NATIONAL TAXPAYERS UNION

August 20, 2018

The Honorable Joseph Simons, Chairman
The Honorable Maureen K. Ohlhausen, former Chair
The Honorable Rohit Chopra, Commissioner
The Honorable Noah Phillips, Commissioner
The Honorable Rebecca Kelly Slaughter, Commissioner

Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Chairman Simons, Commissioner Ohlhausen, Commissioner Chopra, Commissioner Phillips, and Commissioner Slaughter:

On behalf of National Taxpayers Union's (NTU's) thousands of supporters across the country, I am honored to submit the following comments in regard to Project Number P18201, "Competition and Consumer Protection in the 21st Century." Your decision to hold a series of hearings on this topic is both commendable and timely.

Introduction

Few agencies of the federal government are empowered to affect Americans' lives in the way the Federal Trade Commission (FTC) can. And while FTC's policies are often viewed through the prism of their impact on consumers and businesses, NTU would contend that taxpayers have a major stake in FTC's activities. Beyond the agency's own budget, which taxpayers help to provide FTC's regulatory approaches affect areas such as technological innovation (which can make governments more cost-efficient), economic growth (which directly translates into higher government revenues and diminished need for additional public-sector aid programs), and law enforcement techniques and jurisprudence (which has implications for the institutional cultures of other agencies like the IRS).

For all these reasons, NTU has long maintained an abiding, active interest in the FTC and its role in competition policy and consumer protection. Roughly 20 years ago, NTU initiated a project to monitor antitrust activity both at FTC and in the Department of Justice. A Policy Paper, written shortly after initiation of that project by then-Director of Programs Mark Schmidt for NTU's research arm, captured our concerns. He concluded:

> The greatest threat to free competition comes not from aggressive businesses, but from government intrusions into the marketplace. By undermining competition through antitrust enforcement or subsidies for failing industries, government uses tax dollars to make consumers pay higher prices. … If any party is guilty of engaging in "conspiracies in restraint of trade" that keep costs high for consumers, it is government.[1]

More recently, in 2015, NTU issued a lengthy Policy Paper charting a course for FTC amid the revolution in data and calls for a European-style privacy regulation regime based on "precautionary principles." Since then we have also provided recommendations to Congress and the Commission on specific issues of interest, including Americans' concerns over *public*-sector data breaches, the ongoing relevance of the consumer welfare standard, and the vital importance to taxpayers of market-innovation drivers such as the Contact Lens Rule.

The Importance of Innovation – and Regulatory Restraint – to Taxpayers

Despite some spectacular hardware failures, "e-government" has delivered clear efficiency and effectiveness dividends to taxpayers, at all levels. Few of these dividends would ever have been realized in a restrictive policy environment that prevented the evolution of new data-driven consumer and business-to-business services that could be adapted for government's use. Data sharing of the kind that former FTC Chair Ramirez raised concerns about can actually help to combat government waste in a number of ways, such as preventing improper payments to those who are deceased or incarcerated. The emergence of "smart card" technologies could, if applied government-wide, reduce losses to fraud and misapplied entitlement cases by several billion dollars annually.

For more than a decade the White House has made annual reports to Congress on e-government initiatives throughout the federal bureaucracy. A few examples from previous reports include:

- The National Contact Center, a multimedia federal portal for citizen questions about benefits and for interagency communication, delivered some $200,000 in savings to the Fish and Wildlife Service alone by providing speedier assistance with inquiries about permits and other administrative matters.
- The Federal Emergency Management Agency replaced its decades-old content management system with a "cloud"-based alternative that helped the agency re-launch websites in 2011 and 2012. The system cost $1.4 million, but is delivering $220 million in savings over five years.
- The HR Line of Business program, began a government-wide transformation of HR information technology by focusing on modernization, integration, and performance assessment. A key element is the use of "shared service centers" that all agencies are able to access. Projected savings amount to $1.6 billion through the year 2015.

End-users of "e-government" benefit from the quality of service as well. NTU has lauded the success of the IRS Free File program, a public-private partnership for federal tax return preparation and online filing. The initiative has saved $1.5 billion since its inception in consumer expenses as well as government processing costs normally incurred through processing paper returns.

The current Administration's government management plan leans heavily on technologies and methods developed in the private sector. The Office of Management and Budget reports that the use of Technology Business Management techniques from FY 2015 through FY2017 have resulted in a four-fold increase of federal IT spending that "could be clearly tracked to a specific cost category" – an essential element of any plan to ensure that budgets for these activities are rightsized. Again, a key to the success of the White's House proposed "Technology Modernization Fund" will be fast adoption and adaptation of IT solutions first born in the private sector.

Nor are benefits like these confined to the federal level. NIC, a private technology provider, lists numerous "case studies" on its own website of how state and local governments (and in turn taxpayers) reaped rewards from technology as well. Solutions ranged from online vehicle recordkeeping, to procurement tracking, to business form filing.

But perhaps the most important transformative technology for government in recent years has been the use of cloud-based data management and communication services. In 2011, NTU partnered with the U.S. Public Interest Research Group to produce a report for Congress's deficit reduction "Super Committee. "One key recommendation of the report was to implement federal IT management reforms:

> Taking advantage of options such as virtual network-based computing technology while closing up to 800 of the 2,100 federal data centers nationwide, as proposed by the Obama Administration, would save taxpayers an estimated $160 billion over the coming decade.

While follow-on estimates were less optimistic, the use of data-driven innovative models in the private sector is still revolutionizing the way government spends taxpayer funds on information management. The cloud-based Joint Enterprise Defense Infrastructure Project, currently in progress at the Department of Defense, is just one such instance.

It is clear that hi-tech innovation can change the quality and cost of government for the better, if federal managers properly embrace it. Yet, they may have fewer opportunities to do so, if the pipeline of private-sector development is slowed or cut off due to government regulatory overreach. How can FTC best optimize its policy for taxpayer interests? NTU respectfully offers the following recommendations as discussion points for your hearings going forward. While our suggestions touch upon all 11 of the topics outlined in the FTC's June 20 hearing notice, they are especially pertinent to topics 1, 4, 5, 8, 10, and 11.

Recommendation 1: Cost-benefit Analysis Should Include Taxpayers' – Not Just Consumers' – Concerns.

Over 30 years ago Timothy J. Muris, the FTC's then-Director of the Consumer Protection Bureau, analyzed a spate of FTC rulemaking proceedings subsequent to the Moss-Magnuson Act, and found that most were withdrawn, made obsolete, or delayed. In his words, it was "hardly a record to justify the enthusiasm that launched the Commission on its one-proposal-a-month binge in 1975."

Muris compared and contrasted several of these rules, concluding that most failures stemmed from two factors: 1) A lack of clear theory to show how a given practice violated the law and why a government remedy is superior to the market; and 2) A lack of "systematic projectable evidence" that confirms, not just coincides with, the theory.

Muris cited two cogent examples to illustrate his point – proposed rules that would lift states' restrictions on advertising for eyeglasses and regulations regarding disclosure of funeral home pricing. In the former case, FTC relied on systematic projectable evidence that states with advertising proscriptions had "significantly higher prices" than those with more open information environments." In the latter case, the FTC plowed ahead with a rule requiring price disclosures via telephone and point of sale, relying on "no more than a score of anecdotes" in a funeral industry with (at that point) some 2 million transactions a year.

The FTC must always embrace robust and transparent cost-benefit analysis in its decision-making – whether it takes the form of rules, consent decrees, or investigations, following Muris' guidance from 1982:

> [A] proposal should not become a rule until systematic evidence has been collected to test its factual premises. Anecdotes, the Commission's own expertise, and the testimony of experts rarely, if ever, provide the necessary confirmation. Such evidence may be consistent with the theory, but cannot test it. And an untested theory should not be imposed on society at large.

Others since Muris, among them former Commissioner Joshua Wright, have continued to insist on higher-quality evidence of consumer harms (or benefits), rather than hypothetical speculation to guide FTC's actions. No other practical exercise can have a greater salutary impact on the quality of FTC's work.

Yet, there is a role for deeper analysis which, while not hypothetical, goes beyond traditional projectable evidence about outcomes for consumers and examines other measurable types of consequences for taxpayers. The Contact Lens Rule provides potent illustrations of how FTC could maximize this impact.

- According to the Pew Charitable Trusts, in 2013 states and their employees spent $30.7 billion to provide health coverage to 2.7 million households of active state-level employees (not including local government employees, even those who could join state-level plans). State governments – i.e., taxpayers – covered $25.1 billion of this cost (the employees themselves covered the remainder). This is probably the smallest universe of expense attributable to state and local employee insurance. Taxpayers cover more than 70 percent of the premium cost associated with the Federal Employee Health Benefits Program, which pays out over $40 billion to current workers and retirees. Most of these arrangements offer some kind of vision coverage, either subsidized by taxpayers or offered as a supplement. Providing a competitive eye care market will directly impact the overhead costs of these plans.
- As the Bureau of Labor Statistics reported in December 2017, average employer compensation for states and localities totaled nearly $49 per hour versus closer to $34 per hour for the private sector. Health insurance was a driving factor in this differential – states and localities paid out nearly 12 percent of compensation to that benefit, higher by nearly half than what the private sector offered.
- The Contact Lens Rule is one of several factors contributing to the development of innovative online eye care services, among them refractive exams. Parallel to these technologies has been the emergence of other telehealth tools for serious conditions. The U.S. Department of Veterans Affairs utilizes these technologies for several eye care purposes, and as a 2016 Pew report observed, "States increasingly have adopted telemedicine in prisons to save money, improve inmates' health, and lessen the risk of taking prisoners to outside hospitals." Even in this environment, where there is obviously not the same dynamic of consumers making purchases from contact lens

prescriptions, the ocular telehealth technologies have paid dividends to taxpayers – quantifiable savings that either would have been delayed or even nonexistent in the absence of FTC's perceptive rulemaking.

- Other policy initiatives, designed to control Medicare and Medicaid costs, can indirectly benefit from FTC's foresight. While these programs generally do not provide for online lens purchases, without the Contact Lens Rule, the stifled development of new examination and purchasing venues will impact other areas of health care delivery. Citizens who might be deterred from maintaining their eye care out of their own pockets because of more onerous procedures for purchase, which could lead to more serious eye diseases that *would* rack up more Medicare and Medicaid expenses.
- Proposed state-level Medicaid waivers to require community engagement from program participants could work more effectively if beneficiaries re-entering the workforce could avail themselves of eye care services that obviate the need to take costly time off their new jobs.

Conversely, the cost to taxpayers of new rules (or of failing to liberalize existing rules) must also be taken into account. As described in an earlier section of these comments, regulatory excess can deprive taxpayers of innovations that increase government cost-efficiency. In addition, however, there is some evidence to suggest that economic growth (and with it government revenues) can be adversely affected by harsh or inconsistent enforcement activities. In a working paper, economist George Bittlingmayer determined that the high rate of antitrust prosecutions in the late 1950s, early 1960s, and 1970s help to explain the low level of investment in the U.S. economy during those years. Examining antitrust activity in 21 major industries from 1947-91, he determined that each antitrust case lowered overall investment in range of $34 million to $110 million.[2]

Bittlingmayer and Thomas W. Hazlett joined together to examine market data for more than 150 companies between 1991 and 1997, near the time that Microsoft was targeted by the Department of Justice. They determined that returns on most computer industry stocks, in particular (not just Microsoft), were negatively impacted when antitrust activity accelerated.[3]

Job creation (and with it various tax collections) could likewise be jeopardized by an imprudent regulatory stance. In May of 2011 the McKinsey group conducted an exhaustive survey of 13 countries called "Sizing the Internet." One fascinating finding came from a sub-survey of 4,800 small businesses, which determined that for every job "lost" due to "technology-related efficiencies," 2.6 jobs were created. And, in confirming the trends observed in the Census numbers, roughly ¾ of the benefits from the Internet accrue to "traditional sectors" outside of high-tech.

Such benefits are even larger when specific parts of the Internet economy are examined. A separate McKinsey study from 2011 calculated that search technologies alone added $780 billion of value to the global economy, fully 96 percent of which went to sectors outside search. In 2017 the Interactive Advertising Bureau determined that including indirect jobs, some 10.1 million people are employed in the ad-supported Internet ecosystem. More current predictions about the "Internet of Things" estimate a worldwide economic added value of as much as $11.1 trillion in the year 2025.

In short, a far-reaching cost-benefit analysis must consider fiscal, not just economic, outcomes. Such outcomes may not be easy to isolate, but increasingly sophisticated tools allow them to be weighed with lesser degrees of uncertainty than in the past.

Recommendation 2: Rule out the European-Style Data Regulation Approach.

As the European Union implemented the General Data Protection Regulation earlier this year, some policymakers called on U.S. agencies to follow this lead, and for the FTC in particular to develop EU-style policies reflecting some of the precepts outlined by former Chair Ramirez and the FTC's March 2012 privacy report. Back then the Information Technology and Innovation Foundation (ITIF) responded, "Consumers should have options to protect their privacy but there are important trade-offs and costs in creating those protections. The FTC's recommendations would create economic burdens that could stifle the efficiency and innovation that consumers also want from the Internet."

But how would these burdens manifest themselves? ITIF's Daniel Castro connected the dots for Congress a full two years before the FTC's privacy report, when he testified before a hearing of the House Energy and Commerce Committee on "Do Not Track" legislation. The proposal would have created a government mechanism blocking all data profiling in the private sector for advertising. Castro recounted how huge swaths of Internet services, from Facebook to YouTube, are free to users precisely because they are supported largely by advertising. He warned that this type of regulation would mean "not only fewer websites and less valuable content, but also less spending by Internet companies on servers and bandwidth. The net result will be fewer jobs." Left unsaid is the fact that taxpayers would have been deprived of these benefits as well, since government agencies could not have availed themselves of these services either.

Backing up these experts' opinions are some solid economic projections. Castro's testimony cited a study from Avi Goldfarb of University of Toronto and Catherine Tucker of MIT found that the EU's Data Privacy Directive decreased online advertising effectiveness by two-thirds relative to that of the environment in the rest of the world. Their conclusion: "the empirical findings of this paper suggest that even moderate privacy regulation does reduce the effectiveness of online advertising, that these costs are not borne equally by all websites, and that the costs should be weighed against the benefits to consumers."

A subsequent analysis by Josh Lerner of Harvard University discovered that the EU's e-privacy directive (implemented in 2003 after the original 1995 Data Privacy Directive) led to a $249 million decrease in venture capital investment toward European online entrepreneurs in an 8-1/2 year period. However, because venture capital often delivers a greater "bang for the buck," he concluded that "this may be the equivalent of approximately $750 million to $1 billion in traditional R&D investment."

Another less quantifiable impact from Euro-regulation could be a ramp-up in a malady that already afflicts parts of American industry: crony capitalism. Friedman identified a "suicidal instinct" in some U.S. businesses when they seek to aim government regulators at their rivals. In his dissent to FTC's 2012 privacy report, Commissioner Rosch raised a similar point:

> 'Unfairness' is an elastic and elusive concept. What is 'unfair' is in the eye of the beholder...Not surprisingly, large enterprises in highly concentrated industries, which may be tempted to raise the privacy bar so high that it will disadvantage rivals, also support adopting more stringent privacy principles.

Recommendation 3: Rethink the "Culture of Consent" – and, in Turn, FTC's Institutional Culture.

Since at least the 1950s, the percentage of civil cases brought by the Department of Justice's Antitrust Division settled by consent decree has hovered near 90 percent. In FTC's realm of competition cases, the figure has averaged slightly greater than 90 percent since 1995. According to a review from New York University Law Professor (and Senior Circuit Judge) Douglas Ginsburg and Joshua Wright (writing as a George Mason University Professor), this "shift toward a more bureaucratic and less litigation-oriented regime" can have many negative consequences.

For example, "the culture of the agency is inevitably affected by the tasks it predominantly performs" – "sophisticated forensic skills" that might be required for a case that will be litigated may not be developed for those that will likelier be settled. That means the investigations have less persuasive evidence – and more intimidation -- behind them. Moreover, such settlements often contain conditions and micromanaging that would not be possible in a court ruling, all while "economizing on scarce agency resources." Equally troubling, is the motivation the government has to settle upon terms that serve its interests," whether than means expanding its mission, rewarding political allies, or "accumulating power over the regulated community."

Though Ginsburg and Wright confined their analysis to antitrust cases, their observations are entirely applicable to the range of FTC's investigative tactics and proceedings. They conclude:

> The consequences of such consent decrees, that is, are borne not only by the parties that are subject to them, but also by consumers and by non-parties who glean the agency's enforcement position from the terms of those decrees.

Thus, consumers and businesses have a direct interest in ensuring that checks and balances of litigation are restored to FTC's practices. One intriguing avenue for litigation was suggested by Glenn Lammi of the Washington Legal Foundation in connection with the *Wyndham* case. He cited an argument developed by Gerard Stegmaier and Wendell Bartick that the "fair notice doctrine" created by court ruling could "check FTC's assertion of data oversight power." This line of jurisprudence is best explained in a U.S. Court of Appeals for the D.C. Circuit opinion in *General Electric Company v. EPA*, whereby "a regulated party acting in good faith would be able to identify, with ascertainable certainty the standards with which the agency expects parties to perform." Clearly actions against Wyndham and other companies for inadequate "privacy standards" that FTC has never articulated would have failed under this doctrine. As Lammi notes:

> Invoking the fair notice doctrine in the data security context is ironically appropriate, given that state laws require businesses to inform their customers if personal data has been compromised. Isn't it equally important, especially considering the concepts of fair notice and transparency prescribed by the Fifth Amendment and administrative law, that regulated entities know what's legal and what's not?

The FTC could also issue new guidelines regarding the Section 5 "unfairness" language that has given the agency so latitude for mischief. James Cooper, Director of Policy and Research at George Mason University's Law and Economics Center, provides a useful framework that would "proscribe a narrow domain." The FTC should turn its attention toward conduct that is:

- Undeniably and clearly harmful to consumers due to its detrimental impact on competition;
- "Is unlikely to generate any cognizable efficiencies"; and
- Would have no remedy except for the existence of Section 5.

Berin Szoka and Geoffrey Manne recommend that even prior to the issuance of guidelines like these, the FTC should be compelled by Congress to "convene a public workshop aimed at identifying what a valid standalone Section 5 case could cover." This has proven to be a valuable exercise to many stakeholders, especially high-tech businesses.

Recommendation 4: Provide Accessible, Affordable, and More Neutral "Due Process."

Although the need for litigated decisions as opposed to consent decrees is readily apparent, so is the need for ways that companies – especially those without "deep pockets" for lawyers or protracted court battles – can challenge unjust FTC actions. NTU's experience in this area stems from tax administration reform.

While the Internal Revenue Service (IRS) has provided long provided appeals procedures for in-person and correspondence audits as well as certain enforcement actions, it has taken three separate legislative efforts to make "collection due process" reasonably useful for average taxpayers. The FTC's appeal procedures are comparatively embryonic. For example, the pre-merger review at the FTC contains an appeal process for when a company is being asked for documents and information it cannot provide:

> If the recipient of a Request from the FTC believes that compliance with portions of the Request should not be required and the recipient has exhausted reasonable efforts to obtain modification of the Request from the lead staff attorney and the Assistant Director of the Bureau of Competition supervising the investigation, the recipient may petition the General Counsel of the FTC to hear an appeal on unresolved issues.

However, when it comes to investigations of small companies, the options are more conventional, governed by Administrative Procedures Act guidelines. While this may seem straightforward, from the perspective of small- or medium-sized firm an FTC complaint can be very intimidating.

Beyond Commission appeals, litigants may take their cases to courts of law in any federal court of their choosing, an advantage that many other federal agency rulemakings do not permit. Recently an iron pipe-fitting firm in Alabama was relieved of most charges against it when the Commission itself further scaled back the charges that an FTC Administrative Law Judge had already trimmed. This was a rare victory according to *The Wall Street Journal*, which pointed out that "there are inherent tensions in that process because the FTC effectively acts as both prosecutor and judge: The commission votes to bring a legal case and later gets to rule on whether the FTC's staff has proven the commission's allegations."

David Balto, a former policy director at FTC made two salient points in a 2013 essay that provides concurrence with the *Journal*'s assertions:

> [T]he administrative process is credible only to the extent that it is impartial and there is a sense of fairness. FTC adjudication is not only important for an individual case, but in interpreting the law and establishing precedent. For example, in a private case brought while the FTC Rambus decision was on appeal, a district court specifically rejected the FTC's findings because of 'the FTC's lack of independence given the fact that the FTC essentially acts as both the complainant and the decision maker.'

> [T]he FTC adjudicative process is tremendously expensive. Fundamentally, if businesses know that they will not be able to appear before a truly independent adjudicator until they can appeal an FTC decision to a court of appeals, this will significantly raise the cost of the FTC process and often force companies into a settlement simply to avoid those costs.

In 2016 Commissioner Ohlhausen conducted an excellent review of FTC administrative litigation which suggested that recent "Part 3" cases may be providing higher-quality policy instruction. Nonetheless, Congress and the FTC could work together to establish a robust director-level office that could assess businesses' appeals of individual FTC determinations and unduly burdensome requests for information in all kinds of investigations (not simply pre-merger activities), prior to proceedings before an Administrative Law Judge. The office should have an independent budget and hiring authority at a high level within the FTC's structure (co-equal with offices such as General Counsel or Administrative Law Judges), if not completely outside it. NTU's experience with IRS reform indicates that if an appeals arm is created as an afterthought and staffed from FTC's current ranks, the office's credibility will be compromised.

The Small Business Taxpayer Bill of Rights (S. 2689 by Senator John Cornyn (R-TX) contains a provision for Alternative Dispute Resolution procedures in smaller tax audit cases. Considering that FTC's own website contains information on how consumers and businesses can utilize this procedure to resolve disputes, certain cases involving small businesses and the FTC itself could be afforded this option.

Recommendation 5: Small Businesses Need an Advocate.

The IRS first established an office of the Ombudsman in 1979 to serve as a bridge between taxpayers experiencing individual problems with the agency and the bureaucracy. It took 20 more years to transform that office into the National Taxpayer Advocate, which today has somewhat greater powers and independence to be effective at resolving some individual tax cases. Another useful function of the Advocate is the annual report to Congress in which the "Most Serious Problems Facing Taxpayers" are delineated.

It is time for Congress to consider creating a "Consumer and Business Advocate" in connection with FTC. Given the different structures of FTC and IRS, such an entity need not be as elaborate or as enabled with director-level authority to intervene in individual cases as the National Taxpayer Advocate can. Rather, an FTC Consumer and Business Advocate could be authorized to independently assess how FTC serves stakeholders. The office could be structured to:

- Receive and catalogue complaints from businesses about FTC investigations well as complaints from consumers who feel their communications to FTC might not have been appropriately addressed;
- Survey public and business perceptions of FTC, outside of the American Consumer Satisfaction Index FTC currently uses for customer satisfaction;
- Engage members of the legal community who practice before FTC administrative law judges or other proceedings for specific recommendations on how everyday procedures might be improved.
- Work with the existing Inspector General to identify areas of improvement within the agency's management structure.

By being required to report to Congress on stakeholders' perceptions of the FTC and the "Most Serious Problems Facing the Agency," a Consumer and Business Advocate could provide lawmakers with "early warning" of needed course corrections.

Recommendation 6: Continue Providing Valuable Guidance to States and Localities.

Some of the most vocal advocates for government driven antitrust litigation have been State Attorneys General. NTU and its research arm documented how these officials – fresh from filling their public coffers with tobacco settlement money – were seeking fiscal retribution through their own multi-state actions.

Thankfully, this type of history has rarely repeated itself, but some troubling cases or extortionate state behavior, especially in the area of antitrust, continue to arise. Ginsburg and Wright, referenced above, catalogued some examples:

- The Commonwealth of Pennsylvania managed to wrangle an agreement with Providence Health System over its acquisition of North Central. Several terms of the agreement had little to do with ensuring general market-based competition, such as a stipulation that 20 percent of operating room scheduling times "be available on a first-come, first-served basis."
- Before giving the go-ahead to the merger of Leominster and Burbank Hospitals, the Attorney General of Massachusetts forced the entities to agree on a $600,000 expansion of community health programs.
- Before UnitedHealth Group and Sierra Health Services could combine, they had to make $15 million in charitable contributions to health care programs of the Nevada Attorney General's own choosing.

Clarifying federal law and providing prudent limits on FTC's mission could send a signal for states to get their own houses in order. At the same time, the agency should continue to share its perspective on potentially harmful state policies. In February of this year FTC recognized this fact when staff from several of FTC's divisions commented on legislation in Washington State undermining the federal Contact Lens Rule, which has heretofore provided customers with more purchasing options for corrective eyewear. The staff wrote that "the Bill, if adopted, may reduce competition, access, and consumer choice in eye care services, and might also raise costs for consumers." To NTU, this type of outreach from the FTC to public officials on threats to pro-taxpayer policies is critical.

NTU can provide numerous additional recommendations in antitrust and competition policy from the taxpayer's perspective. My colleagues and I welcome the opportunity to do so in future FTC hearings and comment periods. We are also at your service for any other questions or concerns you may have. Thank you for your consideration of our views.

Sincerely,

Pete Sepp President

Notes

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[1] Schmidt, Mark, *Antitrust Law: Affirmative Action for Uncompetitive Businesses*, National Taxpayers Union Foundation Policy Paper No. 132, December 11, 2000.

[2] Ibid, p. 4.

[3] Cited in Schmidt, Mark, *Lawyers Playing Lawmakers: The Microsoft Antitrust Suit*, National Taxpayers Union Foundation Policy Paper No. 119, September 9, 1999, pp. 7-8.