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Federal Trade Commission
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Office of the Chair

Remarks of Chair Lina M. Khan
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International Antitrust Law & Policy

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Thanks so much for the introduction. And thank you to the conference organizers for convening this discussion, with enforcers and practitioners from across the international community. The Federal Trade Commission has long valued and deeply invested in its international partnerships, and we are excited to be building on that tradition. As we face this moment of reassessment and reform in the U.S. and as we navigate common challenges across our jurisdictions, there is tremendous opportunity for shared learning. I am thrilled that Maria Coppola, whom many of you have long known, has recently taken the helm at the FTC¶ Office of International Affairs 0 D U L D ¶ V G H H S F R P P L W P H Q W W R R X U L Q W H U Q D
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many areas of competition enforcement, the agencies¶ post-1980 retreat did not stem from court setbacks. Rather, agency leaders chose not to fully exercise the authority granted to us by Congress. I worry that these decisions set us on a course that departed from the text, structure, and history of the underlying statutes, as well as from controlling law and judicial precedent.[3] Indeed, despite the ascendance of textualism, antitrust analysis has been remarkably devoid of actually grappling with the underlying statutory text.[4] Restoring antitrust to an approach that is fully faithful to the legal authorities that Congress gave us is critical for promoting the rule of law and for ensuring the democratic legitimacy of our work.

To understand how all this played out, it helps to begin with the FTC Act of 1914, the statute that created the Commission itself. The FTC Act poses something of a riddle. At the time it was passed, the Department of Justice already was bringing antitrust cases under the Sherman Act.[5] Why, then, did the United States need a second agency to enforce competition law?

The answer is that Congress determined W K H 6 K H U P D Q $ F W Z D V Q ¶ W H Q R X J. In the famous Standard Oil case, the Supreme Court had announced that it would interpret the Sherman Act using the open- H Q G H G rule of ³reason.´ A restraint of trade might be illegal, or it might not; it would depend on whether a federal judge decided it was reasonable. Lawmakers in Congress were alarmed. They worried that the courts¶ approach delayed resolution of cases, delivered inconsistent and unpredictable results, and gave the judiciary outsized and unchecked interpretive authority.[6] In light of this deep concern, a 1913 Senate committee report called for

FTC with fleshing out that distinction based on its expertise. The crucial point is that lawmakers

The retreat from standalone Section 5 cases reached its

The Commission is currently considering this policy

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these cases. As a result, firms were able to consolidate markets until every remaining firm was critical to maintaining even a semblance of competition.