

**U.S. Senator Elizabeth Warren**  
**Keynote Speech – RemedyFest Conference**  
**What’s Next for Big Tech**  
**February 27<sup>th</sup>, 2024**

*As Prepared for Delivery*

Hello, RemedyFest! I’m glad to have the chance to talk with you about the next frontiers in competition policy. But to understand where we can go, we need to think about where we’ve come from and understand the momentum we’ve built.

Let’s go back eight years—to 2016. At that point, antitrust enforcement was basically dead.<sup>1</sup> Instead of vibrant, competitive markets, giants dominated. In the preceding two decades, consolidation had increased in more than 75 percent of American industries.<sup>2</sup> Banks. Airlines. Retail sales. Construction. Agriculture. Health insurance. Hog processing. Corporate concentration dominated pretty much every area of American life. The big guys weren’t advancing innovation, helping workers, or benefitting consumers, but they sure as heck were more profitable.<sup>3</sup>

That state of affairs was okay with CEOs and Wall Street movers and shakers who made money off consolidation, and no one else paid much attention. But a handful of us—some in this room—said ENOUGH. We believed we could bring the competition movement back to life.

We picked a fight, and that fight mattered. We pushed and pushed and pushed some more.

And eventually green shoots started popping up in all kinds of places. Congressional investigations.<sup>4</sup> Proposed legislation.<sup>5</sup> Calling out corporate greed and connecting the dots between concentration and price gouging.<sup>6</sup>

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<sup>1</sup> National Bureau of Economic Research, “The Political Economy of the Decline of Antitrust Enforcement in the United States,” August 2022, pp. 5-6, [https://www.nber.org/system/files/working\\_papers/w30326/w30326.pdf](https://www.nber.org/system/files/working_papers/w30326/w30326.pdf).

<sup>2</sup> Swiss Finance Institute, Review of Finance, “U.S. Industries Becoming More Concentrated?,” Gustavo Grullon, Yelena Larkin, and Roni Michaely, October 25, 2018, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2612047](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2612047).

<sup>3</sup> The White House, “The Importance of Competition for the American Economy,” Heather Boushey and Helen Knudsen, July 9, 2021, <https://www.whitehouse.gov/cea/written-materials/2021/07/09/the-importance-of-competition-for-the-american-economy/>.

<sup>4</sup> House Committee on the Judiciary, “Antitrust Investigation of the Rise and Use of Market Power Online and the Adequacy of Existing Antitrust Laws and Current Enforcement Levels,” <https://democrats-judiciary.house.gov/issues/issue/?IssueID=14921>.

<sup>5</sup> Digital Consumer Protection Commission Act, S. 2597, <https://www.congress.gov/bill/118th-congress/senate-bill/2597>; American Innovation and Choice Online Act, S. 2992, <https://www.congress.gov/bill/117th-congress/senate-bill/2992>; Open App Markets Act, S. 2710, <https://www.congress.gov/bill/117th-congress/senate-bill/2710>; AMERICA Act, S. 1073, <https://www.congress.gov/bill/118th-congress/senate-bill/1073>.

<sup>6</sup> The Guardian, “Revealed: Top US Corporations Raising Prices on Americans Even as Profits Surge,” Tom Perkins, April 27, 2022, <https://www.theguardian.com/business/2022/apr/27/inflation-corporate-america-increased-prices-profits>; Letter from Senator Elizabeth Warren to Publix CEO Randall Jones, December 14, 2021, <https://www.warren.senate.gov/newsroom/press-releases/warren-calls-out-big-grocery-chains-for-putting-company-profits-over-customers>.

We got this going, you kept it going, and now we have a movement.

Once he was elected President, Joe Biden had the space to make antitrust a priority. He issued an Executive Order to kick off pro-competition actions in more than dozen federal agencies.<sup>7</sup> And he hired the right team. Personnel is policy! Lina Khan and Jonathan Kanter shifted the paradigm on antitrust. They brought blockbuster cases, including DOJ's lawsuit against Google and the FTC's case against Amazon.<sup>8</sup>

Those changes have echoed around the world. Australia and Canada adopted legislation to stop Facebook's exploitation of local journalists.<sup>9</sup> The European Union adopted the *Digital Markets Act* and the *Digital Services Act*.<sup>10</sup> And the UK's competition authority challenged numerous tech mergers, like Microsoft's bid to acquire Activision.<sup>11</sup>

The results of this movement are starting to show up. Between 2021 and 2023, transactions valued over \$5 billion fell by 60 percent.<sup>12</sup> The Fifth Circuit agreed with the FTC on the need to unwind harmful vertical mergers.<sup>13</sup> Judges are openly considering whether to break up some of the biggest tech giants.<sup>14</sup> Sixty-seven percent of Americans now believe it's a bad thing for a single company to dominate a market and 69 percent support antitrust laws.<sup>15</sup>

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<sup>7</sup> The White House, "Executive Order on Promoting Competition in the American Economy," July 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

<sup>8</sup> Department of Justice, "Justice Department Sues Google for Monopolizing Digital Advertising Technologies," press release, January 24, 2023, <https://www.justice.gov/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies>; Federal Trade Commission, "FTC Sues Amazon for Illegally Maintaining Monopoly Power," press release, September 26, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>.

<sup>9</sup> Reuters, "Canada to keep pressure on Facebook to pay for news, Trudeau says," December 15, 2023, <https://www.reuters.com/world/americas/canada-keep-pressure-facebook-pay-news-trudeau-says-2023-12-15/>; Reuters, "Australia says law making Facebook and Google pay for news has worked," Byron Kaye, December 1, 2022, <https://www.reuters.com/technology/australia-says-law-making-facebook-google-pay-news-has-worked-2022-12-02/>.

<sup>10</sup> European Commission, "The Digital Markets Act: Ensuring Fair and Open Digital Markets," [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en); European Commission, "The Digital Services Act Ensuring a Safe and Accountable Online Environment," [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en).

<sup>11</sup> TechCrunch, "UK's CMA confirms decision to block Microsoft-Activision but opens fresh probe of restructured deal proposal," Natasha Lomas, August 22, 2023, <https://techcrunch.com/2023/08/22/microsoft-activision-uk-cma-new-probe>.

<sup>12</sup> PWC, "Global M&A Industry Trends," Brian Levy, January 23, 2024, <https://www.pwc.com/gx/en/services/deals/trends.html>.

<sup>13</sup> Federal Trade Commission, "Statement Regarding Illumina's Decision to Divest Grail," press release, December 18, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/12/statement-regarding-illumina-decision-divest-grail>.

<sup>14</sup> Wall Street Journal, "Big Tech Braces for Wave of Antitrust Rulings in 2024," Jan Wolfe, January 1, 2024, <https://www.wsj.com/tech/big-tech-braces-for-wave-of-antitrust-rulings-in-2024-860f0149>.

<sup>15</sup> Economic Security Project, "Beyond Monopolies," Becky Chao, February 5, 2024, <https://economicsecurityproject.org/resource/beyond-monopolies/>.

That's a lot of change in a short time. And here's the best part: We're just getting started.

We've passed the tender green shoots. Now we're entering a new phase where antitrust enforcers start winning, and industry giants are spending even more money on lobbyists, lawyers, and PR flaks to try to regain control.

There's plenty of howling in nearly every industry, but Big Tech is running a play borrowed from the financial industry. In the wake of the 2008 financial crisis, I talked about how the titans of the financial sector built a "complexity machine" to dodge oversight.<sup>16</sup> First, Wall Street sold the public "very complex" financial instruments they said only Wall Streeters could understand, and they used that complexity to hide the risks and make money hand over fist. Once they blew up the economy and got bailed out, and Congress tried to put meaningful rules in place, the Wall Streeters fought us every inch of way, claiming the markets were too complex to regulate and changes should be put off indefinitely.

Now Big Tech is cranking up the same complexity machine. Google's former CEO Eric Schmidt asked Congress for billions in taxpayer dollars for AI — then turned around and said, "there's no way a non-industry person can understand what is possible" and "there's no one in the government who can get it right."<sup>17</sup> Translation: it's too complex for you dummies to understand AND too complex for government to regulate. OpenAI's CEO Sam Altman agreed, comparing the risk of AI to "pandemics and nuclear war,"<sup>18</sup> then claiming efforts to address those risks are "over-regulating."<sup>19</sup> Too complex to understand, and too complex to regulate. Back in 2010, I pointed out that for the big banks "complexity works for them, and it works against those who end up paying."<sup>20</sup>

But unlike in the 2010 bank crisis, we already have many effective tools in the toolbox. Sure, there are places that need updating, but the antitrust laws of the 19<sup>th</sup> and 20<sup>th</sup> centuries gave us the basic weapons to fight concentration. We should pick them up and use them right now.

This is RemedyFest, so let's talk remedies! I see four very shiny tools we can use to promote competition in the tech world:

- First, break up the giants.
- Second, block vertical integration.
- Third, end merger conditions.
- Fourth, require interoperability and data portability.

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<sup>16</sup> Youtube, "Elizabeth Warren Talks About 'The Complexity Machine'," <https://www.youtube.com/watch?v=xu72oFFlzZg>.

<sup>17</sup> Yahoo Finance, "Former Google CEO Eric Schmidt Tells Government to Leave A.I. Regulation to Big Tech," Christiana Hetzner, May 15, 2023, <https://finance.yahoo.com/news/former-google-ceo-eric-schmidt-155901279.html>.

<sup>18</sup> Center for AI Safety, "Statement on AI Risk," <https://www.safe.ai/statement-on-ai-risk>.

<sup>19</sup> CNBC, "OpenAI's Sam Altman Reverses Threat to Cease European Operations," Hayden Field, May 26, 2023, <https://www.cnbc.com/2023/05/26/openai-ceo-sam-altman-reverses-threat-to-cease-european-operations.html>.

<sup>20</sup> Youtube, "Elizabeth Warren Talks About 'The Complexity Machine'," <https://www.youtube.com/watch?v=xu72oFFlzZg>.

So let's start with the big tool: break up monopolies. The polite term is structural separation – that is, separating a monopoly into multiple lines of business. We've done it in the past, and the results have been more competition, fewer conflicts of interest, less concentration of power, and markets that are truly open to innovation. And notice how sharp that tool is: Our antitrust laws explicitly allow enforcers to unwind a harmful merger even YEARS after the fact as a remedy for unlawful behavior.<sup>21</sup>

We've been breaking up monopolies for more than a century. In 1906, Congress broke apart businesses that ran railroads and sold products carried on railroads, so no business got a comparative advantage when shipping its goods (think about the analogy to Amazon today).<sup>22</sup> In the 20<sup>th</sup> century, the FCC adopted structural separation rules in the television and telecom industries.<sup>23</sup> In 1968, DOJ made IBM unbundle hardware and software. And it worked– we saw skyrocketing sales for American software firms.<sup>24</sup> The same kind of thing happened when DOJ broke up AT&T's monopoly.<sup>25</sup>

It's time once again to bring out the big guns and break up the giants. To restore competition in existing digital markets and to foster emerging markets like AI, Amazon's e-commerce platform should be separated from its product lines.<sup>26</sup> Google should be broken into its search business and its browsing services.<sup>27</sup> Each of the major cloud services—Google, Microsoft, and Amazon—should not be allowed to use their enormous size to dominate a whole new field, and that means blocking them from operating large language models.<sup>28</sup> Each of these moves would create valuable competition.

So first, break up the giants. Second, keep them from forming, and that includes blocking vertical integration.

Our antitrust laws don't distinguish between vertical mergers (one company buying another in its supply chain) and horizontal mergers (one company acquiring another at the same level of

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<sup>21</sup> Cadwalader, “Buyer Beware: FTC Orders Unwinding of a Consummated Transaction,” November 7, 2019, <https://www.cadwalader.com/resources/clients-friends-memos/buyer-beware-ftc-orders-unwinding-of-a-consummated-transaction>.

<sup>22</sup> Hepburn Act, Public Law 59-337.

<sup>23</sup> Washington Monthly, “The FCC Has Untapped Powers. The Next Administration Needs to Use Them.,” Daniel A. Hanley, October 9, 2020, <https://washingtonmonthly.com/2020/10/09/the-fcc-has-untapped-powers-the-next-administration-needs-to-use-them/>.

<sup>24</sup> Columbia Law School, “Tech Dominance and the Policeman at the Elbow,” Tim Wu, pp. 83, 88-91, [https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3292&context=faculty\\_scholarship](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3292&context=faculty_scholarship); “Captured Innovation: Technology Monopoly Response to Transformational Development,” Reed Showalter and Laura Edelson, pp. 10-16 (on file with Office of Senator Elizabeth Warren).

<sup>25</sup> “Captured Innovation: Technology Monopoly Response to Transformational Development,” Reed Showalter and Laura Edelson, pp. 34-35 (on file with Office of Senator Elizabeth Warren)

<sup>26</sup> Columbia Law School, “Buyer Beware: FTC Orders Unwinding of a Consummated Transaction,” Lina M. Khan, 2019, [https://scholarship.law.columbia.edu/faculty\\_scholarship/2789/](https://scholarship.law.columbia.edu/faculty_scholarship/2789/).

<sup>27</sup> New York Times, “The Google Trial Is Going to Rewrite Our Future,” Tim Wu, September 18, 2023, <https://www.nytimes.com/2023/09/18/opinion/contributors/google-antitrust-trial.html>.

<sup>28</sup> Vanderbilt University, “An Antimonopoly Approach to Governing Artificial Intelligence,” Tejas Narechania and Ganesh Sitaraman, October 6, 2023, <https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2023/10/06212048/Narechania-Sitaraman-Antimonopoly-AI-2023.10.6.pdf.pdf>.

production).<sup>29</sup> One of the core features of the right-wing takeover of antitrust law was to make up a distinction between horizontal and vertical mergers, essentially claiming that vertical mergers are somehow “good monopolies” that help consumers.<sup>30</sup>

First, I’ve read all the antitrust laws, and I still haven’t seen the phrase “good monopolies.” I also haven’t seen any distinction between horizontal and vertical mergers. So let me say to antitrust defense lawyers and their fellow traveler judges and economists: stop making stuff up. Follow the law Congress wrote.

Vertical integration nearly always enables significant anticompetitive behavior, like self-preferencing. Think of Amazon pushing Amazon-branded products to the top of its search results<sup>31</sup> or Google placing its own comparison-shopping tools above others.<sup>32</sup> By favoring their own products, big players lock in customers and lock out competitors at multiple points in the tech stack—and that makes it a whole lot harder for new companies to enter the market.

AI will make the vertical integration problem a thousand-fold worse. For example, three tech giants – Microsoft, Google, and Amazon – control the vast majority of cloud infrastructure.<sup>33</sup> That means they control the foundation on which virtually every innovator will build generative AI models and AI applications. The giants have every incentive to lock customers into their own cloud systems, and then preference their own products at every step in that chain. And speaking of chains, remember the supply chain crisis we faced a few years ago, when the pandemic shut factories down? Vertical integration is not just about consumer prices. Vertical integration poses a real risk to our entire economy, our health, and our security.

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<sup>29</sup> United States v. E.I. du Pont de Nemours & Co., 353 U.S. 586 (1957), at 590 (describing House Judiciary Committee report that said Section 7 of the Clayton Act “applies to all types of mergers and acquisitions, vertical and conglomerate as well as horizontal).”

<sup>30</sup> Washington Post, “Antitrust was defined by Robert Bork. I cannot overstate his influence.” Dylan Matthews, December 20, 2012, <https://www.washingtonpost.com/news/wonk/wp/2012/12/20/antitrust-was-defined-by-robert-bork-i-cannot-overstate-his-influence/>; Georgetown University Law Center, “Five Principles for Vertical Merger Enforcement,” Jonathan B. Baker et al., p. 8, <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3166&context=facpub>.

<sup>31</sup> Harvard Business School, “Self-Preferencing at Amazon: Evidence from Search Rankings,” Chiara Farronato, Andrew Fradkin, and Alexander MacKay, January 2023, pp. 2, 7, [https://www.hbs.edu/ris/Publication%20Files/Self-Preferencing%20at%20Amazon%20-%20Evidence%20from%20Search%20Rankings\\_c3330c64-0bad-48e7-98e7-afdd8356afd4.pdf](https://www.hbs.edu/ris/Publication%20Files/Self-Preferencing%20at%20Amazon%20-%20Evidence%20from%20Search%20Rankings_c3330c64-0bad-48e7-98e7-afdd8356afd4.pdf); The Markup, “How We Analyzed Amazon’s Treatment of Its ‘Brands’ in Search Results,” Leon Yin and Adrienne Jeffries, October 14, 2021, <https://themarkup.org/amazons-advantage/2021/10/14/how-we-analyzed-amazons-treatment-of-its-brands-in-search-results>.

<sup>32</sup> European Commission, “Antitrust: Commission Fines Google €2.42 Billion for Abusing Dominance as Search Engine by Giving Illegal Advantage to Own Comparison Shopping Service: Factsheet,” [https://ec.europa.eu/commission/presscorner/detail/es/MEMO\\_17\\_1785](https://ec.europa.eu/commission/presscorner/detail/es/MEMO_17_1785); GCR, “Self-Preferencing in Digital Markets,” Matt Hunt, Safer Burak Darbaz, and Robert Scherf, November 25, 2022, <https://globalcompetitionreview.com/guide/digital-markets-guide/second-edition/article/self-preferencing-in-digital-markets#footnote-089-backlink>.

<sup>33</sup> Synergy Research Group, “Cloud Spending Growth Rate Slows by Q4 Still Up By \$10 Billion from 2021; Microsoft Gains Market Share,” February 6, 2023, <https://www.srgresearch.com/articles/cloud-spending-growth-rate-slows-but-q4-still-up-by-10-billion-from-2021-microsoft-gains-market-share>.



First, break up the giants. Second, stop concentration through vertical integration. Third, stop accepting mergers, vertical or horizontal, based on weak corporate promises. When a company buys up a competitor and wants to avoid antitrust objections, it will sometimes make promises to treat workers well or treat the competitors that are left fairly, or it will offer to sell off a teeny slice of its business. These merger remedies are lipstick on a pig designed to let bad deals go through—and for years the FTC and DOJ have just gone along.

How bad is it? Just look at Microsoft’s acquisition of the videogame maker Activision. Microsoft hyped the idea that the deal should go through because it had struck a great pro-worker agreement. Less than three months after the deal was struck, Microsoft laid off nearly two thousand Activision workers.<sup>34</sup> Or look at Hertz’s merger with Dollar Thrifty, or Safeway with Albertsons. Companies sold some assets to make a deal work. But the spinoffs were designed to fail. Once they declared bankruptcy, the giants just bought them back—some merger remedy.<sup>35</sup>

Merger remedies are useless. If a merger deal can’t go through without a merger remedy, then the deal shouldn’t go through. Period.

OK, break up the giants. Stop bad vertical mergers. Stop bad merger remedies. Now the final one—and a personal favorite: embrace interoperability. You all know interoperability—it’s why you can use your phone to call me, even if you and I don’t use the same phone company.<sup>36</sup> It’s why you can use your Gmail account to email your grandmother who has an Outlook account. And it’s why you can use a non-Microsoft browser like Chrome on a Microsoft operating system – well, that interoperability is thanks to a DOJ lawsuit.<sup>37</sup>

And for all you developers in the room—this remedy is what will let you bring competition to tech markets.

You guys already get it, but for everyone else, let me explain: interoperability and its cousin, data portability, form one of the Big Four antitrust remedies because without them, Big Tech firms can continue to build walls around their products so they can offer worse products and keep users from going to competitors. Today, you can’t run an Android app on an Apple phone or take your followers with you when you leave Twitter. Those are policy choices, not technical impossibilities.<sup>38</sup>

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<sup>34</sup> The Verge, “Microsoft Lays Off 1,900 Activision Blizzard and Xbox Employees,” Tom Warren, January 25, 2024, <https://www.theverge.com/2024/1/25/24049050/microsoft-activision-blizzard-layoffs>.

<sup>35</sup> Bloomberg, “Hertz Set to Buy Advantage Locations, Undercutting FTC,” David McLaughlin, April 18, 2014, <http://www.bloomberg.com/news/articles/2014-04-17/hertz-set-to-buy-advantage-locationsundercutting-ftc>; The Arizona Republic, “Albertsons Buys Back Stores Feds Forced It to Sell,” Robert Anglen, November 25, 2015, <http://www.azcentral.com/story/money/2015/11/25/albertsons-buys-back-stores-feds-forcedsell/76383234>.

<sup>36</sup> Chicago Policy Review, “Cory Doctorow on Why Interoperability Would Boost Digital Competition,” Zander Arnao, April 12, 2023, <https://chicagopolicyreview.org/2023/04/12/cory-doctorow-on-why-interoperability-would-boost-digital-competition/>.

<sup>37</sup> Center for Democracy and Technology, “Interoperability is Important for Competition, Consumers, & the Economy,” George Slover, January 12, 2023, <https://cdt.org/insights/interoperability-is-important-for-competition-consumers-the-economy/>.

<sup>38</sup> Chicago Policy Review, “Cory Doctorow on Why Interoperability Would Boost Digital Competition,” Zander Arnao, April 12, 2023, <https://chicagopolicyreview.org/2023/04/12/cory-doctorow-on-why-interoperability-would-boost-digital-competition/>.

Interoperability makes it easy for consumers to switch between products and let consumers choose the best, not just the biggest options.<sup>39</sup> In other words, it's a remedy, like the others, that promotes competition. Developers, please keep building tools and third-party apps to let systems communicate—you are a critical part of this antitrust remedy.

There they are: four remedies that will bring more competition to our markets. The giants will fight us, but we have the tools to beat them back—if we use them.

Let me finish with a thank-you and a plea: We brought antitrust enforcement back to life together. We can stand here today to celebrate successes because of you. But to develop truly robust markets, we need to keep the pressure up. Please. Keep organizing. Keep using your technical skills to show how these remedies are workable. Keep paying attention to how antitrust enforcement is funded and what judges are doing. Keep speaking up in agency processes and in the halls of power. Don't let up.

It's all about competition versus concentration. This is a fight for a stronger economy, stronger communities, and a stronger democracy—and it's an honor to fight alongside you. Thank you.

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<sup>39</sup> Public Knowledge, “Why We Can’t Be Friends: We Need Interoperability in Digital Markets,” Alex Petros, February 23, 2021, <https://publicknowledge.org/why-we-cant-be-friends-we-need-interoperability-in-digital-markets/>.