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Advancing Liberty from the Economy to Ecology

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Competition and Consumer Protection	)	
in the 21st Century	)	Project Number P181201

Comments of the Competitive Enterprise Institute

The Competitive Enterprise Institute (CEI) respectfully submits these comments regarding the Federal Trade Commission's forthcoming hearings to consider whether evolving business models in the new economy will require the agency to reexamine its approach to competition and consumer protection policy.[1] CEI is a nonprofit, nonpartisan public interest organization dedicated to the principles of limited constitutional government and free enterprise.[2] In this filing, we briefly describe how the FTC can best advance free markets and consumer welfare in the information age. Appended to this filing is a bibliography that highlights some of CEI's many publications regarding the eleven areas the Commission will consider. We look forward to participating in the FTC's process and submitting additional comments as the agency examines these crucial issues in the coming months.

Antitrust has long represented one of the federal government's most substantial and, in some cases, problematic interventions into the free market. The Commission, in conjunction with the Department of Justice, wields considerable power over markets under the century-old antitrust laws—and the scope of these powers is more visible than ever in in the age of spectacularly successful technology companies such as Google, Amazon and Facebook.

As the agency considers its role in promoting consumer welfare and protecting consumers, to what extent should it condemn anticompetitive conduct through compulsory intervention? In answering this question, the FTC must remember the lessons of rent seeking, the inherent limitations on agency expertise, and the incentive structure of the lucrative antitrust bar. Antitrust regulation is often exploited as a form of thinly veiled corporate welfare, fueled by calls for intervention based on spurious allegations of lock-in or market power. The recent resurgence of the movement to employ

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1. Fed. Trade Comm'n, *Federal Trade Commission Announces Hearings on Competition and Consumer Protection in the 21st Century* (2018), https://www.ftc.gov/system/files/attachments/hearings-competition-consumer-protection-21st-century/hearings-announcement.pdf.
2. For more information about CEI, *see* https://cei.org/about-cei.

antitrust as a tool for remaking the economy in the idealized image of central planners represents a serious impediment to free competitive enterprise and entrepreneurship, and risks hindering frontier sectors not only domestically, but globally.

More probable than purported anti-competitive abuses on the part of private firms operating in voluntary market institutions is that coercive regulation will preclude new, unseen, or unpredictable avenues of competitive response. Scholars have documented the high social costs to innovation that accompany antitrust intervention in new, rapidly evolving markets. Potential remedies for such harmful intervention should seek to minimize error costs—the risk of improperly condemning as anticompetitive conduct that is actually beneficial—include heightening the standard of proof of anticompetitive effects, limiting damage awards in antitrust suits, and limiting the standing of companies to bring suits against their rivals.

Overzealous intervention in frontier sectors will likely preempt entire categories of future entrepreneurship, innovation, and wealth creation. Owing to progressivism and its belief in centralized—rather than dispersed—expertise, property rights in frontier sectors, network industries, and vast global "commons" such as spectrum remain poorly understood. It will be catastrophic for entrepreneurship and wealth creation—and consumer protection—if governments worldwide continue to steer, while markets merely row.

Antitrust and regulatory interventionism in the name of consumer welfare should be employed only with extreme caution and skepticism. Political failures, we contend, occur far more frequently than alleged "market failures," which are in reality often simply failures to allow markets to emerge and evolve. We include the following selection of papers and writings dating back over two decades that demonstrate how government intervention tends to hinder consumer welfare.

Respectfully submitted,

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