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Office of the Chair

Remarks of Chair Lina M. Khan
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Good evening, everyone. I'm so glad to be here to discuss why open, fair, competitive markets are critical to promoting innovation and unleashing the full potential of emerging technologies. It's a particular honor to be able to do so here at Stanford University, which for decades has been such a key catalyst of research and innovation.

Over fifty years ago, not too far from here, a group of pioneers built out the world's first microprocessors. Their ingenuity and grit helped launch a semiconductor sector that would give Silicon Valley its name and transform the world. In the decades since, Silicon Valley has been home to countless breakthrough technologies that have delivered enormous benefits and helped position the United States as a global leader of innovation. At its best, Silicon Valley represents America's endless sense of possibility—a place where tinkerers and visionaries, start-ups and entrepreneurs, against all odds and through sheer hustle, strive to bring their ideas to life and make the world a better place.

Many people have tried to explain what has accounted for Silicon Valley's success.

One explanation that caught my ear recently was offered by investor Bill Gurley at a conference a few weeks back. He talked about the relationship between dominant companies and government regulation. He shared several stories laying out how powerful firms have used their influence to tilt laws and regulation in their favor, often at the expense of smaller companies and the public good.[1] "The reason Silicon Valley has been so successful," he concluded, "is because it's so f—king far away from Washington DC."

It was a provocative observation, one that I want to use as a jumping off point for my remarks today. How should we understand the relationship between Washington and Silicon Valley, or more broadly, between government and America's entrepreneurs and innovators?

The late former FTC Chairman Robert Pitofsky once said that "If you're going to let the free market work, you'd better protect the free market."[2]

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[1] Bill Gurley, Remarks at the UCLA All-In Summit (Sept. 12, 2023), https://www.youtube.com/watch?v=F9cO3-MLHOM.

[2] Emily Langer, *Robert Pitofsky, Activist Federal Trade Commission Chairman, Dies at 88*, WASH. POST (Apr. 8, 2023), https://www.washingtonpost.com/local/obituaries/robert-pitofsky-activist-federal-trade-commission-chairman-dies-at-88/2018/10/09/28bac896-ca9a-11e8-a3e6-44daa3d35ede_story.html.

He was right. Part of protecting the free market is ensuring that market outcomes—who wins and who loses—is determined by fair competition rather than by private gatekeepers who can serve as de-facto *private* regulators. Protecting open and competitive markets means that the best ideas win. It means that businesses get ahead by competing on the merits of their skill, not by exploiting special privileges or bowing down to incumbent monopolists. The antitrust laws and the Federal Trade Commission were established to ensure just that.

I'll offer that it is *this* commitment—to free enterprise and fair competition—that has allowed the United States to harness the talents of its citizens, reap breakthrough innovations, and lead as an economic powerhouse.

Our history is replete with examples of how government action to protect free and fair competition has been a key driver of innovation and growth.

When most people think of antitrust action against AT&T, they think of the lawsuit that resulted in the 1982 break-up of the Bell System. But an equally important action by the Justice Department was its 1956 consent decree with AT&T, which allowed the company to stay vertically integrated but required the company to license its existing patents on a royalty-free basis. In practice, this meant that critical technologies held by Bell Labs became available to all U.S. companies. Empirical research shows the consent decree unleashed waves of follow-on innovation, driven by young and small companies that were able to build on Bell Labs' technologies.[3]

There was also the DOJ's antitrust lawsuit against IBM, which charged the firm with slowing the growth of data-processing companies. As then-CEO Thomas Watson Jr. wrote, IBM's old practice had been to "lump everything together in a single process—hardware, software, engineering help, maintenance, and even training sessions."[4] As a response to DOJ's lawsuit, IBM unbundled its hardware, software, and services and allowed firms to freely pick and choose.

The government action that most directly accounts for Silicon Valley's phenomenal growth over the last two decades traces back to 1998, when federal enforcers sued Microsoft for violating the antitrust laws. The action directly responded to start-ups who had called foul on Microsoft for tactics designed to lock out new firms that threatened its monopoly. Critically, these new firms were introducing products that would create new pathways for accessing services in the digital age. Because these new layers, such as browsers, would disintermediate Microsoft's control, it engaged in a scheme to kill them off. The government's lawsuit ultimately prevented Microsoft from further centralizing control and paved the way for small scrappy firms, like Google, to enter and grow. Antitrust action added much-needed oxygen to the market, spurring decades of innovation and creating enormous wealth, including here in Silicon Valley.

[3] See, e.g., Martin Watzinger et al., *How Antitrust Enforcement Can Spur Innovation: Bell Labs and the 1956 Consent Decree*, 12 AM. ECON. ASSOC. 4 (2020), https://www.aeaweb.org/articles?id=10.1257/pol.20190086.
[4] Barry C. Lynn, *Estates of Mind*, WASH. MONTHLY (July 4, 2013), https://washingtonmonthly.com/2013/07/04/estates-of-mind/.

So to return to Bill's thesis: government has, in fact, been a key ingredient in Silicon Valley's success. Antitrust enforcement and competition policy have helped create the conditions for fair and honest competition—ensuring that today's scrappy start-ups have the opportunity to become tomorrow's winners.

In other words, the key question is not *whether* government shapes markets, but *how* government shapes markets and towards what ends.

For the last 40 years, government policy made a sharp shift away from promoting open, competitive markets.

As a result, today a handful of large incumbent firms increasingly set the terms and rules of markets. We hear from start-ups and entrepreneurs about how their access to markets is increasingly mediated by a handful of giants. These gatekeepers can use their power to pick winners and losers—such that a start-up's success can depend on the arbitrary whims of an existing giant.

Research suggests that incumbent firms may be capturing large amounts of innovative capacity through hoarding talent or acquiring firms for the express purpose of killing competition. One recent study found that after being hired by a large company, inventors produced 6 to 11 percent fewer innovations than they did at smaller firms.[5] Another study shows that in sectors where dominant platforms make frequent acquisitions, there's a drop off in venture capital investment in start-ups—suggesting that incumbents create "kill zones," where new ventures are not worth funding.[6]

Entrepreneurs tell us that they often see being acquired by a big firm as their only viable exit option. While one in two firms exited by IPO in 1990s, only about one in ten do today.[7] Part of this has to do with factors outside of antitrust and competition. But this fact can mean that increasing amounts of venture capital go to companies that have a chance of being acquired by existing firms rather than replace them—which can short-circuit the innovation potential of the entire ecosystem. Fewer pathways to commercialization also mean that there are fewer buyers to negotiate with, leading to lower valuations and less favorable deal terms.

After decades of lax antitrust enforcement and competition policy, there's renewed bipartisan interest to once again use these tools to create opportunities for entrepreneurs and unleash the U.S. economy's full potential. If we succeed, more Americans will be able to go from tinkering in a garage to having a shot at becoming the next giant.

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[5] Ufuk Akcigit & Nathan Goldschlag, *Where Have All the "Creative Talents" Gone? Employment Dynamics of US Inventors* 3, 11 (BECKER FRIEDMAN INST., Working Paper No. 2023-32, 2023), https://bfi.uchicago.edu/working-paper/2023-32/; *see also* Christopher Mims, *Is Big Tech's R&D Spending Actually Hurting Innovation in the U.S.?*, WALL ST. J. (Apr. 8, 2023), https://www.wsj.com/articles/is-big-techs-r-d-spending-actually-hurting-innovation-in-the-u-s-acfa004e.

[6] Sai Krishna Kamepalli, et al., *Kill Zone*, SSRN, Feb. 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3555915.

[7] *See* Mark Lemley & Andrew McCreary, *Exit Strategy*, 101 BOSTON U. L. REV. 1, 7 n.12, 17 n.64 (2020).

At the FTC, we've been firing on all cylinders to enable the conditions that let new innovations, start-ups, and ideas take root and thrive.

First, we're taking on coercive gatekeepers. In partnership with seventeen state attorneys general, the FTC this fall sued Amazon for deploying tactics to deprive rival platforms of the scale needed to meaningfully compete against Amazon.[8] Our lawsuit charges that Amazon used these tactics to protect its monopoly power from competitive checks while raising prices and degrading service for the tens of millions of families that shop on Amazon's platform and the hundreds of thousands of sellers that use Amazon to reach them. In a competitive world, a monopoly that hikes prices and degrades services would create an opening for rivals to come in, draw business, grow, and compete. But our investigation found that Amazon's unlawful monopolistic strategy closed off that possibility—with the public paying as a result.

This lawsuit is one of several that federal and state enforcers have filed against dominant digital platforms. At their core, these cases all tell stories about firms that initially enjoyed success through building service that users wanted and out-competing rivals—but then later resorted to monopolistic tactics to pull up the ladder behind them. On a general level, these cases are designed to unclog the arteries of competition and ensure the next set of innovators aren't locked out of competing.

Second, we're looking to ensure companies aren't blocking competition through the use of noncompete clauses. In January we proposed a rule that would largely eliminate noncompete clauses from employment contracts.[9] Our proposal builds on extensive research showing that noncompetes undermine product markets as well as labor markets, limiting the ability of entrepreneurs and start-ups to enter and compete. At the FTC we've heard from firms who identified a market opportunity, secured funding, and entered—only to find they can't grow because the relevant talent pool is locked up by incumbents.

California has long had a policy that noncompetes are not enforceable in the state—a policy that some say was key to Silicon Valley's growth as the epicenter of America's tech industry.[10] Technological advances benefit from the free flow of talent and knowledge between companies and start-ups,[11] and our proposal recognizes that tying down workers through noncompetes risks blocking this progress.

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[8] Press Release, Fed. Trade Comm'n, FTC Sues Amazon for Illegally Maintaining Monopoly Power (Sept. 26, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power.

[9] Press Release, Fed. Trade Comm'n, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition.

[10] Ronald J. Gilson, *The Legal Infrastructure of High Technology Industrial Districts: Silicon Valley, Route 128, and Covenants Not To Compete*, 74 N.Y. L. REV NO. 3, 575, *passim,* https://www.nyulawreview.org/issues/volume-74-number-3/the-legal-infrastructure-of-high-technology-industrial-districts-silicon-valley-route-128-and-covenants-not-to-compete/; Timothy B. Lee, *A Little-Known California Law is Silicon Valley's Secret Weapon*, VOX (Feb. 13, 2017), https://www.vox.com/new-money/2017/2/13/14580874/google-self-driving-noncompetes.

[11] Sampsa Samila & Olav Sorenson, *Noncompete Covenants: Incentives to Innovate or Impediments to Growth*, 57 MGMT. SCI. 3 (2011), https://www.jstor.org/stable/41060682., Jessica Jeffers, *The Impact of Restricting Labor Mobility on Corporate Investment and Entrepreneurship*, SSRN (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3040393.

Third, we're scanning the horizon to ensure the FTC is protecting open markets even in areas of new and nascent technologies. Much is uncertain about what the long-term impact of large language models and AI will look like. But it's clear these technologies could potentially transform industries across the economy, just as the rise of the internet did nearly forty years ago. Just like back then, this technology has already seen a huge influx of capital, with promise to grow our economy and catalyze major advances.

The FTC's competition role here includes scrutinizing any bottlenecks. History shows that firms that capture control over key inputs or distribution channels can use their power to exploit those bottlenecks, extort customers, and maintain their monopolies. The role of antitrust is to guard against bottlenecks achieved through illegal tactics and ensure dominant firms aren't unlawfully abusing their monopoly power to block innovation and competition.

The agency is taking a close look across the AI stack to understand the extent of competition across the various layers and sub-layers. We are examining whether dominant firms with control over key inputs—like cloud infrastructure and access to GPUs—may be able to charge excessive prices or impose coercive terms. And we've launched a new Office of Technology to bring on data engineers, data scientists, and AI specialists to ensure our skillsets are keeping pace with evolving markets. We're keen to sharpen our thinking on the various opportunities and potential obstacles for competition across AI markets and are eager to be learning from players within this ecosystem.

Much is uncertain about what the precise future of this technology will look like. The FTC has made clear that there is no AI exemption from the laws on the books—and we'll be clear-eyed in ensuring that claims of innovation are not used as cover for lawbreaking. Our history shows that maintaining open, fair, and competitive markets, especially at technological inflection points, is a key way to ensure America benefits from the innovation these tools may catalyze. And we'll continue our work to encourage a vibrant playing field where pioneers and tinkerers can bring their ideas to market and help unleash the dynamism and prosperity that has been key to America's success.

Thank you.

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