

## “A Senate Debate Over Who’s to Blame for Shrinking Competition”

Jeremy Fassler, *The Capitol Forum*, 6/10/24

On Thursday, a hearing on corporate consolidation led by Senate antitrust subcommittee chair Amy Klobuchar (D-MN) and Ranking Member Mike Lee (R-UT) turned into a debate over whether government is the solution to the problem—or the cause.

Klobuchar, who has collaborated with Lee on antitrust legislation, argued that the government needs to change antitrust laws “to fit the world we live in, not the world that we lived in 10 years ago.” Her Competition and Antitrust Law Enforcement Reform Act, which she reintroduced last month, amends the Clayton Act to shift the burden onto merging parties to show their proposed tie-ups wouldn’t harm competition. The legislation would also provide more funding for enforcers to investigate planned mergers.

Lee, while agreeing that consolidation is an issue, maintained that heavy government regulation has stifled competition from emerging in the form of startups. “In certain spaces such as airlines, defense and food, the government creates formidable barriers to entry,” he argued. “These barriers either deter entry altogether or result in the increase of compliance costs that consumers experience in the form of higher prices.”

Richard Stern, director of the Heritage Foundation’s Grover M. Herrmann Center for the Federal Budget, reinforced Lee’s arguments, testifying that government burdens small businesses with outsized regulatory and tax-compliant costs.

“With lower regulatory tax barriers, you had companies that [thrived,]” Stern said. “Part of what we’re looking at here again is not that companies are forcibly consolidated; it’s that many companies are being started out of existence...[and] that the companies that are left are facing these giant regulatory barriers.”

On the other side of the debate, witnesses Barry Lynn, director of the Open Markets Institute, and Professor Erin Fuse Brown of Georgia State University spoke to how updated legislation can lessen the effects of consolidation on everyday Americans.

In her opening statement, Brown argued for what she called a “Glass-Steagall for Healthcare.” Referencing the now-dismembered Depression-era law that separated commercial and investment banking, this hypothetical legislation would, for example, prohibit health insurance companies and pharmacy benefits managers (PBMs) from owning pharmacies or health care providers.

“It’s systematically difficult to eliminate the conflict of interest [created] when you’re paying yourself, when you can hide profits by moving things from the premium revenue side of the ledger over to the provider side, the medical side of the ledger,” Brown said. “A [new] Glass-Steagall would break up that conflict of interest.”

Lynn argued that existing laws such as the Inflation Reduction Act, which he said “showed how industrial policy can be used to break chokepoints...[and] promote anti-monopoly outcomes,” could serve as a model for laws that would provide Americans with a reliable stockpile of generic drugs.

“Congress should...one, use industrial investments to begin the process of establishing alternative sources of supply,” Lynn said. “Two, protect those sources of supply with tariffs, as the Biden administration is doing right now against Chinese EVs. Three, cooperate with our allies in Europe and around the world...to create a cooperative system of protecting and rebuilding. Four, have our antitrust enforcers prevent further concentration once we have rebuilt.”