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Federal Trade Commission

Competition and Liberty

Maureen K. Ohlhausen¹

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I. Introduction

as being “as important to the preservation of economic freedom and free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”³

Thus, protecting and promoting competition is an important job, one that is tied to another foundational principle of our government: the protection of individual liberty. Today, I would like to examine this link between competition and liberty, and how I have sought to pursue these principles during my tenure at the FTC.

II. What is Competition and Why Does it Matter

At first blush, competition may seem like a fairly straightforward concept. After all, we all know a competitive market when we see it. Adam Smith described it as a market where goods and services are sold at their natural prices.⁴ Two of America’s leading industrial economists, Dennis Carlton and Jeffrey Perloff, have described the indicia of a market operating under “perfect competition” as having homogeneous output, perfect information among buyers and sellers, no transaction costs, price-taking by buyers and sellers, and no externalities.⁵ But these indicia do not explain what competition is, any more than saying that it is sunny today explains what weather is. Instead, these observations give a snapshot of an ideal outcome, rather than the process that tends toward that particular outcome. Too often the output of the competitive process—low prices, wider choice—gets confused with the process itself. My focus today is on that process and its connection to liberty.

Competition is the activity of individuals pursuing their economic self-interest by convincing others to buy the good or service they sell. Of course, buyers also pursue their self-interest. The exchange between a buyer and seller leaves both better off, even though each

³ U.S. v. Topco Associates, 405 U.S. 596, 610, 92 S. Ct. 1126 (1972).

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is pursuing their own interest. As Adam Smith explained, “It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest.”⁶ As Smith further explained, it is the vigorous pursuit of a person’s individual interests that “naturally, or rather necessarily, leads him to prefer the employment which is most advantageous to the society.”⁷ Or as modern commentators have observed, “[T]he entrepreneur has a central role as the agent of change who pulls the markets in new directions.”⁸

I believe that, at its heart, competition is a product of an individual’s liberty to pursue their desires. Many of you visiting New York for this conference likely have seen an image of the Statue of Liberty during your visit. That statue stands amidst a great hub of commerce is only fitting.

Thanks to the liberty preserving protections of limited government and individual rights, we are free to pursue our self-interests, to pursue happiness as the founding fathers so eloquently stated.⁹ Individuals exercising liberty in the pursuit of self-fulfillment and prosperity collectively gives rise to competition, which benefits everyone.

As Alexis de Tocqueville observed about America nearly two centuries ago, our society lacks a central philosophy, save one: “each American appeals only to the individual effort of his own understanding.”¹⁰ Because of our self-reliance, de Tocqueville described our young nation as being one of near constant industry; where even the already rich, are “constantly haunted by the desire of obtaining wealth.”¹¹ In trying to satisfy their self-interests, Americans “naturally

⁶ ADAM SMITH, WEALTH OF NATIONS 13 (Knopf 1991) (1776).

⁷ Id. at 397.

⁸ MATTHEW D. MITCHELL AND PETER J. BOETTKE, APPLIED MAINLINE ECONOMICS 36 (2017).

⁹ See generally THE DECLARATION OF INDEPENDENCE (U.S. 1776).

¹⁰ ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 143 (Penguin Putnam 2001) (1835).

¹¹ Id. at 214.

IV.

Just to briefly sketch the facts, both companies operated online daily fantasy sports platforms, which allow users to potentially win money from each other based on their ability to assemble virtual sports teams composed of real athletes. These platforms were subject to various benefits of scale, including the fact that having more players allowed the operator to run larger contests with bigger prizes.

The parties made a number of arguments about market definition and the efficiencies that would flow from their combination. They particularly stressed that the product hadn't been around a long time, that it was a nascent industry, that it was inappropriate to judge them by the same standards that applied to more established markets.

Our investigation showed that daily fantasy sports were a distinct market, separate from "season-long" fantasy sports, which many friends or leagues play socially. There was also abundant evidence of significant head-to-head competition between these two platforms, with competition directly benefitting consumers. It was also clear to us that no other provider could replace the quality and strength of the competition that these two firms provided to each other. In addition, the regulatory obstacles and the importance of scale that our investigation identified strongly suggested that successful further entry into this market was unlikely. At the end of the day, what we were left with was in effect, a 2-1 merger.

Like all antitrust matters, that case turns on its specific facts, though reasonable minds may differ on what those facts indicated about the likely future of competition in that market. But, on a broader point, it is also a dichotomy to suggest respect for the power and social utility of free markets must also lead competition enforcers to stand aside in situations where

job of the antitrust enforcer to allow transactions to occur if they seem likely to spur competition and benefit consumers, even if that competition will be disruptive to incumbent players in the market.

V. Conclusion

To sum up, I believe competition and liberty are strongly interconnected and interdependent. Markets and competition work because they channel the self-interest of the entrepreneur toward the greater good of society. Government's role is to protect the process and not dictate results. The examples I have shared show where we ha