

Europe

Unpacking “America First” Antitrust for Europeans

By Cristina Caffarra





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The past week has seen two major antitrust policy speeches given in the U.S. by the new head of the Antitrust Division, Gail Slater, and newly confirmed FTC Commissioner Mark Meador: AAG Slater gave her Remarks on “*The Conservative Roots of America First Antitrust Enforcement*”² at Notre Dame Law School (home of her Principal Deputy, Prof. Roger Alford), while Commissioner Meador delivered a speech based on his scholarly essay, “*Antitrust Policy for the Conservative*”³ at an event co-hosted by American Compass and the Conservative Partnership Institute.

FTC Chair Andrew Ferguson also delivered influential speeches in recent weeks, laying out his policy vision (including on freedom of speech at the Stigler Annual Conference, which I attended). I will focus here however mainly on the Slater/Meador talks of last week as the most recent references for Europeans to understand where U.S. antitrust may be

headed after the “progressive reign” of Lina Khan and Jonathan Kanter.⁴ While of course it is too early to tell how all this will unfold in practice, these views are significant and worthy of being highlighted.

I. NO RETURNING TO THE PAST

I wrote already last December, just after the U.S. elections, that Europeans were “oh so wrong” if they expected (and hoped) that Trump 2.0 was going to signify a return to the George (W.) Bush-era Chicago-inspired *laissez-faire* approach to enforcement, trigger a smorgasbord of pent-up deals from a Wall Street cohort drunk on advisory fees, and signal a rollback of action against concentrated power – especially in digital markets.⁵ This was obvious already then, as a number of high-profile enforcement cases against Big Tech had started in fact under Trump 1.0, and important developments occurred in conservative thinking over the previous few years. The names being floated, even so early as at the time for senior agency positions were also very telling. That we would not be sliding back entirely (as many Europeans hoped) to the good old days of doing very little, efficiency and consumer welfare as lodestars, was apparent. But what is now transpiring goes beyond what Europeans who have not been closely

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² [Office of Public Affairs | Assistant Attorney General Gail Slater Delivers First Antitrust Address at University of Notre Dame Law School | United States Department of Justice](https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-first-antitrust-address-university-notre), 28 April 2025. Available at: <https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-first-antitrust-address-university-notre>. (“Slater”).

³ [Antitrust Policy for the Conservative](https://www.ftc.gov/system/files/ftc_gov/pdf/antitrust-policy-for-the-conservative-meador.pdf), 1 May 2025 (“Meador”). Available at: [https://www.ftc.gov/system/files/ftc_gov/pdf/a](https://www.ftc.gov/system/files/ftc_gov/pdf/antitrust-policy-for-the-conservative-meador.pdf)

[ntitrust-policy-for-the-conservative-meador.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/antitrust-policy-for-the-conservative-meador.pdf).

⁴ I do not of course pretend to be an authoritative commentator on the scholarly and historic references in these speeches: I am writing as a European who has closely observed developments in U.S. antitrust for nearly three decades, and to provide some context that Europeans may be missing. These are of course only my views.

⁵ See <https://cristinacaffarra.blog/2024/12/09/trump2-will-shake-up-the-competition-safe-spaces/>.



following may be anticipating, and deserves some unpacking.

II. “THE REALIGNMENT”

“Realignment” is in fact what one hears everywhere in DC right now: the “America First” vision of antitrust enforcement, with a strong populist streak and an explicit recognition of the need to fight concentrated economic power (especially by digital giants) appears at first sight remarkably close to many of the “progressive” positions of Biden-era antitrust. And indeed there is a conscious effort to highlight these commonalities (e.g. at events such as YC’s DC conference last month, and at other events and gatherings). Finding common ground between otherwise polarized political camps on foundational issues such as concentrated power is perceived as important ultimately to deliver change.

III. WHAT IS, THEN, “AMERICA FIRST” ANTITRUST?

The two major speeches by Slater and Meador last week are important. They aim to lay out the intellectual foundations and set the tables for the next four years of “conservative” antitrust. While I inevitably simplify, strong common features are affirmation of “moral agency,” “freedom” and “individual liberty” as founding values “that define both conservatism and America” (Slater); a very strong “populist” streak – “America First Antitrust cares deeply about the average American in the heartland” (Slater); endorsement of the multiple economic tools the administration is experimenting with to deliver “America First” results (especially in trade). This includes a particular focus on concentrated economic power posing a threat to individual liberty, which are argued must

be tackled as vigorously as the traditional threat posed by political power. Meador makes the case strongly at the start of the piece:

“Despite our unanimity about the threat unchecked political power poses to individual liberty and self-governance, there has been a wilful blindness to how the acquisition and maintenance of economic power manifests in equally problematic ways. When economic relationships are shaped not by free exchange, but by coercion and exclusion, the distinction between private and public power erodes.” And *“concentrated economic power is just as dangerous as concentrated political power, and rightly ordered political power is a necessary and appropriate tool for restraining excessive economic power and preserving liberty”* (p.1).

A “populist” focus is something that progressives have certainly pursued with vigor during the Biden administration, but is also very much in line with President Trump’s election promises. There is a lot of language (particularly in Slater’s speech) about ordinary Americans being at the center, and the kitchen table issues that preoccupy them being a major enforcement focus – from jobs to groceries to housing to transportation to entertainment to healthcare (“pocketbook issues” as Slater describes them); on labor



being a primary focus for enforcement (“to defend ordinary Americans who need competition for their work to raise wages and improve working conditions”); on farmers, and on citizens not just as consumers. At times it seems hard to perceive much of a difference between these postures and the progressive view on these specific issues. As Slater puts it:

America First Antitrust empowers America’s forgotten men and women to shape their own economic destinies in the free market. We will stand for America’s forgotten consumers. We will stand for America’s forgotten workers. And we will stand for the small businesses and innovators, from Little Tech, to manufacturing, to family farms, that were forgotten by our economic policies for too long.

Next, there is endorsement of the Trump administration’s effort to reindustrialize America and reshore production to recreate jobs and revive communities – except the tool is upending the trade system rather than the major industrial policy spend of the Biden era. It confirms a view of antitrust as complementary to other policy tools (notably, trade) in reversing the decline in domestic manufacturing. As Slater says:

“...Some say that free trade and open borders result in a larger pie. But it begs the question as to the size of the slice that each community in our society

received. At the same time that global labor arbitrage traded American jobs for cheap manufacturing abroad, growing profit margins diverted the economic gains for many goods from American consumers and workers to our coastal elites. Too many communities hollowed out here in Indiana and across the nation. This hollowing out in turn created the conditions for a weakened middle class, fractured families, and in some cases deaths of despair. What was good for a few powerful global corporations, it turned out, was often bad for the dynamic businesses and innovators that made us the greatest nation on earth. It was also bad for the communities in which those businesses once thrived.

Treasury Secretary Scott Bessent recently said something incredibly important about all this. “Access to cheap goods,” he said, “is not the essence of the American dream.” The American Dream “is not ‘let them eat flat screens.’” Instead, he said, and I agree with this, that “The American dream is rooted in the concept that any citizen can achieve



*prosperity, upward
mobility, and economic
security.”*

This is a strongly-expressed call for a broad vision of “America First” beyond merely antitrust. It is especially remarkable from a European perspective, where antitrust is never discussed in the same breath as trade and economic policies more generally.

Europeans not conversant with the evolution of U.S. conservative thinking should also note the vocal espousal of the view that *concentrated corporate power is inimical to conservatives as much as the traditional concern about concentrated power of the state*. This is worth pausing on, again as something Europeans may not entirely appreciate in its profound significance. The traditional “GOP” conservative view had been that “big is bad” when it refers to “big government.” It has always been “axiomatic” (Meador) for conservatives that the *unchecked power of the state* poses a “threat to individual liberty and self-governance,” and this has been traditionally much more concerning than the economic power of corporations – essentially because businesses do not have the “monopoly on force” that the state has, and companies do not have the power to “determine political liberties or rights” (Meador p.5). This stance has profound roots in American history. Economic power, on the contrary, was not regarded as quite as pernicious in terms of threat to individual freedom and self-

determination as economic transactions are voluntary.

Things began to change in conservative thinking a few years ago. And a major part in the change has been played by the realization that even if “a corporation cannot compel anything at the point of a gun, [this] is cold comfort when it can cut you off from commerce, speech, and even your bank account” (Meador p. 5). Slater talks about “the emergence of new durable forms of monopoly power ... driving a Republican realignment away from big business and toward the working class that is reconnecting the party with its roots.” The power of tech monopolies in particular to control and censor free speech has been central to the expressed conservative view (supported by President Trump) that “concentration of power in the hands of too few” should be curbed, because indeed it undermines the fundamental right to freedom of speech.⁶

This concern has motivated a whole evolution in conservative thinking. For Europeans’ benefit, the reference for conservative intellectual legal thinking in the U.S. is the Federalist Society in Washington, DC, which holds events and discussions of enormous significance across the Republican legal world. Alida Kass, VP for Strategic Initiatives at the Federalist Society, has been greatly influential behind the scenes in shaping the evolution of the antitrust debate there, reverberating across conservative legal America. Ashley Keller, a highly respected attorney who clerked at the Supreme Court, made history with a famous debate

⁶ I am making no comment on how the conservative view of what constitutes “freedom of speech” may appear to Europeans, and *vice versa*. I am putting

forward what I believe to be the conservative justification for the position.



(organized by Kass) at the 2021 National Lawyers' Convention defending the motion "Is corporate power a greater threat to individual freedom in America than government power?"⁷

It is hard to overstate how important that event was for grounding the view that concentrated economic power is as much of an enemy to conservatives as government power. This has since become accepted wisdom among conservatives, and proponents of that view (especially the coercive power of Big Tech monopolies and their influence on our freedom of speech) are now in positions of influence in the administration (besides Slater, Meador and Ferguson, Alida Kass is now Senior Counsel in the Office of Legal Policy at DOJ, James Lloyd who led the antitrust case against Google AdTech in Texas working with Ashley Keller as attorney is now Deputy Policy Director to VP Vance, and of course Roger Alford was also at DOJ during Trump 1.0 as Head of International, later advised Texas in the Google AdTech litigation is now PD AAG).

What all of this means is that there is a strong view shared across the current administration that corporate power is problematic and needs checking through antitrust ("antitrust law exists to protect the people from the dangers of concentrated economic power," Meador p. 9). And indeed, both AAG Slater and Chair Ferguson have made very strong statements in support of continuing to pursue the DOJ Google complaints in the courts, and the FTC *Meta* and *Amazon* cases. There is no indication at this stage that this administration is watering down the effort of their predecessors in these

cases. On the contrary, there is clearly doubling down. Agency leadership have made also strong statements of their enforcement intentions against anticompetitive practices in labor markets, and of the resolution to investigate attempts to exploit tariffs of inflation for price gauging.

IV. FAITHFUL TO CONSERVATIVE PRINCIPLES

Both speeches do spend considerable time establishing the conservative credentials for their headline points. Foundational principles that matter a lot to conservatives include demonstrating one is faithful to the original letter and spirit of the antitrust laws and the Constitution; acknowledging that the power of the state is scary, hence small government and targeted interventions are always preferable even though there is now acceptance that "Tyranny.com" is as bad as "Tyranny.gov"; and "a healthy respect for textualism, originalism, and precedent" (Slater) – i.e. fealty to the letter of the law, as derived from the "will of Congress as interpreted by the courts," even as times change.

Both speeches make considerable efforts to reassure conservatives that what may appear in places like progressive antitrust views are perfectly consistent – nay, "mainstream" and "historically supported" – with conservative orthodoxy.

They both also reflect the sentiment that "conservatives should reject a laissez-faire and libertarian approach to antitrust law" because this means allowing economic power to

⁷ [2021 National Lawyers Convention](#).



“calcify into anarchistic private tyranny” (Meador p. 1). And they both make very expansive references to history, and scholarly analyses of concentrated economic power in original texts (from Madison to Jefferson to Hamilton to Roosevelt and of course Shearman, plus many more).

There is also clear recognition that neoliberalism failed and created major problems for American society. As Slater puts it,

“...Policymakers in Washington, D.C. voted for free trade agreements that shipped jobs overseas; they opened up our southern border to mass migration; and they underenforced our century-old antitrust laws for several decades. In D.C., these neoliberal policies are collectively referred to as the “Washington Consensus,” and they were the foundation of our economic policy for several decades. They were born out of the optimism that followed the end of the Cold War, sometimes referred to as “the end of history.” They promoted globalization and the financialization of the U.S. economy, and they initially spurred economic growth and prosperity. But that growth left many

Americans behind, which brings us to today.”

There is repeated reference to the multiple ways in which the power of private monopolies is bad for citizens, and as bad as government tyranny. This also opens into a clear statement of the conservative aversion to regulation which interferes with markets: “Conservatives abhor anticompetitive government regulations that unnecessarily sap the free markets of dynamism” (Slater). An Anticompetitive Regulations Task Force has been launched at the DOJ to push a deregulation agenda.⁸

V. HOW DOES THE VISION OF DILUTING POWER AND DECONCENTRATING MARKETS DIFFER FROM THE BRANDEISIANS’?

Meador in particular spends time on this point, to make clear that while there are apparent similarities, the conservative view has major differences with the Brandeisian view. He recognizes that the progressives’ concerns with concentrated corporate power have similarities with his own, but draws several distinctions. He argues that the primary aim of antitrust for progressives is to disperse economic power, for which they advocate for strong structural presumptions and bright line rules because “competition is inextricably linked to market structure” and concentration must be “prevented above all else” (Meador, p. 9). But he argues Justice Brandeis was not focused on market structure “for its own sake,” or

⁸ <https://www.justice.gov/opa/pr/justice-department-launches-anticompetitive-regulations-task-force>.



“size alone,” he was open to “context” in evaluating conduct.

He also sees the “modern progressive” stance as one that “entrusts courts with unrestricted discretion to “decentralize” industries (p. 11). This is anathema because “the role of the judge is to say what the law is, not what it should be” or to make tradeoffs which involve “political judgments” (p. 13). Indeed “Modern progressives advocate for far more than a simple preference for bright-line rules that favor deconcentration. Rather, their vision of antitrust law is closer to the “public interest” standard that many regulatory agencies employ in various industries — except that, in place of experts removable by a democratically elected President, it would give to unelected lifetime appointed judges oversight of the entire economy” (p. 12). This will likely be a point of future debate, as progressive commentators have already observed they disagree with the notion that Brandeisians want a more powerful judiciary and more power in the hands of judges.⁹

VI. A FEW MORE THINGS TO MENTION

There’s a few more things I want to call out further as they are important to the overall antitrust debate.

Rehabilitation of a “workable” consumer welfare? Meador provides a reformulation of consumer welfare as a goal: he explains how it has been miscast in the past and one can still be faithful to it in conservative antitrust if it is “correctly”

interpreted. He argues that Robert Bork’s “obsession with economic efficiency” (p. 14) as the purpose of antitrust enforcement was misplaced, and his equation of consumer welfare as narrowly relating to economic efficiency did not align with Congress’s. Consumer welfare remains “the standard for interpreting the antitrust laws,” but should be correctly re-defined as “net benefit to real consumers, which includes trading partners.” Meador argues for preserving “a workable definition of consumer welfare” as the goal of antitrust, because placing in the hands of judges the task of pursuing other goals at their own discretion (“weighing social, political, and economic equities among competing constituencies without any grounding principles or guidance” is deeply unpalatable.

I do not love the resuscitation of consumer welfare as “the standard,” as the least productive part of the antitrust debate of the last few years seemed to me to churn around this idea. To the extent this is also a way to argue that the goals of antitrust must remain narrow, I also do not see how this is consistent with a broader populist lens. I welcome however the recommendation we should be more concerned with avoiding Type II errors than Type I – i.e. we should worry much more about underenforcement than about overenforcement. This is a novel position for conservatives and certainly a very pro-enforcement one.

Putting economists in their place. I love Meador’s clear statement that economic analysis has been often “fetishized” (p.26), and notwithstanding

⁹ See <https://x.com/danielahanley/status/1918305410483720269> and

<https://x.com/sandeepvaheesan/status/1918392843762106655?s=46>.



their self-importance and ivory tower, economists are just “servants, not masters” in the analysis. “Conservatives must rehabilitate the understanding of the law as primarily an exercise in law and policy and morality, not in economics” (p. 26). The law is all that matters, with internal documents and factual evidence way more important than any economic elucubration (“economics is not a scientific tool” – yes!). Slater expresses similar sentiments. This is the direction things have taken for some time, and no one more than me favors debunking the status of economists as purveyors of anything “scientific.”

Agencies’ fixation on the innovation myth. Meador spends some time also debunking the myth that “innovation” is a worthwhile value for antitrust to pursue *in and of itself*. I very much support this. Because in Europe the mantra has been for some time that only competition delivers true innovation, and the enforcement of competition is therefore the purest of endeavors motivated by the higher purpose of driving innovation. No one can dare question that premise: it’s a “motherhood and apple pie” statement that justify our regulators doing nothing different ever because – you know – anything that interferes with the pursuit of competition will undermine innovation. The reason I find this irritating is because competition is not a value in itself, nor is innovation. Meador is not transfixed by innovation as a magic word – innovation is a means to an end, “not all that is innovative is good – let alone legal” (p. 28). What matters is *outcomes*, i.e. whether

people and businesses ultimately benefit from equitable growth.

VII. SO WHERE ARE WE?

Two important speeches in the same week complemented Chair Ferguson’s earlier personal vision of antitrust enforcement in the Trump era. Wherever one stands, the intellectual debate around antitrust is always so much richer in the U.S. than in Europe, where we continue to tell each other all is good and we are doing everything right. There’s a lot for Europeans to unpack to begin to understand “America First” antitrust. It is certainly not a return to 20 years ago – an elitist, technocratic, Chicago inspired view of the world, even though the aperture in some dimension may be narrowing (rescuing consumer welfare as a neutral benchmark to save us from judicial discretion is somewhat problematic to me – though I understand the motivation). The fight against digital tech monopolies at home seems set to continue no matter how much they bend the knee to the President (though of course all remains to be seen, and might help them abroad).

Europe is not even a glimpse in anyone’s eye at this point in the U.S. In the words of Julius Krein at my January conference, the Trump administration cares even less about Brussels than its predecessors did. There is major geopolitical change underway, with the U.S. indeed even less inclined to care about Europe and what happens over here. European antitrust regulators may hope to still get a certain amount of attention from their U.S. counterparts, but it is clear the baton of antitrust enforcement against Big Tech is now much more in the hands of U.S. agencies and the courts, and meaningful results (if any) will only come from there.



European regulation will continue to get short shrift and be a cause of friction. Much of course remains to be seen – how specific cases and issues will unfold, whether mergers will recover and how they will be dealt with. But again, how we deal with tech monopolies will be decided mostly in the U.S. Europe will do a few damages cases in digital which will settle and send a few damage seekers (and their advisors) to the beach. We will struggle for growth, and pursue sovereignty in defense and digital because we have no choice. Wish us luck.