DEPARTMENT OF JUSTICE

"Life in the Fast Lane"[1]: Antitrust in a Changing Telecommunications Landscape

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Good morning. Thank you Commissioner Estavillo for the kind introduction. It is an honor to be here in Mexico City at the Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones (IFT)) for the Forum on Challenges on Competition in the Digital Environment. Thank you for inviting me.

I also will note that I'm delighted to be in Mexico this week on behalf of the U.S. delegation to participate in trilateral discussions between Canada, Mexico, and the United States. Cooperation in the enforcement of competition laws in our three countries is important and there is a lot we can learn from each other.

The digital economy has transformed telecommunications and other industries. We have witnessed rapid innovation and dynamic competition as technologies and consumer preferences continue to evolve. These changes impact how companies compete in, and even further, open new markets. Competition enforcers, in turn, must keep up with the new realities of the marketplace.

Mexico has done its part, especially with its landmark competition reforms in 2013 and 2014. These reforms both opened Mexico's telecommunications markets to competition, with significant benefits for consumers, and created this very body, the Federal Telecommunications Institute.

In the aftermath of these reforms, Mexico jumped up the Global Competition Rankings by 60 spots in the last eight years, now ranking among the top two most competitive economies in Latin America.

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[1] The Eagles, Life in the Fast Lane (Asylum 1976).

I was invited to speak on "Challenges of Competition in Convergent Markets," so I will share some perspectives from the United States on challenges for competition policy and enforcement for telecommunications in the digital economy.[2] I selected a famous Eagles song, "Life in the Fast Lane," as it seems to capture how our daily lives have changes with the advent of ever faster communications technologies.

I. Technological Advances in the Digital Economy

The telecommunications industry has experienced revolutionary changes in the United States and around the world. The internet and smart phones, along with other technologies, enable consumers regardless of socio-economic class to connect with each other in ways not imaginable before. As Stephen Hawking said, "We are all now connected by the Internet, like neurons in a giant brain."

Not only has the telecommunications industry itself evolved, but technological advancements are transforming telecommunications from a means of communication into a platform for other industries. Companies in a variety of industries from retail, to transportation, to finance, to entertainment, are now inextricably intertwined with the internet and mobile devices. All of this is happening at lightning speed.

In reflecting on recent advancements, I've identified a few trends in today's digital economy that benefit consumers and inform our competition policies.

a. On-Demand Access

First, with advances in telecommunications, consumers can access more products and services "on-demand" than ever before. For example, it used to be that, if you wanted

[2] I also note COFECE's thoughtful contribution to the digital markets debate by publishing "Rethinking Competition in the Digital Economy," https://www.cofece mx/wp-content/uploads/2018/03/EC-EconomiaDigital_web_ENG_letter.pdf.

to watch a particular TV show, you had to tune your television to that show at the exact time it aired. If you missed your window to watch it, you missed the show. If the show ended as a cliffhanger, you waited eagerly for the next week's installment. Non-linear television programming and new Over-The-Top services revolutionized how and when consumers watch television. Consumers can watch what they want, when they want, even "binge-watching" an entire season (or series) in a weekend.

I am increasingly jealous of people who can do that.

There are also more options of what to watch. Streaming services like Netflix, Amazon, and Hulu in the United States provide consumers with greater choices in entertainment, including through the production of original content.

This "on-demand" trend of consumers getting what they want, when they want it extends beyond the world of television. You want to read a book right this very second? You can buy an e-version and instantly download it to your e-reader. A new video game? Purchase and download it online without leaving your couch. Need a ride? You can order a car service from an app on your phone and know exactly when it will arrive.

b. Ever-increasing Speed

Another trend in telecommunications is "ever-increasing speed." Information now travels faster than ever before. It was not too long ago when, if you wanted to communicate something in writing, you sent a letter through the mail. For a letter, speed was measured in days. Faxes were an improvement, but a lengthy document might take several minutes to print out, especially after running out of that special curled paper. Now, we measure speed across fiber optic lines in milliseconds. Consumers who were once required to wait minutes for a dial-up internet connection, now become impatient if a full website or video takes longer than a second to load.

Increased speed lets us complete tasks more efficiently and enables new products and services for consumers. The need for speed continues. The development of 5G, for example, promises to increase internet speeds on mobile devices, bringing more competition and even more benefits for consumers worldwide.

c. Mobility

A third trend that characterizes telecommunications in today's digital economy is "mobility." Americans now expect to do more things on-the-go. The vast majority of Americans, over 94%, own a cellphone, with 77% owning a smart phone.[3] Three-quarters of Mexico's population (75%) has a mobile phone, with almost half (42%) owning a smart phone.[4] The numbers have grown exponentially over the past few years. It is hard to believe that the iPhone did not even exist just twelve years ago.

With laptops, tablets, and smart phones, we can—for better or worse—now work from home, on our commutes, and even on planes. Work is not the only thing that has become more mobile. Smart phones and tablets have become all-purpose machines for calling, emailing, texting, watching TV, playing games, shopping, and countless other functions.

d. Globalization

Finally, and particularly relevant here, consumers benefit from the increasing globalization of today's digital economy. Technologies like Skype, WhatsApp, FaceTime BlueJeans, and Viber, enable people to stay in touch across the globe cheaply and effectively through internet texting, voice over IP (VOIP) calling, and even video calls.

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[3] Jacob Poushter, Caldwell Bishop and Hanyu Chwe, *Smartphone ownership on the rise in emerging economies*, PEW RESEARCH CENTER (June 19, 2018), http://www.pewglobal.org/2018/06/19/2-smartphone-ownership-on-the-rise-in-emerging-economies.
[4] *Id.*

Consumers can access popular content from all over the world more than before. American media producers, in turn, are drawing more and more on international creative sources. Mexico, in particular, has a strong influence on American television and film. TV networks like Telemundo and Univision provide Spanish-language programming in the United States. Netflix is increasing the amount of Spanish-language content, including original programming. Just last year, Pixar's Coco, a story of Mexican music, culture, and folklore, won the U.S. Academy Award for Best Animated Film.

While advancements in digital economy provide many benefits for consumers, they also raise new challenges for antitrust enforcement.

II. Challenge #1: Technology Can Provide New Ways for Firms To Collude and Elude Enforcers

The first challenge that the digital economy creates for antitrust enforcers is collusion. Technology can provide new ways for firms to collude and hide from enforcers. In 1985, Circuit Judge Douglas Ginsburg, then serving as Assistant Attorney General for Antitrust, said that "Prosecution of per se unlawful restraints affecting horizontal competition is, and should be, the Antitrust Division's primary enforcement activity."[5] Detecting and prosecuting naked horizontal restraints on trade remains one of our highest priorities today.

The reason we, in the United States, place such a high priority on enforcing the antitrust laws against naked horizontal restraints is because they have no redeeming value. Price fixing, bid rigging, and market allocations are nothing more than widespread theft from consumers.

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[5] Douglas H. Ginsburg, Assistant Attorney General, U.S. Department of Justice Antitrust Division, Address at the 19th New England Antitrust Conference, Harvard Law School at 1 (Nov. 8, 1985).

Of course, we only can enforce the antitrust laws when we detect a violation. While the digital economy benefits consumers by providing new ways of communicating and innovative technologies, it also gives conspirators new ways of colluding.

Conspirators are now using chat rooms, encrypted messaging apps, and social media platforms to coordinate price increases, discuss upcoming bids, and allocate consumers. The smoke-filled rooms may now be virtual, but the harm to consumers remains real.

It is a challenge to stay on the technological cutting edge, but it is important that we, in the law enforcement community, do so.

Working with the FBI and other federal law enforcement agencies, the Antitrust Division is constantly re-assessing and readjusting our investigative practices to detect, disrupt, and counter the use of new technology to commit antitrust violations.

A little over a year ago, in August of 2017, the U.S. Justice Department obtained two guilty pleas in a conspiracy to fix the prices of customized promotional products sold online, such as wristbands and lanyards. Those investigations revealed that the conspirators used social media platforms and encrypted messaging applications to reach their agreements and implement them.[6]

A related challenge is the use of new technologies—like algorithms or artificial intelligence—to implement antitrust conspiracies. For example, the Division investigated

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[6] Press Release, U.S. Department of Justice Office of Public Affairs, E-Commerce Company and Top Executive Agree to Plead Guilty to Price-Fixing Conspiracy for Customized Promotional Products (Aug. 7, 2017), https://www.justice.gov/opa/pr/e-commerce-company-and-top-executive-agree-plead-guilty-price-fixing-conspiracy-customized; Press Release, U.S. Department of Justice Office of Public Affairs, Second E-Commerce Company and Its Top Executive Agree to Plead Guilty to Price-Fixing Conspiracy in Customized Promotional Products Industry (Aug. 22, 2017), https://www.justice.gov/opa/pr/second-e-commerce-company-and-its-top-executive-agree-plead-guilty-price-fixing-conspiracy.

a conspiracy involving the use of an algorithm to fix the price of posters sold on Amazon Marketplace. So far, the Division has charged two executives and one company in the conspiracy.[7]

On Amazon Marketplace, a retailer sets the price of its own products. Consumers search for a given product, and Amazon Marketplace displays the most responsive products, generally with the lowest priced one appearing first. Retailers understand that appearing first in a search query is an advantageous position to have, and often employ algorithms to price their products accordingly.

The conspiracy involved an agreement between two poster sellers to use algorithms to fix prices. One conspirator programmed its algorithm to search for the lowest price offered by a non-conspiring competitor for a particular poster. The algorithm would set a price just below its non-conspiring competitor's price.

The co-conspirator then programmed its algorithm to match the first conspirator's price. That let the conspirators' products appear near the top of the search query without having to compete with each other. Although they programmed their algorithms differently, the conspirators used algorithms to fix prices and avoid competition.

Troublingly, once the algorithms were programmed, the conspiracy was largely self-executing, making the conduct harder to detect.

[7] Press Release, U.S. Department of Justice Office of Public Affairs, Former E-Commerce Executive Charged with Price Fixing in the Antitrust Division's First Online Marketplace Prosecution (Apr. 6, 2015), https://www.justice.gov/opa/pr/former-e-commerce-executive-charged-price-fixing-antitrust-divisions-first-online-marketplace; Press Release, U.S. Department of Justice Office of Public Affairs, E-Commerce Exec and Online Retailer Charged with Price Fixing Wall Posters (Dec. 4, 2015), https://www.justice.gov/opa/pr/e-commerce-exec-and-online-retailer-charged-price-fixing-wall-posters; Press Release, U.S. Department of Justice Office of Public Affairs, Online Retailer Pleads Guilty to Fixing Prices of Wall Posters (Aug. 11, 2016), https://www.justice.gov/opa/pr/online-retailer-pleads-guilty-fixing-prices-wall-posters.

While algorithms can be used to facilitate price fixing, it is important to keep in mind that they are not inherently anticompetitive. Indeed, algorithms are an important part of the digital economy and can account for great efficiencies that benefit consumers. We continue to study the implications that algorithms have for competition policy, and will enforce vigorously the antitrust laws against any illegal agreement.

We also will work to ensure that we have the tools to detect and prosecute any illegal agreement, no matter the technology used to enter the agreement or implement it.

III. Challenge #2: Barriers to Entry in the Digital Economy

A second challenge for antitrust authorities globally is how to assess market power and barriers to entry in the digital economy.

a. Market Power

Market power is the ability for a firm to charge higher than the competitive price or to exclude competitors. Accurate assessments of market power are critical to antitrust enforcement, where otherwise benign behavior can become unlawful if a defendant has market power.[8]

Given the significant consequences that attach to market power, and the fact that market power is a motivating factor for investment in a free market economy, we must be careful in analyzing the real-world competitive dynamics before ascribing market power to a firm. We must especially be careful in innovative markets that are subject to rapid change.

In assessing market power, we often use market share as an initial measurement. This can be tricky, however, in the digital economy.

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[8] *See* Herbert Hovenkamp, *Antitrust and Information Technologies*, 68 FLA. L. REV. 419, 423 (March 2016).

Online platforms compete against each other in new and different ways. Product and service categories morph quickly and easily. Market leaders are often displaced overall and within categories. The existence of multi-sided platforms further complicates the analysis, especially where platforms provide services for free to one set of users subsidized through sales to another set of consumers. Traditional market share calculation may not be as helpful in such cases.[9]

Defining the relevant market and calculating shares does not end the inquiry, because a high market share does not always equate to market *power*. Depending on the circumstances, a firm with a high market share still may lack the ability to increase price or exclude competitors.

Let me explain.

High market shares can be fleeting, especially in dynamic markets. A high market share or high profit margins may reflect the advantage that comes with being the "first mover." High profits enable firms to recoup investment in sunk costs and provide incentives to take on the risks inherent in innovation.

Sustained high prices also can serve as an engine of innovation, inviting entry and even disruption by new competitors. In today's digital economy, it may be entirely possible for popular companies with large market shares to be replaced quickly by new, innovative competitors. Firms that fail to innovate are often left behind in the dust.

As Semon Knudsen, an American automobile executive, once warned: "In business, the competition will bite you if you keep running; if you stand still, they will swallow you."

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[9] *Id.* at 432.

This is true in both the United States and Mexico. For instance, a study looked at the top 20 most popular websites in Mexico between 2006 and 2013.[10] Facebook jumped from #14 in popularity in 2006 to #1 by 2013, while competitors MySpace and Hi5 dropped from #7 and #13, respectively, to off the chart entirely. Twitter was not on the list at all in 2006, but was #7 by 2013. Who knows what a comparable list will look like in 2025?

In a dynamic market with low barriers to entry, a high market share may not translate to the ability to charge a supracompetitive price or exclude competitors. The question for antitrust enforcers is whether a firm has durable market power. This inquiry requires a careful evidence-based assessment of the market and the relevant competitive constraints, including barriers to entry.[11]

To be clear, market power alone is not an antitrust violation, but when market power is established through careful analysis, we scrutinize conduct more closely. If a firm uses market power to harm or exclude competition, timely and vigorous enforcement is necessary. To keep markets free and open, we must protect against incumbent firms using market power to squash or block innovative new entrants. We must do this, however, in a manner so that we mistakenly don't inhibit innovation in the first place.

b. Barriers to Entry

Another challenge is assessing barriers to entry. Broadly speaking, there are two primary types of barriers. The first type exist naturally in the marketplace or are created by market participants. The second type are regulatory barriers created through

[10] David S. Evans & Elisa V. Mariscal, *Market Definition Analysis in Latin America with Applications to Internet-Based Industries*, 9 ISJLP 531, 567 (2014).
[11] *Id*. at 577.

government action. These are fundamentally different and each requires a different response by competition authorities.

Barriers to entry created by market forces—such as a superior product or more efficient cost structures—typically do not warrant intervention by the Division. In such cases, the Division's general approach is to follow the Hippocratic Oath and "first, do no harm." A free and open market is often the best medicine.

Competitors can surmount high barriers to entry through disruptive innovation, creating new products and services to the benefit of consumers. We call this "dynamic competition." The recent history of advances in telecommunications demonstrate this characteristic. The telecommunications industry has been characterized by high fixed and sunk costs, economies of scale and scope, and network effects. Nonetheless, innovations in technology have led to competition from new entrants, including in cable, wireless, and satellite delivery.

Although the mere existence of such barriers typically does not require enforcement action, we need to be vigilant in identifying dominant firms that may take actions to erect or use barriers to entry to foreclose innovative competitors. Of course, in the United States, it took multiple antitrust actions against our dominant telephone company, AT&T, in the twentieth century to create competition.

Regulatory barriers to entry are, however, fundamentally different. Regulatory barriers can pose great harm to competition because they cannot be undone by market forces. Regulation sometimes can act as a barrier to entry by keeping out potential entrants who would otherwise increase competition, lower prices, and increase choices for consumers.

Price regulation, price caps, and forced sharing can also deter entry. By limiting the amount of profits a firm can make or requiring a successful firm to share its assets with competitors, the government may remove the incentives necessary to encourage new entry.

The prospect of making high profits, even if short-lived, is an important driver of competition and innovation. As then-Judge, and now Supreme Court Justice, Gorsuch explained in the *Novell v. Microsoft* decision: "[T]he monopolist might be deterred from investing, innovating, or expanding (or even entering a market in the first place) with the knowledge anything it creates it could be forced to share; the smaller company might be deterred too, knowing it could just demand the right to piggyback on its larger rival."[12] I agree completely with Justice Gorsuch.

Of course, you would not be surprised to hear that incumbents often like regulation. It preserves the status quo and hinders competition from new entrants. Firms that have market power within a regulated market also pose a greater threat to competition because they cannot be dislodged through fierce or disruptive competition.

It is, therefore, important to distinguish between regulatory barriers that are the unfortunate product of an incumbents' attempt to block innovative entrants and those that are justified by legitimate concerns. In some cases, competition enforcers may need to intervene to advocate for the removal of regulatory barriers and open up the marketplace for new entrants.

Government regulation also can be problematic in fast-moving industries because it tends to be rigid and slow moving—lagging behind changes in market conditions and technologies. This "regulatory lag" can delay entry, expansion and innovation. Antitrust

[12] Novell, Inc. v. Microsoft Corp, 731 F.3d 1064, 1073 (10th Cir. 2013).

enforcers are neither the inventors nor the technical experts, but it is our job to keep the markets free. It is such free and competitive markets that are the best means to determine what technology works for consumers and the economy.[13]

As a former head of the National Association of Manufacturers, Morris Sayre, once said: "The idea of imposing restrictions on a free economy to assure freedom of competition is like breaking a man's leg to make him run faster."

To best promote innovation and competition, the government instead should clear the path for innovation and enable firms to experiment with new technologies and provide alternatives for consumers. Governments also can work on removing or simplifying licensing rules wherever possible, and decreasing the complexity for obtaining permits and rights-of-way where applicable.

Fortunately, in both the United States and Mexico, there has been a trend toward deregulation in the telecommunications industry; opening up the markets to new firms and new technologies that benefit consumers and the economy.

The United States' push for deregulation in the last two years resulted in the elimination of hundreds of burdensome regulations and reduced regulatory costs by $23 billion in the last two years. Neomi Rao, a former colleague, and the current Administrator of the Office of Information and Regulatory Affairs at the White House, explained the Administration's policy toward regulation: "Unless otherwise required by law, we move

[13] *See* David J. Teece, *Telecommunications in Transition: Unbundling, Reintegration, and Competition,* 1 MICH. TELECOMM. L. REV. 47, 68 (1995) (noting that wherever possible, government should be technology neutral).

forward only when we can identify a serious problem or market failure that would be best addressed by federal regulation."[14]

As we do that, we as antitrust enforcers need to be ever more vigilant. Anne Bingaman, one of my predecessors at the Antitrust Division, noted in 1995: "As we move forward with deregulating more industries—such as telecommunications and railroads—we should keep in mind that the goal of deregulation is to promote and protect competition, not to replace regulated monopolies or cartels with unregulated ones."[15] I agree. Deregulation and antitrust enforcement must go hand in hand. When opening up markets, the antitrust authorities must stand at the ready to investigate and stop anticompetitive behavior.

IV. Challenge #3: How Should Advancements in Technology Inform Merger Review in Telecommunications?

Let me now turn to the third challenge that the digital economy brings to antitrust enforcement: determining how advancements in technology should inform merger reviews, especially in telecommunications.

Merger review is different from the review of conduct I just discussed because merger review is primarily forward looking. When examining a proposed merger, we ask, is the effect likely "to lessen competition, or tend to create a monopoly"?[16] If the answer is yes, then the merger is illegal.

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[14] Neomi Rao, "The Trump administration's deregulation efforts are saving billions of dollars," The Wash. Post, (Oct. 17, 2017), https://www.washingtonpost.com/opinions/the-trump-administration-is-deregulating-at-breakneck-speed/2018/10/17/09bd0b4c-d194-11e8-83d6-291fcead2ab1_story.html?utm_term=.519941048a8d.

[15] Anne Bingaman, Assistant Attorney General, U.S. Department of Justice Antitrust Division, Remarks on Injecting Competition into Regulated Industries and Utilities as Presented before the Public Utilities Communications, and Transportation Section, ABA (Apr. 20, 1995), https://www.justice.gov/atr/file/519086/download.

[16] 15 U.S.C. § 18.

This approach allows the Antitrust Division to act before a market problem arises. It also allows the Division to address problems that would not necessarily be covered in a conduct case. For example, a merger to monopoly is illegal. The Antitrust Division would sue to block any such merger. Outside of the merger context, however, the Antitrust Division does not seek to break up a monopoly that is lawfully acquired.

The U.S. Supreme Court expressly recognized in its landmark case *Trinko* that "[t]he mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system."[17]

The growth of the digital economy, and the increasing importance of the internet and technological advances in telecommunications, affects how we think about some mergers. Facts matter a great deal in antitrust enforcement. While the law and underlying principles haven't changed, the digital economy frequently changes the facts, and we always take those facts into consideration.

One fact that has changed in the world of media is the development of new technologies and new entrants—like Netflix, Amazon, Hulu, and YouTube. As I discussed earlier, non-linear programming changed consumers' viewing habits and enabled new business models. These changes created an explosion of new content available to viewers.

In light of this proliferation of content, mergers like the one between Disney and Fox that we reviewed recently raise fewer competitive concerns than they might have in the past.

[17] Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 407 (2004).

The same underlying facts that may make us less concerned about some kinds of mergers, might make us more concerned about others. For instance, a merger that combined a significant content creation company with a significant content distribution company might raise the prospect of foreclosure. Independently, each side of the merger may have had the incentive but not the ability to harm its horizontal rivals. Together, depending on the circumstances, the combined company may have both the incentive and the ability to harm its rivals, and ultimately consumers.

The competitive concerns could be as dramatic as completely foreclosing access to the distribution system, or it could be more subtle as in price increases above competitive levels. Similarly, the legacy distribution system may harm other distributors by limiting their access to the newly merged entity's content.

These worries aren't strictly hypothetical when it comes to telecommunications. The Antitrust Division faced a version of this scenario in 2011 when Comcast bought NBCUniversal.[18] In that matter, under the previous Administration, the Division, along with our telecommunications regulator—the FCC—sought to resolve its concerns and preserve competition by entering into a highly regulatory behavioral consent decree.

More recently, we confronted this scenario when AT&T bought Time Warner.[19] That matter is pending on appeal, with oral argument scheduled on December 6. I won't say more, other than to note that the issue may get more clarity in the coming months.

Another potential problem might arise if a vertically integrated content distributor seeks to merge with another distributor. While the analysis hinges on the specific facts, the possibility exists that the combined entity could act as a gatekeeper for internet-based

[18] *See* Complaint, United States v. Comcast Corp., 1:11-cv-00106 (D.D.C., Jan. 18, 2011).
[19] United States v. AT&T Inc., No. 17-2511, slip op. (D.D.C. Jun. 12, 2018).

services that rely on a broadband connection to reach consumers. The combined company may have the incentive and ability to strangle nascent, internet-based competitors in their cradles. Again, this concern isn't strictly hypothetical. While it was before my time, the Antitrust Division confronted this scenario in 2015, when Comcast sought to buy Time Warner Cable. In that case, the parties abandoned their transaction after the Division expressed its concerns.[20]

Given the internet's importance to the digital economy, we are especially focused on gatekeeper or bottleneck concerns in telecommunications mergers. Such problems are best addressed during the merger review process because they become much harder to solve later.

Once we determine that a proposed merger's effect "may be substantially to lessen competition" the next question is what to do about it. In telecommunications, as in other industries, we strongly favor structural remedies. If a structural remedy isn't available, then, except in the rarest of circumstances, we will seek to block an illegal merger.

The Division has a strong preference for structural remedies over behavioral ones.[21] Behavioral remedies present three main problems. The first is that they are inherently regulatory, which is to say that they substitute central decision making for the preferred free market.

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[20] Press Release, Department of Justice Office of Public Affairs, Comcast Corporation Abandons Proposed Acquisition of Time Warner Cable After Justice Department and the Federal Communications Commission Informed Parties of Concerns (Apr. 24, 2015), https://www.justice.gov/opa/pr/comcast-corporation-abandons-proposed-acquisition-time-warner-cable-after-justice-department.

[21] Makan Delrahim, Assistant Attorney General, U.S. Department of Justice Antitrust Division, Remarks on Antitrust and Deregulation at the ABA Antitrust Section Fall Forum (Nov. 16, 2017), https://www.justice.gov/opa/speech/file/1012086/download.

The second reason is closely related to the first: The Antitrust Division is a law enforcer and, even where regulation is appropriate, it is not equipped to be the ongoing regulator.

The third reason that behavioral decrees are problematic is that they are merely temporary fixes for an ongoing problem. Once the term of the consent decree expires, whether in five, seven, or ten years, the conditions disappear but the merger and any on-going anticompetitive effects remain. By contrast, a structural remedy more efficiently and permanently fixes the competitive problems stemming from the merger.

V. Conclusion

The challenges we face in today's digital economy are not something that Mexico and the United States are confronting alone. While I spoke earlier of technological convergence, we also are seeing greater international convergence on antitrust principles and cooperation. Both the United States and Mexico benefit from regional and international antitrust cooperation and dialogue.

Related to convergence on substantive standards and cooperation, and equally important in my view, is convergence on sound and fair procedures for antitrust investigations and enforcement. In the recently announced United States, Mexico, Canada Agreement, known as the USMCA, the three North American partners introduced a robust set of procedural fairness provisions. They cover critical topics such as non-discrimination, transparency, timing of investigations, rights to be heard, to review evidence, and to be represented by counsel, protection of confidential and privileged information, and judicial review of agency decisions.

The USMCA is a big step towards ensuring fair procedures, which will improve the quality of our decision-making, and bolster the legitimacy of our competition enforcement mission. At the same time, it will facilitate further the cooperation among enforcers.

Let me conclude by thanking the IFT for inviting me today to this excellent conference. As close neighbors, we both have much to gain in working together to preserve competition and help create the conditions for continued innovation and economic growth.

Thank you.