Consumer Technology Association, producer of CES®

Returning to a Pro-Innovation Competition Policy:

How the FTC and DOJ Can Unleash Innovation by Technology Entrepreneurs and Benefit American Consumers

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Introduction and Overview

The United States has maintained its global leadership in technology innovation for decades, powered by a vibrant and competitive marketplace. Until recently, U.S. regulators embraced an evidence-driven approach that prioritized consumer benefits and minimized interference with productive economic activity. However, during the past four years, the Federal Trade Commission (FTC) and U.S. Department of Justice (DOJ) leadership departed from this approach by introducing new policy preferences in antitrust analysis, actively discouraging consumer-beneficial transactions, and creating market unpredictability. As we move forward in 2025, both agencies have the opportunity to restore predictability in merger and antitrust policy while bolstering American innovation in critical areas like artificial intelligence, quantum computing, and other cutting-edge technologies.

This White Paper, authored by the Consumer Technology Association (CTA), outlines the benefits of returning to a pro-innovation approach. As North America's largest technology trade association, CTA represents the world's leading innovators, from startups to global brands, supporting more than 18 million American jobs. CTA owns and produces CES®, the world's most powerful tech event. Our members operate in a competitive marketplace to create innovative products that benefit consumers and drive economic growth. CTA focuses particularly on policies that help unlock innovation by supporting startups and small entrepreneurial companies taking competitive risks to bring new consumer tech products to market.

Under the Trump-Vance Administration, the agencies have a unique opportunity to reverse recent and end past policies, which had a chilling effect on innovative transactions. The new administration can advance a pro-innovation competition policy that promotes market incentives for innovative startups and small businesses. As FTC Chairman Andrew N. Ferguson previously stated as a Commissioner, "America is the greatest commercial power in the history of the world in no small part because of its tolerant attitude toward innovation and new industry."[1]

A pro-innovation competition policy is crucial for fostering economic growth, improving consumer welfare, creating employment opportunities, and developing world-changing innovation in areas like AI, fintech, and quantum computing that will boost America's competitiveness and global leadership. The agencies can accomplish this by incentivizing companies to innovate – including through robust competition in the marketplace – and promoting consumer welfare rather than other policy objectives.

The FTC should end the practice of collaborating with foreign competitors to the detriment of American businesses. This was evident under the prior Administration, including when FTC officials worked with the European Union (EU) to block Amazon's proposed acquisition of iRobot, a smart vacuum cleaner manufacturer facing increasing competition from China.

Technology startups serve as a crucial engine for innovation, economic growth, and consumer benefits. These companies thrive in a competitive landscape that permits successful acquisitions, providing incentives for critical capital investment and risk-taking. Startup founders have emphasized that acquisitions "enable startup investors to reclaim their invested capital, realize any gains, and recycle their capital into the next generation of startups, fueling the ongoing process of innovation-led economic growth and job creation."[2]

The importance of acquisitions as an exit strategy cannot be overstated. A 2020 report revealed that most entrepreneurs never expect to reach a public market exit, with nearly 60 percent of startup executives listing acquisition as a long-term goal, compared to only 17 percent pursuing an initial public offering (IPO).[3] This acquisition-focused approach has driven remarkable investment growth, with capital investment reaching $330 billion in 2020, nearly double the previous record of $166.6 billion.[4]

As CTA's CEO and Vice Chair, Gary Shapiro observed, "Startups are born from the passion and drive of entrepreneurs to create something new. However, startup investors have a different priority: They want a return on their investment. That return can come from intrinsic growth, an IPO, or an acquisition by another company. Remove any leg of this three-legged stool and it will topple."[5]

The artificial intelligence sector demonstrates particularly dynamic growth and innovation. In 2023, the AI sector generated $1.8 billion in revenue, with applications spanning healthcare, finance, entertainment, and education.[6] From 2013 to 2023, U.S. private sector AI investment exceeded that of any other country by more than threefold. In 2024, venture capitalists invested $3.9 billion in generative AI startups across 206 deals, with startups securing over $20 billion in funding by the third quarter alone, according to S&P Global Market Intelligence.[7]

CTA's Eureka Park® at CES® showcases this innovation firsthand. The 2025 event featured over 1300 startups displaying diverse products, from AI-enabled walking canes for the visually-impaired to ambient sound energy harvesting technology and needle-free injection systems. The event demonstrates the crucial relationship between technology investments and acquisitions, highlighting the importance of consumer-focused competition policy in maintaining innovation cycles.

CTA encourages government representatives to attend CES in-person, as it demonstrates and reinforces the strong relationship between technology investments and acquisitions and helps to crystallize the importance of focusing on consumer benefits in competition policy to preserve the cycle of investment in technology and innovation. For example, at CES 2025, CTA welcomed two FTC Commissioners along with more than 100 other federal, congressional, state, and local policymakers.[8]

Problems with the Previous Administration's Approach

The previous administration's competition policy particularly hindered startups and small businesses that depend on predictable antitrust rules and a competitive transaction environment. Its approach prioritized individual policy goals over the traditional consumer welfare standard and reflexively opposed large company acquisitions without evaluating effects on smaller companies that rely on a competitive market for investments and risk-taking.

The FTC's approach to competition was stunningly untethered to actual market reality. For example, the emergence of the Chinese search engine DeepSeek came even as the agencies were reportedly investigating NVIDIA and other companies on the basis that the AI market lacked competition.[9]

Several specific policy changes created significant challenges. In 2022, the FTC rescinded its 2015 Statement of Enforcement Principles, expanding potential unfair competition enforcement without establishing clear guidelines for companies.[10] This shift abandoned the consumer welfare standard that had grounded enforcement in economic realities and safeguarded competition policy from subjective or political influences.[11]

The 2023 revised Merger Guidelines threatened to prevent beneficial mergers, potentially leading to higher prices, reduced innovation, lower quality, and decreased wages. A 2024 CTA study concluded these guidelines would "prevent beneficial mergers that lie at the core of how market economies benefit society."[12] The Guidelines made incorrect claims about competition effects and focused on poor indicators of merger impacts on consumers and society. In October 2024, major changes to Hart-Scott-Rodino rules and merger notification forms created substantial new burdens.[13] The new HSR forms require expanded transaction and corporate structure information and new documents, with the government estimating an average of 68 additional hours per filing.[14] These changes particularly disadvantage smaller entities with fewer resources.

The Amazon-iRobot case exemplifies these problems. The FTC's opposition to this merger between two American companies, despite iRobot's declining market share (from 64 percent in 2016 to 46 percent in 2020), ultimately harmed both competition and consumers.[15] After the failed merger, iRobot laid off 30% of its workforce, closed offices, and reduced research and development by $20 million through offshoring non-core engineering functions.[16] The result harmed competition as well as consumers who would have benefited from iRobot's ability to compete with foreign-made imports.

Recommendations for the Trump-Vance Administration

To promote entrepreneurship and innovation, the new Administration should implement several key changes:

- First, the FTC should abandon its current Policy Statement on Unfair Methods of Competition and return to the consumer welfare standard.

As CTA CEO and Vice Chair Gary Shapiro explained, "For the ensuing four decades, through successive administrations, the FTC. . . focused on a consumer welfare standard that preserves competition and advances the common good. But in the past 18 months, the FTC has shifted to ideological attacks on big companies rather than considering what consumers want."[17] The government should reverse this direction to drive economic growth, improve consumer welfare, and promote a fair and efficient market.

- Second, the FTC and DOJ should revise the Merger Guidelines to recognize that mergers and acquisitions incentivize investment in new companies and expand innovative product offerings.

FTC Chairman Ferguson recently stated that the 2023 Merger Guidelines will remain in place for the time being, in order to help maintain stability in business guidance. But as Chairman Ferguson's statement recognized, "[n]o guidelines are perfect."[18] Indeed, these particular guidelines are flawed.

The agencies should look for opportunities to clarify or update the guidelines when appropriate, particularly when explaining how they apply those guidelines in reviewing actual proposed mergers. In applying the guidelines, the agencies should avoid undue scrutiny of "serial acquisitions" or transactions that are part of an "overall strategic approach to serial acquisitions." This focus on analyzing broader merger strategies distracts from prioritizing the best outcomes for consumers, including by promoting investments in companies offering innovative products.

- Third, premerger notification processes should be streamlined.

While the new HSR form changes have become effective, the agencies should engage in an ongoing process to review those changes and solicit feedback on the changes for indications from innovators of undue burdens. Additionally, the Online Merger Portal should be optimized to allow positive merger feedback. As Commissioner Holyoak noted during the November 2024 FTC Open Commission Meeting, "most mergers do not raise anti-competitive concerns. In fact, the Commission only issued second requests on 1.4% of transactions in 2023. . . .[T]his new comment portal by its prompts alone puts a heavy thumb on the scale and continues the oft-repeated narrative from the Commission's majority that all mergers are bad."[19]

- Fourth, the agencies should end the practice of collaborating with foreign governments to stunt American innovation, investment and job creation.

The prior Administration offered several blatant examples of such coordination. In January 2024, the European Commission's Executive Vice-President Margrethe Vestager confirmed "close contact" between the FTC and the EU, in what ultimately led to Amazon's proposed acquisition of iRobot being blocked.[20]

In an earlier example, the FTC and EU collaborated to block Illumina's acquisition of Grail, a cancer blood-testing startup. Hundreds of emails were reportedly exchanged between FTC officials and European competition regulators over a multi-year period.

Under the prior Administration, the FTC also urged the U.S. Trade Representative (USTR) to withdraw its support for proposed digital trade rules that emulated existing rules in the U.S.-Mexico-Canada Agreement as well as an agreement with Japan, both at the Indo-Pacific Economic Framework (IPEF) negotiations and the negotiations on e-commerce at the World Trade Organization (WTO). As a result, the negotiations on trade pillar under IPEF collapsed under the Biden Administration. And the "stabilised text" on e-commerce released at the WTO last year no longer contains any provisions prohibiting harmful practices such as data localization requirements, which impair the ability of U.S. companies to compete fairly in foreign markets.

We urge the Trump Administration to reverse the harmful Biden course on digital trade and negotiate strong rules on digital trade that meet or exceed those in the USMCA and the U.S.-Japan agreement. Such rules will prevent the growing discrimination around the world against U.S. companies of all sizes, all of whom rely on cross-border data flows and digitally enabled services to compete and grow.

- Finally, enforcement should focus on actual anticompetitive conduct rather than targeting specific technologies.

For example, the DOJ's August 2024 civil antitrust lawsuit against RealPage, a provider of property management software, alleged that the software allowed landlords to coordinate rent increases and limit competition. However, algorithmic pricing is widely used across industries to analyze factors like supply and demand, competitor prices, customer behavior, and external events to identify optimal pricing that can benefit consumers. The government should avoid focusing on specific technologies – which can deter innovative and beneficial uses – and instead focus on actual conduct consistent with established antitrust principles.

Conclusion

CTA advocates for a pro-innovation competition policy that maximizes consumer benefits and unleashes productive economic activity. The government now has a unique opportunity to promote the rule of law, restore predictability in competition policy, and bolster American innovation for consumer benefit.

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About CTA

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