



**Briefing on Competition and Corporate Power
The Impact of Economic Concentration on Jobs, Inequality
and the Financial Security of Working Families**

Co-Hosted by Judiciary Democrats and the Congressional Progressive Caucus

**Thursday, October 5, 2017
11:30 am – 12:30 am
2226 Rayburn House Office Building**

**Remarks of
Diana Moss, Ph.D.
President, American Antitrust Institute**

Good afternoon. It is a great pleasure to be here today to lend the American Antitrust Institute's perspective to the issue of market power, concentration, workers, and the economy. These concerns should be on the radar screen of every American consumer, worker, entrepreneur, lawmaker, policymaker, and enforcer. And I'd like to say how heartened AAI is that lawmakers in the Senate and House have turned their attention, in earnest, to this issue.

Today, after almost three decades of relatively lax antitrust enforcement, we see the ill effects of declining competition. All the economic, business, and finance evidence points in the same direction. Some of our very critical markets now contain only 2 or 3 rivals. The rate of start-ups is in a 30-year free-fall. And we see growing inequality gaps, driven wide by a small number of the largest corporations holding the greatest amount of wealth.

What does this mean for consumers, workers, and economic growth? The American consumer is at risk of higher prices, lower quality, and less choice and innovation. In some markets, the consumer has lost the power to vote with her dollars and to enjoy the freedom that a market economy should ensure.

American workers see stagnant wages and dwindling employment benefits. The bargaining power of organized labor has eroded, as powerful oligopolies and dominant firms have grown and gained the advantage.

This a worrisome picture, to be sure. But the importance of competition is now on the national policy agenda, and efforts in the Senate, and now the House, to keep it there are vital.

As the leader in independent, progressive competition advocacy, AAI has consistently pushed for more vigorous enforcement for two decades. This spans the public-private enforcement partnership, and across *all* walks of antitrust, including merger control; anticompetitive agreements; and exclusionary practices by powerful sellers and buyers.

AAI's National Competition Policy Statement lays out an action plan for getting more vigorous enforcement. Our work highlights the durability and flexibility of the antitrust laws. And it ratifies the consumer welfare standard and its ability to reach to the issues that trouble competition, consumers, and workers today.

The antitrust laws can, in fact, address the many competition issues we face. This includes the manifestation of market power in modern and complex markets, the exercise of seller and buyer market power at ANY point along a supply chain, and the potential for strategic use of intellectual property and "big data" to exclude rivals.

Enforcement actions demonstrate that the existing standard captures the effects of consolidation and anticompetitive conduct – not only on price -- but on quality, variety, choice, and innovation. Enforcement has addressed quality effects in hospital mergers. Other actions have raised innovation concerns in mergers involving semiconductor equipment, planting technology, and oilfield services and equipment.

On the important issue of workers, enforcers have taken on monopsony issues in mergers of beef and pork packers, and health insurance companies. In forcing the abandonment of a merger of broadband distributors, enforcers flagged the negative effects of greater bargaining power on content writers and producers. In a merger of acute care cardiac facilities, enforcers required hospitals to release doctors from their non-compete clauses to restore competition.

Enforcers have policed anticompetitive bid-rigging, wage-fixing, no-poach, and information-sharing agreements that hurt workers. These workers include nurses, tech professionals, and others. And the agencies have made it clear through their guidance that such agreements will not be tolerated.

Moreover, occupational licensing cases in North Carolina and Texas demonstrate how state licensing boards may not be immunized under the antitrust laws for actions that exclude non-typical or innovative market entrants.

But antitrust can, and should, do more of this through more aggressive and vigorous enforcement. The laws can benefit from clarification in light of developments in technology, market dynamics, and competitive practices.

Among other improvements, enforcers should be granted the ability to hold merging parties "feet to the fire" on their claims that a merger will deliver benefits to consumers....which can also benefit labor.

We should return to the presumption that mergers in highly concentrated markets are *just plain illegal* under Clayton Section 7.

And we need to revitalize enforcement of abusive practices with the *many* tools available to do so. This includes Section 2 of the Sherman Act, Section 5 of the FTC Act, and the Robinson Patman Act.

These will all give enforcers and the courts important tools to facilitate more vigorous, effective enforcement. But antitrust needs support from other policy instruments. Trade, labor, education, tax, and small business policies all bear importantly on promoting competition.

This fundamental political-economy issue is so important to our markets, workers, consumers, and entrepreneurs that nothing short of a holistic approach can work.

Thank you very much.