Statement of the Honorable David N. Cicilline, Ranking Member of the Subcommittee on Regulatory Reform, Commercial and Antitrust Law for Briefing on “America’s Monopoly Moment | Work, Innovation, and Control in an Age of Concentrated Power,” by the Open Markets Institute

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Good afternoon, and thank you for inviting me to today’s important discussion of America’s Monopoly Moment: Work, Innovation, and Control in an Age of Concentrated Power.”

I am honored and delighted to join you to discuss one of the key issues of our time.

Monopoly Moment

We are in a monopoly moment.

Nearly every relevant point of economic data shows that the concentration of economic power is at historic levels.

The Wall Street Journal reported two years ago that nearly a third of U.S. industries “would be considered highly concentrated under current federal antitrust standards,” while 2015 was the biggest year ever for mergers and acquisitions.
Since then, waves of anticompetitive mergers—deals that should never have made it out of the board room—have tested the boundaries and durability of the antitrust laws while straining the razor-thin resources of the antitrust agencies.

Economic concentration is at a three-decade high and has structurally weakened competition on an economy-wide basis.

In the midst of this wave of consolidation, there is also overwhelming evidence that corporations are earning monopoly profits that aren’t being reinvested in workers or the economy.

Last month, Gary Cohn, President Trump’s top economic adviser accidentally illustrated this point at a Wall Street Journal CEO Conference where members of the audience of CEOs and top executives were asked to raise their hands if they would reinvest savings from tax reform back into the economy. When few raised their hands, Cohn laughed nervously and asked, “Why aren’t the other hands up?”

It is no mystery why the companies that are already enjoying record profits in concentrated industries are under no pressure to invest in their workers or the economy.

The Economist described this last year as the hoarding of economic growth by corporate monopolists—an economic “sickness” signaling that companies have become “more adept at siphoning wealth off than creating it afresh.”
Professor Carl Shapiro of the University of California at Berkeley, who served as the chief economist in the Justice Department’s Antitrust Division, has reached a similar conclusion, noting that corporations “are systematically earning far higher profits than they were 25 or 30 years ago,” pointing to “a rise in incumbency rents.”

But on an even more fundamental level, hardworking Americans already know that the economy is not working for them.

They feel it in every paycheck, every job application, and every credit card payment.

In a seminal speech on America’s monopoly problem earlier this year, Nobel laureate Joseph Stiglitz described this as “a widespread sense of powerlessness, both in our economic and political life. We seem no longer to control our own destinies.”

**Jobs, Wages, and Small Business Growth**

That’s because for too long, wave after wave of large corporate mergers have decimated jobs and wages while rigging the economy against locally owned businesses, working families, and entrepreneurs.

Business dynamism—a key measure of productivity and economic growth—has steadily declined over the past several decades as the economy has become dominated by fewer and fewer large corporations.

And over three thousand stores are expected to close this year—*double* the number of closings during this period last year—while
the number of monthly job losses in the retail sector far exceed the losses in every other sector of the economy *combined*.

Declining competition among employers has resulted in lower wages and worse benefits *precisely* because corporations in concentrated markets have virtually zero incentive to pay fair wages.

And while the effects of economic concentration have been devastating for nearly all workers, it most severely harms workers in vulnerable groups, such as women and minorities, who have less bargaining power against wage discrimination and other forms of workplace inequality.

Professor Marcellus Andrews of Bucknell University observes for minority small-business owners and workers, lax antitrust enforcement has been a “catastrophic intellectual and political policy mistake.”

**Excessive Licensing**

But economic concentration is not the only anticompetitive threat to the prosperity of working American families.

Over the past several decades, the dramatic growth of excessive licensing and the proliferation of non-compete clauses in employment contracts have become a *turnstile* for the employment of everyday workers—a one-way restriction on economic opportunity that keeps jobs out of reach for too many working families.
Today, nearly a third of American jobs require a state license, including many jobs that have little impact on public health or consumer safety.

For example, to work as a security guard—a job that typically pays less than $30,000 annually—a Michigan resident must have three years of education and training. Other states require less than two weeks of training for the same job.

And because these standards differ by state, licensing barriers have disproportionately affected the mobility and opportunity of military families, which are 10 times more likely to relocate across state lines than other working families.

Worse still, many states have used occupational licenses as leverage to collect educational debt, suspending or even seizing these licenses from firefighters, nurses, teachers, psychologists, barbers, lawyers, real estate brokers, and others who fall behind on student loan payments.

According to a New York Times investigation of this alarming phenomenon, there are “at least 8,700 cases in which licenses were taken away or put at risk of suspension in recent years, although that tally almost certainly understates the true number.”

This is nothing short of a weaponization of safety requirements against the economic security of working American families.
But to be clear, calls for reform of *excessive* licensing cannot serve as a springboard for Lochnerism or the erosion of each state’s *plenary* authority to establish standards governing the health and safety of its own citizens.

The Supreme Court has long recognized that states have broad power to enforce public health standards as a “vital part of a state’s police power.”

Equally as important, we must distinguish *excessive* licensing, such as onerous and costly requirements for everyday professions, from the reasonable practice of establishing minimum qualifications for professions that affect public health and safety in each state.

The benefits of sensible licensing practices, such as establishing education requirements for doctors or nurses or reducing the racial and gender wage gap, cannot be lost in this conversation.

**Non-compete Clauses**

There is also mounting evidence that the widespread use of non-compete clauses in everyday employment contracts is a fundamental threat to workers’ economic freedom and mobility.

These clauses are widespread, even among workers who do not possess trade secrets, such as workers in the fast-food industry.
Last year, the Treasury Department reported that nearly 30 million working Americans at all levels of employment are covered by non-compete clauses.

According to this report, these non-competes “prevent workers from finding new employment even after being fired without cause.”

Less than a quarter of workers report that their jobs involve trade secrets, while less than half of non-compete agreements involve work subject to trade secrets. To the contrary, only a small fraction of college-educated employees are subject to trade secrets.

In fact, in many cases, workers have already accepted a job before they even see the text of an employment contract or are simply unaware that they have agreed not to work for a competing business.

And as another investigation by the New York Times notes, these clauses only add to the difficulties that hardworking Americans face in today’s economy: “Globalization and automation have put American workers in competition with overseas labor and machines. The rise of contract employment has made it harder to find a steady job. The decline of unions has made it tougher to negotiate.”

When combined with forced arbitration clauses, which immunize unscrupulous employers from virtually any legal accountability, non-compete clauses lock-in workers, even when they are in a harmful, discriminatory workplace.

Better Deal
While these challenges are daunting, creating economic opportunity for working Americans must be a national priority.

Foremost, this means addressing corporate profit hoarding head-on by raising the income of Americans who are working longer hours for less pay, working on holidays and weekends just to make it to the next paycheck.

It is also essential that we invest in a stronger America that delivers good-paying jobs through apprenticeship programs, on-the-job training and education, and a system of competition that helps workers and small businesses.

House and Senate Democrats have proposed “A Better Deal,” a bold economic agenda to give workers, entrepreneurs, and small businesses new opportunities to get ahead.

A Better Deal on competition means investing in a stronger America through a fair system of competition and economic freedom for all Americans—consumers, workers, and small businesses—not just big corporations that are getting even bigger.

This vision of shared prosperity is more than just promises.

We are committed to rolling up our sleeves and getting to the work of cracking down on economic concentration to make our economy open, fair, and competitive.
We cannot allow corporate monopolies to dictate the economic freedom of workers in such fundamental and pervasive ways.

**Innovation and Platform Dominance**

Today’s event also concerns the effects of economic concentration on innovation.

More than 10 years ago, Dr. Vint Cerf, one of the architects of the Internet, testified that a “primary design goal” of the Internet was “to make the network itself neutral with regard to the applications it supports.”

This principle of neutrality and nondiscrimination created an environment of “innovation without permission,” meaning that startups, blogs, applications, and other edge providers did not need approval from gatekeepers to develop innovative services or contribute to the marketplace of ideas online.

“The Internet's design,” Dr. Cerf stated, “places the power and functionality of the net in the hands of the end users (consumers, businesses and application service providers).”

But today, control of information online—including the pathways for working Americans to access trustworthy news, commerce, and content—has become increasingly centralized among just a few online platforms with *significant and durable* power in winner-take-all markets for harvesting consumers’ attention.
Farhad Manjoo, a technology columnist at the *New York Times*, wrote last week that the Internet as we know it is being “carved into a historically profitable system of fiefs,” transforming its promise of “endless innovation into one stuck in mud, where every start-up is at the tender mercy of some of the largest corporations on the planet.”

This transformation of the Internet into a “corporate playground,” he notes, is the reason that the “freewheeling internet has been dying a slow death.”

But the FCC’s decision to end net neutrality could be terminal.

Last month, under the Orwellian guise of reversing the “decline in infrastructure investment, innovation, and options for consumers,” the Federal Communications Commission released the final text of its rule to repeal Open Internet protections against blocking, throttling, and paid prioritization of consumers' access to lawful content online.

To be clear, the FCC is not only reversing core net neutrality protections. It’s clearing the table of *all* of the protections that have allowed the Open Internet to flourish and grow. This deregulatory trainwreck is an unmitigated disaster for working people, small businesses, and innovation.

It is *beyond dispute* that openness is an engine of innovation and broadband investment.

As the U.S. Court of Appeals for the D.C. Circuit has repeatedly held over the past three years, Internet openness is integral to ensuring
low barriers to entry for competition and promoting the expansion and improvement of broadband infrastructure.

There are important distinctions between broadband providers and platforms. But concerns regarding exclusionary conduct by platforms are not theoretical.

Professor Frank Pasquale testified before the House Judiciary Antitrust Subcommittee in 2008 that the “[c]oncentrated control over the flow of information, coupled with the ability to manipulate this flow, may reduce economic efficiency by stifling competition.”

This discriminatory conduct “is likely to result in high barriers to entry that depress competition” because entrenched companies are more likely to have the necessary resources to “preserve their market dominance.”

Nearly a decade later, we know that the ocean of data that platforms harvest from consumers every second has further entrenched this dominance and increased the risk of exclusionary conduct online.

Coupled with machine learning and other incumbent advantages, there is little chance that startups today will even enter markets, let alone receive funding, to compete with a dominant platform.

That’s why we must ensure that the enduring principles of nondiscrimination and openness apply to all levels of the Internet.
When working families pay their bill for broadband internet access, they expect to get what they pay for: access to the entire lawful internet, not just portions of it. That’s true across the board, and it is unquestionably the most important element of the fight for the Open Internet.

As Walt Mossberg, a pioneer of technology journalism who has covered the industry for decades, has observed, “every day, the internet becomes more of a platform for lousy ads, for increasing the power of a few rich companies, and for intrusive tracking. It’s too important to leave unprotected.”

**Solutions**

That’s why it is absolutely critical that we protect and promote competition in every market.

We must aggressively fight anticompetitive transactions that allow incumbent industries to perpetuate their stranglehold over commerce through acquisition after acquisition of future competitors.

This “evergreening” of dominant platforms through consolidation must stop.

As Professor Carl Shapiro recently noted, “there would be a big payoff in terms of competition and innovation if the DOJ and FTC could selectively prevent mergers that serve to solidify the positions of leading incumbent firms, including dominant technology firms, by eliminating future challengers.”
This recommendation is consistent with a recent request by the Open Markets Institute urging the FTC to scrutinize the ability of dominant platforms to “stifle innovation, undermine privacy, and divert readers and advertising revenue away from trustworthy sources of news and information.”

We also cannot give up an inch of ground while enforcing the antitrust laws against monopolization and exclusionary conduct.

In 1994, the Justice Department opened 22 cases alleging monopolization. But twenty years later, it didn’t open any.

To be clear, case law, not a lack of interest in promoting competition, is often the key factor determining whether the antitrust agencies will bring novel cases against monopolization.

Our antitrust laws date back to 1890 and 1914 and were designed with railroads and oil tycoons in mind.

These laws worked for much of the past century until only recently—Congress must assess whether to modernize these laws for the 21st century economy.

Fair and competitive markets are a vital condition for ensuring low barriers to entry and investment opportunities for new businesses, which invest in workers, services, and goods within the community while generating the majority of jobs in the U.S. economy.
But the benefits of antitrust enforcement are not merely economic.

For over a century, policymakers have well understood that vigorous antitrust enforcement is one of the most important tools against autocracy and the corrosive effects of concentrated political power on our democratic institutions and values.

Robert Pitofsky, the former Chairman of the FTC and dean of my law school, wrote in 1979 that we should keep these concerns in mind while enforcing the antitrust laws because “an antitrust policy that failed to take political concerns into account would be unresponsive to the will of Congress and out of touch with the rough political consensus that has supported antitrust enforcement for almost a century.”

**Closing**

As I bring my remarks to a close, I want to thank Barry Lynn, Matt Stoller, Lina Khan, and the entire Open Markets team for their work and passion on these issues.

Barry and the Open Markets team have worked tirelessly to document the power of monopolies to *kill* jobs and make existing jobs *worse*.

Seven years ago, Barry co-authored one of the first deep looks at the effect of economic concentration on jobs and wages. He followed this with *Cornered: The New Monopoly Capitalism and the Economics of Destruction*, an examination of modern-day trusts and a sweeping indictment of the Chicago school of economics.
Since then, Barry and the Open Markets team have been one of the leading voices for holding economic power accountable, as today’s event demonstrates.

This work has greatly informed current policy discussions about how to address America’s monopoly problem.

Thank you for your leadership on these issues.

I look forward to working with each of you to address America’s monopoly problem.

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