “extraordinary cases.” *See generally* Richard A. Miller, *Notes on the 1984 Merger Guidelines: Clarification of the Policy or Repeal of the Celler-Kefauver Act?*, 29 ANTITRUST BULL. 653 (1984).

³⁶ Fox, *supra* note 3, at 37 (“Chairman Miller was ‘really very concerned about using simple concentration indexes as even a prima facie basis for whether a law violation has occurred.’” (citing *Interview with James. C. Miller, III*, 51 ANTITRUST L.J. 3, 9 (1982))).

³⁷ U.S. DEP’T OF JUSTICE & FED. TRADE COMM’N, VERTICAL MERGER GUIDELINES (2020), available at https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical_merger_guidelines_6-30-20.pdf.

³⁸ U.S. DEP’T OF JUSTICE & FED. TRADE COMM’N, HORIZONTAL MERGER GUIDELINES (2010), available at <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>.

³⁹ *FTC v. Procter & Gamble Co.*, 386 U.S. 568, 577 (1967) (“All mergers are within the reach of § 7, and all must be tested by the same standard, whether they are classified as horizontal, vertical, conglomerate or other.”).

⁴⁰ Judge Posner was not alone in noticing this departure from controlling precedent. For example, in the late 1980s the National Association of Attorney Generals issued their own guidelines, emphasizing how far the federal agencies had strayed from the law. National Association of Attorneys General Horizontal Merger Guidelines, 800 Trade Reg. Rep. Pt. II, at 67 (1987). *See also* Fox, *supra* note 3; *In re Echlin Manufacturing Co.*, 105 F.T.C. 410, 502-03 (1985) (Bailey, Comm’r, dissenting) (noting that “[w]hat is emerging in Commission merger decisions is by and large the rule that, according to the ‘new’ economic learning, a merger is almost always legal”).

⁴¹ *Hospital Corp. of America v. FTC*, 807 F.2d 1381, 1385 (7th Cir. 1986) (except *Philadelphia National Bank*).

⁴² *Id.*

successfully promoted the idea that vertical mergers could rarely, if ever, be harmful. The focus, the U.S. claimed to the international audience, should be on prioritizing the benefits of efficiencies in non-horizontal mergers.⁴³

I am thrilled by the progress our teams are making on the revision of the merger guidelines, and we plan to publish draft guidelines in the coming months. As with our Section 5 work, this effort is deeply rooted in the text of our statutes, in controlling law and precedent, and in Congress's deep commitment to robust enforcement. Anchoring our reform efforts in these core principles will bring antitrust more squarely within the rule of law.

Faithfully enforcing the antitrust laws will necessarily involve taking action against dominant firms, some of which are among the wealthiest and most powerful companies in the world. These companies are often able to marshal enormous resources to try to dissuade enforcers. But upholding the rule of law requires that we administer our statutes without fear or favor.

As we set out on this course-correction in the U.S., realigning our international engagement accordingly will be key. We are fortunate to have a terrific international community of antitrust enforcers, and harnessing these partnerships for shared learning will be especially critical in these times of transition.

Thank you.

⁴³ See, e.g., Makan Delrahim, Deputy Asst. Att'y Gen., U.S. Dep't of Just. Antitrust Div., Antitrust Enforcement Priorities and Efforts Towards International Cooperation at the U.S. Department Of Justice (Nov. 15, 2004), <https://www.justice.gov/atr/speech/antitrust-enforcement-priorities-and-efforts-towards-international-cooperation-us>.