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Thank you all for being here. Last month, the Federal Trade Commission hearings focused on the state of play of competitiveness in the U.S. economy and the application of antitrust law. In this and future hearings, we will focus specifically on digital marketplaces and platforms, as well as the implications of big data, algorithms, and artificial intelligence.

As we turn our focus to digital marketplace concerns, we should approach this inquiry with three key major questions in mind. *First*, what are digital marketplaces and how do they compare to other marketplaces? *Second,* what are the role and implications of mass data surveillance in these marketplaces? *Third,* how do privately established rules and regulations promote or distort the competitive process in these marketplaces?

In my view, the FTC's core role – and the role of government more broadly – is to make our markets work, free of anticompetitive lies and distortions. This role protects two groups: buyers and honest sellers.

Safeguarding the competitive process is a prerequisite for prosperity.

Government has long sought to create laws and regulations to structure and facilitate marketplaces that function well. Laws that safeguard an individual's ability to contract and possess property are foundational to functioning markets. This is recognized not only here at home, but also universally. The Universal Declaration of Human Rights declares that "no one shall be arbitrarily deprived of his property."

These foundational laws are supplemented by others that promote free and fair markets. For example, in our own country's history, many cities and towns established public marketplaces for butchers, bakers, farmers, and fishers to sell their products. By bringing together all buyers and sellers in one place, buyers would be able to easily compare products and prices, and sellers could count on a steady stream of customers. Local government could more easily enforce standards for health and safety, weights and measures, and other regulations. Buyers would know that their meat wasn't spoiled and the scales weren't rigged, protecting the competitive process.

In today's economy, digital marketplace platforms carry the potential to facilitate ideas and commerce by bringing together market participants, leveraging the market power of network effects. This is what the internet promised: a dynamic market with low barriers to entry and a level playing field.

Digital marketplaces quickly connect buyers and sellers of goods and services from around the world. Like the farmers and fishers at the public market, sellers offer their goods that buyers can compare and purchase. Just as cities and towns would facilitate craft markets or spice markets, these marketplaces can focus on specific goods and services, like books or hotel rooms. Other marketplaces include sellers of all types, including creators of content, news, and works of art, including photography and videos. These marketplaces also enforce their own regulations for sellers and creators.

Some digital marketplaces focus on individually provided services. Other digital marketplaces helped facilitate reduction of economic spoilage by connecting drivers with riders going in the same direction or households with an extra bedroom or couch with travelers. This has been described as the "sharing economy," though they have since developed into major marketplaces connecting buyers and employers of fissured labor. These marketplaces also develop and enforce regulations, include ones that set prices and assess trust and character.

Of course, there are many differences between the public marketplaces with butchers and bakers, and today's digital marketplaces.

The first key distinction relates to data surveillance. Unlike the family who shopped at the fish market or who tuned in to a television program a generation ago, participating in a digital marketplace isn't always an anonymous experience.

Marketplaces are monitoring individuals, families, and businesses, harvesting data in ways that we might not recognize or understand. This goes far beyond what buyers are looking at and can include where they were when they looked at offerings or content, who they were with, and more. For sellers, data about the prices they charge, the way they deliver goods and services, and many other attributes are ingested. This surveillance can include collection of data completely unrelated to what is needed to participate in the marketplace.

Marketplace operators develop software and algorithms to analyze this data at scale to make inferences about individuals and groups. Machine learning, including Bayesian network and deep learning, aid in the development of artificial intelligence, which helps to mimic the human brain and fully understand the habits, biases, and motivations for buyers and users on the marketplace. The internet of things, or IoT, helps to collect more sensory data from daily user activities, making artificial intelligence and predictive analytics sharper and more powerful. This cycle of learning offers significant gains to data harvesters. But harvesting data is not like mining gold. Those who were the first to collect at scale have a major advantage.

This aggregation and analysis of data has huge value, and the information asymmetry built by first-movers raises a number of questions about the competitive landscape. Marketplace operators can monetize the data that has been surveilled in many different ways. The most basic way is targeted ads. A more advanced way is for the marketplace operator to have a financial stake in a seller's offering or to directly compete with sellers of the same product. One scholar, Shoshana Zuboff, has described this economic model as "surveillance capitalism."

The inferences drawn from the analysis of mass surveillance can be stunningly effective. Many of us have surely been in a situation where you have a private conversation about something and later see an ad delivered to you for that product. Many wonder whether their phone is spying on them. But even if your conversations aren't being recorded and analyzed, the analysis of other data collected on us can be just as predictive of what is truly on your mind.

These inferences can even be used to inform individualized pricing. Here is where our existing model of thinking about markets truly breaks down. Whether selling a basket of bread or a basket of bonds, a buyer now needs to think if they are being charged a higher price compared to someone else browsing for that same product.

If information is critical to dominate markets and Congress has tasked the FTC to safeguard those markets from unfair methods of competition, we must be sure we understand how marketplace operators work: including their structure, their data collection methods, and their business arrangements.

Several lines of inquiry demand further study, including:

- *Collection Practices.* How do marketplace operators collect, store, and secure data? To what extent are participants aware of the extent of what data is being collected? How do operators assemble data on non-participants through the use of "shadow profiles" or similar inventories? How frequently do operators mark content to match it to specific devices ("fingerprinting") for the purposes of data aggregation?
- *Property Rights.* When a content creator uses a platform to distribute their work, who truly owns this content? When sellers distribute their product or services through a marketplace, who owns data about the transaction? Who has the right to sell or share this data? Perhaps more simply, who owns your online identity?
- *Predictive Analytics.* What is the range of data that feeds algorithms? What third-party data are combined with other data to draw inferences about participants on a marketplace? What is the role of machine learning? How do operators safeguard against bias against protected classes under housing, employment, and credit discrimination laws?
- *Monetization.* In what ways do operators create economic value from the analysis of harvested data? In what ways can this data be used to engage in exclusionary conduct? How is this data used to develop personalized pricing and what are the implications of this for competition?

The second key distinction relates to the regulations imposed by the marketplace operator. Public marketplaces in the United States were typically operated by cities and towns, so regulations were subject to democratic processes with, theoretically, the competitive process and the public interest in mind. For example, with bread, there might have been a standardized size for a loaf to help buyers compare and sellers compete.

Regulations might have also governed the allocation of stalls and safety inspection requirements for meat and produce. Pricing for stalls may have covered the costs of operating the marketplace, with subsidies or surpluses coming from or going to the town treasury or to improve the marketplace. Regulations might have also sought to ensure the market maintained popularity and reaped the economic benefits and the virtuous cycle of network effects.

Digital marketplaces are, of course, not operated by the public, so their regulations are developed by their owners, usually governed through "terms of service." Like the public marketplaces, today's digital marketplace regulations might seek to standardize certain procedures to promote scale and comparison shopping, while also taking steps to ensure that sellers are honest.

However, a key difference is that some regulations might seek to serve the private interest of the marketplace operator. For example, their regulations might preference the goods and services on offer where the operator competes with other sellers. Their regulations might also forbid marketplace sellers from offering their goods at a lower price on another marketplace or require sellers to pay more for premier placement. While some of these private regulations protect the competitive process, are some of these regulations driven by the profit motive of the marketplace operator in ways that conflict with the competitive process?

These regulations and restraints raise many questions, including:

- *Contracting.* What role do marketplace operators play in the contracting process between buyers and sellers? Who are the parties?
- *Preferencing and Discrimination.* How do marketplace operators show preferential treatment to some sellers over others? What factors do they consider? What are the implications of this?
- *Maintenance.* What steps do operators take that have the effect of deterring the formation of new, competing marketplaces? In today's economy, is it even possible to avoid these marketplaces?
- *Price Controls.* In what ways do digital marketplace operators engage in setting or regulating prices for sellers on the market?

As my colleague Commissioner Rebecca Kelly Slaughter outlined in her remarks before one of last month's hearings, the distinction between "consumer protection" and "competition" is becoming blurry when it comes to facets of today's digital economy. I agree with her that it would be a mistake to categorize the questions before us using these two labels. We must approach this holistically with the goal of making markets work well for all participants: buyers, sellers, users, and creators.

This will require more than just discussion. The FTC derives expertise and learnings from enforcement, but we must also engage in an analytically rigorous examination of data surveillance and monetization techniques, as well as an analytically rigorous assessment of the regulations and restraints imposed by today's digital marketplaces on their participants. Without this information about how our digital economy is governed by some of the globe's biggest companies, we won’t know if markets are working, or if they’re breaking down.

I look forward to these next set of hearings, to serve as a starting point to deepen our understanding of digital marketplaces. These marketplaces do not operate like those we read about in history or in our economics textbooks. If we do not understand them, we are in big trouble.

Shedding light on how marketplaces and platforms engage in data surveillance and analysis, as well as how their rules and regulations promote or impede the competitive process, will be a great contribution to advancing the Federal Trade Commission’s mission and developing policy that will make sure our markets are truly working.

Thank you.