ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION
SCHUMPETER PROJECT ON COMPETITION POLICY

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COMMENTS OF ITIF

to the

U.S. Federal Trade Commission

Washington, D.C.

In the Matter of: Request for Public Comment Regarding Reducing Anti-Competitive Regulatory Barriers	)	Docket No. FTC-2025-0028-0001

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INTRODUCTION

On March 27, 2025, the Federal Trade Commission (FTC) launched its Public Inquiry into Anti-Competitive Regulations and invited public comment on "how federal regulations can harm competition in the American economy."[1] The Public Inquiry follows an executive order issued by President Trump titled "Unleashing Prosperity Through Deregulation" that called for the elimination of "unnecessary regulatory burdens."[2] In a subsequent executive order associated titled "Reducing Anti-Competitive Regulatory Barriers," the FTC was directed to lead an effort to identify a variety of different types of anticompetitive regulations, ranging from those which "create, or facilitate, the creation of, de facto or de jure monopolies" to those which more broadly "impose anti-competitive restraints or distortions on the operation of the free market."[3]

The Information Technology and Innovation Foundation (ITIF), the world's top-ranked science and technology policy think tank, commends the FTC for its efforts to identify anticompetitive regulations and greatly appreciates the opportunity to respond to its request for public comment.

ITIF's comment proceeds in three short parts. First, ITIF provides examples showing that while targeted rules and regulations which address real market failures and improve the status quo can be defensible, there are others that do not benefit competition or consumers and should likely be rescinded. As noted below, these rules and regulations can take the form of ill-advised attempts to dictate how firms may price their services and which result in market inefficiencies and consumer harm that outweigh any competitive benefits. Moreover, regulation can also raise the specter of a capture problem where the rules are used to benefit certain industry participants at the expense of others—even within the context of successful regulatory frameworks which may indeed improve the status quo and benefit consumers. The comment next provides a brief summary of high-level recommendations for the FTC as it evaluates the competitive merits of a regulation. A short conclusion follows.

[1] Press Release, Fed. Trade Comm'n, FTC Launches Public Inquiry into Anti-Competitive Regulations (Apr. 14, 2025).

[2] Executive Order 14192, Unleashing Prosperity Through Deregulation (Jan. 31, 2025).

[3] Executive Order 14267, Reducing Anti-Competitive Regulatory Barriers (Apr. 15, 2025).

ANTICOMPETITIVE REGULATIONS

The Federal Aviation Administration's (FAA) Weight-Based Fee Pricing Guidelines

Airport landing fees that are set strictly as a function of aircraft weight are a textbook example of a well-intentioned cost-recovery rule that has morphed into a competitive distortion. Because the fee a carrier pays is virtually the same at 7 a.m. as at 2 p.m., and because a 50-seat regional jet is charged far less than a 150-seat narrow-body, incumbents can protect their market share by blanketing the most valuable peak hours with numerous lightly loaded flights. The result is chronic runway congestion, more delays, costs that are passed through to passengers, and an artificial scarcity of peak-hour capacity that locks out potential entrants that might prefer to operate fewer, fuller planes. In short, weight-based pricing allow dominant carriers to capture scarcity rents while consumers and new competitors absorb the inefficiencies.[4] Unfortunately, this outcome is not a quirk of airline strategy—it is baked into federal policy. Specifically, the FAA's guidelines for airport charges have long been interpreted to mean weight-proportional fees.[5]

The FAA's federal weight pricing guidelines, therefore, operate as a de facto anticompetitive regulation: they predetermine price structure, skew competitive entry decisions, and prevent local operators from using market signals to allocate scarce runway capacity efficiently. Indeed, it has long been estimated that shifting to marginal-cost or congestion-based pricing could generate on the order of $6 billion in annual net benefits, largely through reduced delay and more efficient use of existing infrastructure.[6] Eliminating the weight-based fee requirement and replacing it with congestion pricing is thus well worth examining. Empowering airports to experiment with alternate pricing models, such as time-variant charges, slot auctions, or other market-based mechanisms would better allow price signals to convey the true cost of each movement, encourage airlines to up-gauge aircraft and smooth schedules, and open peak-hour access to lower-cost competitors.

Optometrists Efforts to Weaken the Contact Lens Rule

In addition to federal regulations that can harm competition, it is also important to be vigilant about efforts to undo successful legislative efforts in ways that could harm consumers. For example, in 2002 Congress passed the Fairness to Contact Lens Consumers Act (FCLCA), which made it easier for contact lens users to purchase their contact lenses from any seller, provided they have a prescription. This framework has been implemented by the Federal Trade Commission's (FTC) Contact Lens Rule, which put forward strong protections to make sure that consumers know they have a right to purchase their lenses from any licensed seller. However, as ITIF has explained:

> No surprise, optometrists are lobbying to weaken the FTC rule, particularly by making it harder and more expensive for third-party lens sellers to get approval for selling lenses.

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[4] Dorothy Robyn, *The Unfinished Business of Transportation Deregulation*, TR NEWS 315 (May–June 2018) https://www.brookings.edu/wp-content/uploads/2018/10/POV-Robyn.pdf.

[5] Department of Transportation (USDOT), Federal Aviation Administration, *Policy Regarding Airport Rates and Charges,* RIN 2120-AF90 (Sept.10, 2023), https://www.federalregister.gov/documents/2013/09/10/2013-21905/policy-regarding-airport-rates-and-charges; USDOT, FAA Order 5190.6B Change 3 (Sept. 15, 2023), https://www.faa.gov/documentLibrary/media/Order/Order_5190.6B_Compliance_Chg3.pdf.

[6] Steven A. Morrison and Clifford Winston, *Delayed! U.S. Aviation Infrastructure Policy at a Crossroads*, BROOKINGS INSTITUTION (May 2008), https://www.brookings.edu/wp-content/uploads/2016/06/Winston_aviation_chpt2.pdf.

> Congress should respect the FTC's decision and not be seduced by these rent seekers' arguments. Especially in a time of high inflation, consumers' interests should come first.[7]

The FTC's contact lens rule is a great example of both sensible consumer protection regulation that can improve the status quo, as well as the continuous threat of special interests seeking to engage in capture.

RECOMMENDATIONS

As it continues to assess the competitive merits of various rules and regulations, ITIF offers the following general recommendations to the FTC:

- **Regulation should address demonstrable market failures.** Regulations designed to improve economic outcomes are typically only justified as a corrective to a real and persistent market failure. This is often evinced by a highly concentrated industry that consistently demonstrates high prices, lack of dynamism, reduced output, or poor product quality. In general, regulations designed to improve economic welfare in industries that do not exhibit market failure should be reassessed so as to determine whether or not they are actually necessary.
- **Regulation should be a tool of last resort.** Even in the case of real market failure, law enforcement regimes, including antitrust and consumer protection, often provide a much more expedient and cost-effective way to correct market failures relative to regulation. When analyzing a regulation, policymakers should therefore consider whether the underlying policy goals can be achieved through already existing and more light-touch law enforcement tools.
- **Regulation should improve the *status quo*.** In the case of a failing market that cannot be remedied through the judicious use of law enforcement tools like antitrust and consumer protection, regulation still may not be justified if there is reason to believe that it will harm—rather than help—the status quo. In reality, regulators often have insufficient incentives or abilities to improve economic outcomes, leading to situations where regulation results in capture and/or inefficiencies as well as other costs that harm consumers and competition.

CONCLUSION

ITIF broadly supports the efforts of the FTC to improve competition and consumer welfare in the American economy by identifying and working to eliminate anticompetitive regulations. However well-intentioned they may be, many rules and regulations are often both unnecessary and stifle the innovation and dynamism that is key to driving economic growth. With the resolution of landmark antitrust cases against America's leading technology firms pending and an increasingly dire techno-economic rivalry with China in areas like artificial intelligence, ITIF hopes that this program of minimizing government intervention into the economy and promoting innovation is consistent with the FTC's broader antitrust policy enforcement goals.

Thank you for your consideration.

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[7] R. Atkinson, *Congress Should Side With Consumers on Contact Lenses, Not the Optometry Lobby*, ITIF (June 13, 2023).