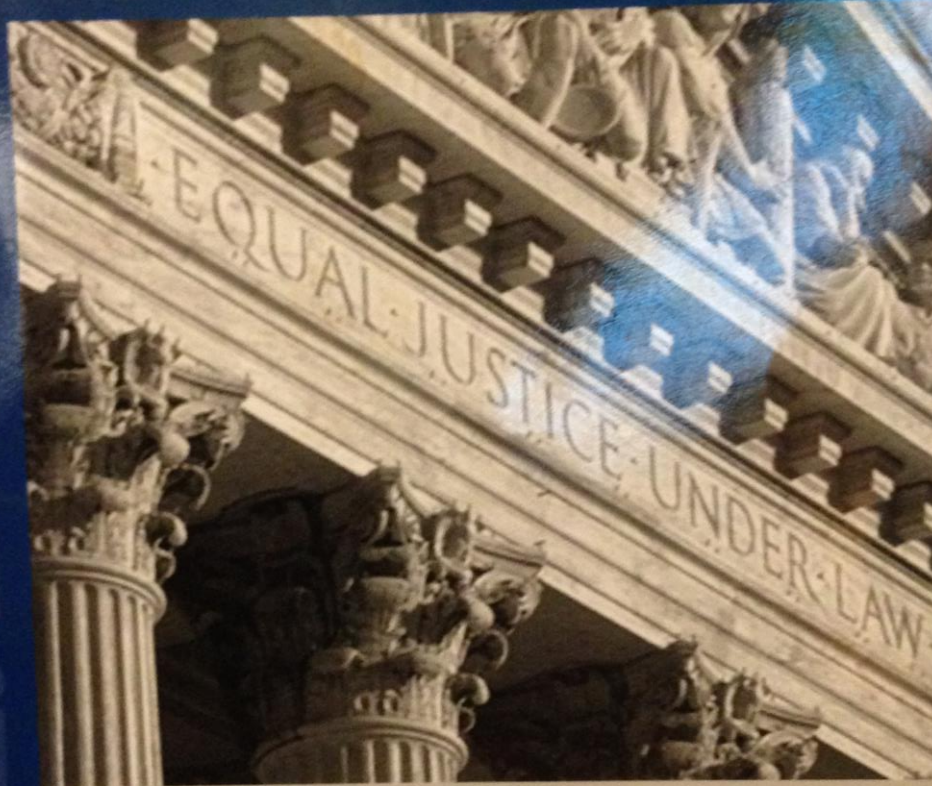


AMERICAN ANTITRUST INSTITUTE



The Next Antitrust Agenda

THE AMERICAN ANTITRUST INSTITUTE'S TRANSITION REPORT
ON COMPETITION POLICY TO THE 44TH PRESIDENT

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Editor in Chief

About AAI

- Founded in 1998
- Independent, non-profit, advocacy organization
- 2008 – Publishes “The Next Antitrust Agenda”
- 2016 – Publishing a completely updated transition report
 - Includes new chapter on financial markets
 - Competition policy recommendations for the next administration
 - <http://www.antitrustinstitute.org/2016-transition-report>

Financial Markets – A Regulated but Troubled,
Complex, Largely Global, Dramatically
Consolidating Industry

Mergers

- DOJ role in financial crisis – where were they?
- More use of Bank Merger Act and Bank Holding Company Act
- Open-minded analysis of potential anti-competitive effects, beyond standard product and geographic market analyses.
- Closer attention to adverse effects produced by rising levels of concentration in national and international markets for financial products and services.

Cartels and Other Collusive Conduct

- All but ONE of 14 financial giants have been involved in regulatory actions or civil suits related to manipulation of financial benchmarks.
- Overlapping Ownership
 - Top 4 Shareholders of JPMC = Top 4 Shareholders of B of A
= Top 4/6 Shareholders at Citigroup

Cartels and Other Collusive Conduct

- Build on recent past – more vigorous and effective.
- Track record of collusion shifts burden
- Focus more on punishment of senior executives.
- Potential collusive activity involving acquirers or owners of shares.

Antitrust Advocacy, the Too Big to Fail Problem, and Systemic Risk

The Role of Antitrust Advocacy

- DOJ can only comment on regulatory decisions that can affect competition (e.g. restructuring large financial institutions through resolution planning, involuntary receiverships, or other insolvency proceedings).
 - Dodd-Frank does not give USDOJ a statutory role
- We need a clearer role for DOJ
- Meanwhile, forceful “voluntary” advocacy.

Too **BIG** to **FAIL**

“The financial crisis has **shown** that TBTF megabanks create systemic risks that pose a serious threat to the stability of our financial markets and the health of our general economy.”

Too Big to Fail

- Use incentives for company-by-company decisions to divest activities and assets, designed to prevent exploitation of safety net subsidies conferring competitive advantage.
- If this doesn't work, then legislation for mandatory breakups and/or functional separation and/or “narrow banking” approaches.

Adopt the Precautionary Principle

Payment Systems

- Monitor dominant payment card networks as industry migrates into digital commerce and mobile payments
- Scrutinize the Honor All Cards rules
- Monitor relations of leading tech companies with dominant pay networks
- Blockchain technology