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In Speech at Center for American Progress, Klobuchar Discusses How Vigorous Antitrust Enforcement Can Strengthen U.S. Economy

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Klobuchar, the ranking member of the Antitrust Subcommittee, discussed the growing concentration of economic power; the broad economic benefits vigorous antitrust enforcement can provide to workers, consumers, and small businesses; and unveiled a package of legislative proposals that would strengthen antitrust enforcement in our country.

WASHINGTON, DC – Today, U.S. Senator Amy Klobuchar gave a speech at the Center for American Progress in which she discussed the growing concentration of economic power; the broad economic benefits vigorous antitrust enforcement can provide to workers, consumers, and small businesses; the Trump Administration’s retreat from aggressive enforcement; and unveiled a package of legislative proposals that would strengthen antitrust enforcement in our country. Klobuchar is the ranking member of the U.S. Senate Subcommittee on Antitrust, Competition, and Consumer Rights.

“Antitrust law and policy is not always front and center, but it should be. Protecting competition speaks to the basic principles of economic opportunity and fairness,” said Klobuchar. “We need vigorous antitrust enforcement in this country—our economy depends on it.”

In her remarks, Klobuchar discussed how competition lowers prices for consumers, fosters small business growth, reduces inequality, and increases innovation. She talked about the unprecedented wave of recent mergers, and the importance of antitrust enforcement in light of this concerning trend. Klobuchar called on both the Administration and Congress to step up, laying out three legislative solutions that would strengthen antitrust enforcement in our Country. Her proposals would give agencies the tools they need to check whether their efforts
have been successful; gather critical information about how investment fund ownership affects competition; and increase antitrust fees that reflect the complexities of mega-mergers and their serious impacts on consumers.

Klobuchar’s remarks as prepared for delivery are below:

Thank you, Winnie, for that kind introduction. And thank you to the Center for American Progress for hosting this important event and inviting me talk about the importance of antitrust law.

It is good to be here with this distinguished panel.

Before I was a Senator, I was a prosecutor, and before that I was a lawyer.

At one point early on in my career, my main client was MCI, an aggressive, innovative long-distance telephone company that was determined to disrupt the telecom industry by competing with local monopoly carriers.

It was an exciting time to be representing a hungry young company.

MCI’s scrappy lawyers viewed themselves as cowboys of sorts, fighting for consumers and lower prices, and taking on local telephone monopolies around the country. And that was good training for Washington, which right now feels like the wild, wild West on a daily basis -- strike that, on an hourly basis.

Maybe you remember the first words Alexander Graham Bell said over the telephone: “Come here, Watson, I need you,”

Well, in the wild west world of MCI, when they were getting ready to relay the first communication between St. Louis and Chicago, investor Irwin Hirsh memorialized that great moment like a modern-day Bell. He said: “I’ll be damned. It actually works.”

But, in fact, without antitrust law, MCI would never have worked.

MCI took on Bell Operating Company and its owner AT&T, and ultimately help break up that monopoly, lowered long-distance prices for consumers across the country, and revolutionized the telecom industry.

Now, I know that antitrust law might not make front page news or even capture the attention of all of our nation’s lawmakers. But this is important stuff. And consequential stuff, too.
Just look at South Korea. There, the President was recently impeached based—in part—on allegations that she participated in a bribery scheme that ordered government support of a merger.

Or here in the U.S., the Nixon administration concluded during Watergate that the best way to intimidate the nation’s three major television networks was to keep the constant threat of an antitrust suit hanging over them. And we all know how that ended.

I think the American people intuitively understand that there’s too much concentration in this country—even if they can’t always describe it. In fact, two-thirds of Americans, including a majority of Republicans, have come to believe that the economy “unfairly favors powerful interests.”

Even as our economy stabilizes and grows stronger, it’s easy to see why people feel that way.

Every year I visit all 87 counties in Minnesota.

This year, I’ve been to twenty rural counties in my home state over just the past month. And I can tell you – people are still struggling. They are wary. And growing even more so during this huge transition in Washington.

Some can’t afford to pay their mortgage, much less prescription drugs or the cost of internet service. An increasingly specialized workforce can make it hard to find a job. Too many people who dream of starting their own businesses do not qualify for a loan or can’t afford to take that risk.

They want common-sense solutions. That’s why I’m leading the charge in the Senate to lower prescription drug costs. That’s why I’m working to expand services like career planning, job training, transitional jobs and apprenticeships. And that’s why I am fighting to strengthen the rural economy, which includes everything from tackling poverty and affordable housing to supporting farmers and expanding access to broadband.

For farmers in rural America, net income is 50 percent of what it was three years ago. And the poverty rate for kids in rural areas is four percentage points higher than in urban areas.

So, if you don’t think that major mergers – whether it’s agriculture, cable, or healthcare companies – impact people, this is all the evidence you need. It does have a big impact on Americans.

That’s why one of my top economic priorities is antitrust enforcement—or ensuring we have free, open, competitive markets.
Some people ask, what does a strong economy have to do with antitrust? And the answer is unexpectedly: Everything. Let me repeat that. Antitrust has everything to do with our broader economy.

You've heard much of this before: When companies are allowed to compete, businesses can offer the highest quality good for the lowest possible price.

This is all true. But the point I really want to emphasize is this—talking about antitrust only in this way is outdated and oversimplified.

Antitrust enforcement affects more than the prices people pay for the goods they buy.

We now have evidence that competition fosters small business growth, reduces inequality, and increases innovation. In short, tackling concentrations of power is a linchpin to a healthy economy and democracy.

For the last few decades, however, Supreme Court cases—like Trinko, Credit Suisse, Leegin, among others—have raised barriers to the pursuit of antitrust cases. And as Judge Gorsuch is an antitrust expert, it'll be a good thing to pursue with him next week. Because these are important questions, especially in light of the broad economic implications.

For example, evidence suggests that concentrated interests make it nearly impossible for entrepreneurs and small business owners to compete. So, ensuring competitive markets is one clear way to help our small businesses succeed.

I don't have to tell you how important small business growth is to our economy. As firms with fewer than 20 workers make up 90 percent of businesses in our country, the stakes of allowing firms to compete could not be higher.

When there are eight or ten competitors, they're trying to do anything new and innovative to get a leg up on the competition. But when there's only one firm, the status quo is just fine. There's no incentive to develop new products.

Concentration can also limit innovation. Think of your cable company and the cable box. No one liked the cable box, but for years the cable company made no modifications and continually increased rental fees.

Recently, competition—like Apple TV and Roku—has improved the viewer experience and expanded choice. Competition drives innovation.
If that was too technical for you, how about beer?

For years, there were a few, dominant breweries, and they all sold similar mass-market beer. By 1978, there were fewer than 50 brewers nationwide.

Then, across the country, entrepreneurs started what we call the craft brewing revolution. They innovated, increased choices, and improved quality.

Today, in my state alone, we have over 70 craft brewers, more than the entire country had back in 1978.

That’s why we had our beer hearing, which was the most widely attended antitrust hearing in the history of America a few years back. What did we call it? Oh, the “beerhemoth merger.” Yes, I remember. That was pretty witty. We really have to work hard in this area to make this exciting.

I’m trying to make the case for you today that this is not only important, but it’s cool to talk about, because it’s all about what’s going to happen with the economy.

Research also suggests that concentration increases income inequality. Intuitively, this makes a lot of sense. Firms with monopoly power raise prices, taking money from consumers and putting it in the pocket of owners and employees. The consumers who spend money far outnumber the owners and employees who gain it—all of which contributes to inequality in this country.

So, we have to recognize the broader benefits of antitrust enforcement. Especially today, when we’re living through an unprecedented wave of concentration across industries.

Since 2008, American firms have engaged in $10 trillion in acquisitions. And over the last five years, there was a 50 percent increase in mergers reviewed by the Federal Trade Commission and Department of Justice Antitrust Division.

There are signs of anticompetitive concentration everywhere. As former Chair and current ranking member of the Antitrust Subcommittee, I’ve raised concerns about several mega-merger proposals during the last couple years.

Take for example, Comcast’s failed merger with Time Warner. As we pointed out at the Senate hearing, if the merger was approved, the combined company would have controlled 60 percent of the country’s high-speed broadband customers.
Or the failed merger between Norfolk Southern Railway and Canadian Pacific, something I took on immediately after it was announced. Even without the merger, 90 percent of freight traffic is handled by only four railroads. As I like to note on this topic, how many railroads are on the Monopoly board? Four. No coincidence.

These examples are part of a larger pattern. Just last year, then Assistant Attorney General for Antitrust Bill Baer, a lifelong antitrust practitioner, said his agency was reviewing deals with such serious antitrust concerns that they should never have made it out of the corporate boardroom.

And there’s more reason for concern. Like the fact that 83 percent of companies that earned 25 percent profit or more in 2003 were still achieving those profit levels a decade later.

Although firms may exploit an advantage in the short-term, winners and losers should change over time in a competitive market. This should be the case in the American economy.

Or the fact that prices in America should be lower than other countries because the market is so large. But, in general, American prices are not lower than in countries with smaller markets.

All of this suggests that now more than ever, we need vigorous antitrust enforcement. Especially in light of the stakes. Without effective antitrust enforcement, we may be jeopardizing our broader economic health.

And there are new types of activity to consider as well. Large institutional investors own almost 70 percent of the stock market. For example, the largest shareholders of Apple and Microsoft are BlackRock and Vanguard. We see this same pattern in pharmacies, soft drinks producers, and banks. It is easy to see how this cross-ownership could hurt consumers.

Many are also rightfully concerned that conditions the agencies place on mergers often fail and that more deals must be blocked. The FTC vigorously disputes these claims and recently published its own merger retrospective. But even the FTC’s own study found a significant number of failed remedies.

And, as merger deals have grown, so have the complexities of the settlements. We often talk about firms being “too-big-to-fail.” A question for modern antitrust enforcement is whether some mergers are too big to fix.

So here’s the billion dollar question—what are we going to do about this?
One big solution is obvious: More aggressive antitrust enforcement to prevent concentration and monopolies.

Here's the good news. Antitrust and competition policies are not Republican or Democratic issues, they are consumer issues. We can all agree that robust competition is essential to our free-market economy.

And while aggressive antitrust enforcement might not solve all our larger problems, effective enforcement will alleviate some of them.

So, you'd think that in light of this consensus, the enormous economic consequences of antitrust enforcement, and the current merger wave—we'd already be tackling this issue. Unfortunately, that's not quite true.

I will say that Senator Mike Lee and I have worked very well on these issues together and painstakingly worked out ideas for conditions and other things when we send letters and work with the Antitrust Division. And they have told us repeatedly how helpful it is for them because, in fact, these are bipartisan suggestions and ideas for others.

Which brings me to the bad news. The federal government’s commitment to antitrust enforcement has declined.

Let me explain: Our economy—in terms of nominal GDP—has increased by over 20 percent between 2010 and 2016. And merger filings have increased by over 50 percent. At same time, our antitrust agencies' budgets have been held flat.

Because antitrust agencies are only able to litigate cases involving the most highly concentrated market, they often can't deal with new issues like investment funds’ cross-ownership of competing firms without an industry.

Still, these agencies are doing the best they can, and we’ve seen some real results.

In 2015, the Department of Justice obtained a record $3.6 billion in criminal antitrust fines. The antitrust division’s entire operating budget is roughly 5 percent of this figure. What’s incredible is that the division is actually a money maker.

The FTC had six antitrust cases in active litigation last year, including blocking Staples’s proposed acquisition of Office Depot and four hospitals mergers.
And more recently, the antitrust division successfully litigated two mega mergers in the insurance industry, including Anthem and Cigna. Chairman Mike Lee and I held an Antitrust Subcommittee hearing on the effects of these mergers on consumers.

But, we need the agencies to do more. And we need the new Administration to take this seriously.

Some might argue that President Trump—who has been both plaintiff and defendant in antitrust lawsuits—will champion increased enforcement efforts.

First, as a plaintiff in the United States Football League’s case against the NFL, Trump won a dollar in damages (tripled to three dollars). There is even an ESPN documentary about it.

Second, in 1988, he paid a $750,000 penalty to settle claims that he had failed to make required filings with the FTC and DOJ in connection with an acquisition of stock in Holiday Corp and Bally Manufacturing.

So, overall, he’s in the red on antitrust litigation.

During the campaign, then-Candidate Trump’s rhetoric echoed former President Teddy Roosevelt. He even talked about “too much concentration of power in the hands of too few.”

But now it looks like that the President is speaking a different language. I’ll give you a just a few examples:

Early warning signs suggest that the Trump Administration will appoint people who will scale back enforcement. Peter Thiel, one of the President’s close advisers has mocked free markets, saying “competition is for losers.”

The Acting Chairwoman at the FTC has said that the Obama administration’s more aggressive approach to competition “imposed unnecessary costs on business.”

Here’s another example. In a typical administration, the enforcement decisions of the Assistant Attorney General for Antitrust are made independently—the White House is typically not involved.

But at a meeting with the President-elect, the CEOs of Bayer and Monsanto discussed their $66 billion merger, which is currently being reviewed by the Justice Department. After the meeting, the Administration took credit for commitments the companies made to create new jobs and invest in Research and Development.
This was an uncharacteristic discussion and raises concerns that this President may want to negotiate merger settlements himself.

After that meeting, I asked Attorney General Sessions if he would defend the integrity and independence of the Antitrust Division. He said that he would, and I will hold him to that commitment.

That is just the beginning of Congress’s responsibilities. I take my responsibilities on the Antitrust Subcommittee seriously, and am committed to protecting and promoting vigorous antitrust enforcement.

Chairman Lee and I have developed a strong, bipartisan approach to the Committee. We are both committed to the professionalism and independence of the Federal Trade Commission and the Antitrust Division.

If it appears that political concerns have played a role in antitrust enforcement, the Subcommittee can and will hold the agencies accountable.

We will also hold the nominees to the Antitrust Division and the Federal Trade Commission to these same high standards.

But I want to be very clear here. It is not enough to prevent a deterioration of enforcement.

In light of the broader impact of competition, the stakes are just too high to play defense. That’s why today I am announcing that I will introduce a package of bills with three goals:

First, a check on merger conditions.

Effective enforcement depends on feedback. Agencies can make better enforcement decisions if they understand what has worked in the past. And this much is clear—we need to give the agencies the tools to check whether their efforts have been successful.

The FTC’s recent merger retrospective study only covers FTC settlements, and it was the first study since 1999. We have to do better.

Here’s what I propose. A better approach would be to require parties to provide information on a yearly basis after the settlement. Then, agencies could easily review the effectiveness of past settlements, which would inform their future decisions. I believe we can design a requirement that both improves the effectiveness of antitrust enforcement without unduly burdening the companies.
Second, better information.

The Federal Trade Commission or the Department of Justice should gather information about how investment fund ownership affects competition.

Congress needs this information to understand whether there is a problem and when investment fund ownership is anticompetitive or benign.

We need to understand how prevalent the problems are and whether current antitrust tools are sufficient to address them.

Third, we need to up our game.

Antitrust fees that are paid when companies file proposed mergers for review and allow the government to exercise and pursue cases have not kept up with the times.

In fact, the fee has not been adjusted since 2001. And parties involved in larger deals are not paying their fair share.

For example, each party is currently required to pay $280,000 for a deal valued at $807 million or more. But even deals of 100 times that size—which demand greater resources—would incur the same fees.

I propose two simple fixes here. First, while we will take into account the burden on smaller companies, the fees should increase based on gross national product. Second, in an era of megadeals that reach tens or even hundreds of billions of dollars, we need a new category of fees that reflects the complexities of mega-mergers and their serious impacts on consumers.

As one potential model, President Obama’s proposed 2017 budget would have doubled charges for deals over one billion dollars. Even then, the charged amount would be less than 1 percent of the proposed value of the deal.

These proposals are common-sense solutions that will improve the lives of people across the country, and also by the way, improve capitalism. Capitalism is based on fair play and equal competition. It’s based on this idea that you want to have a vibrant system, where small companies can continue to compete and come into the market. If that competition is stifled, it’s not only bad for consumers and for America, it is also bad for business. And so, if any of the other reasons don’t work here, I hope that will.
All of this can be done. It doesn’t take a miracle. It just simply takes the will and the system that we have used so well in America—a system of free market, a system of checks and balances, a system where we put people first.

Protecting competition speaks to the basic principles of economic opportunity and fairness.

So as I said at the beginning, our goal is to make antitrust cool again. And if the Administration won’t do it, we will.

Thank you.