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Pier Pressure:
Regulation and Competition in Maritime Shipping

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Before the United States House of Representatives
House Judiciary Subcommittee on the
Administrative State, Regulatory Reform, and Antitrust

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I. Introduction

Thank you Chair Fitzgerald, Ranking Member Nadler, and Members of the Subcommittee. It is an honor to be here today to lend the Progressive Policy Institute's (PPI's) perspective to the issue of competition and regulation in maritime shipping, with a focus on the state of competition between ocean carriers and the merits of the Shipping Act antitrust exemption.

PPI is a catalyst for policy innovation and advocates for competition policies that support consumers and workers, with pragmatic proposals that champion the economic prospects and outlook for working Americans.[1] PPI applauds House lawmakers for turning their attention to competition issues in a critical transportation market that has a direct impact on the cost of living for American consumers.

II. The Antitrust Laws Play a Vital Role in Protecting Competition and Consumers

Competition is the lifeblood of a market system. Access to markets, choice, and fair terms of trade are hallmarks of competition for consumers, workers, and smaller businesses. The benefits of competition are tangible. The engines of economic activity and growth run at fuller throttle, income and wealth are more equitably distributed, and consumers achieve a better standard of living.

In both theory and practice, markets that feature hard-nosed rivalry are the most likely to produce fair prices and wages, higher product and service quality, and more innovation and economic opportunity and growth. These markets stand in stark contrast to those where dominant players or tight oligopolies wield market power to stifle competition, and restrict choice and market access.

[1] For more information, please see www.progressivepolicy.org.

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The U.S. antitrust laws play a vital role in promoting competition in a market economy. The U.S. Department of Justice (DOJ), Federal Trade Commission (FTC), state Attorneys General, and private antitrust enforcers serve as "referees" on the playing field of markets. Enforcers call the "balls and strikes" on what the law deems to be pro-competitive, versus anticompetitive, consolidation and business practices that harm consumers and workers. The federal U.S. antitrust agencies enforce the Sherman and Clayton Acts, while the FTC also enforces the Federal Trade Commission Act.[2]

Under these statutes, antitrust enforcers, and ultimately the courts, ensure that consumers and workers are not harmed by mergers that substantially lessen competition, dominant firm conduct that squeezes out smaller rivals, and agreements to fix prices (or wages) or divide up markets. The prevailing consumer welfare standard captures these effects, ranging from higher prices or lower wages, to reduced product and service quality, and slower innovation.

The importance of enforcement of the U.S. antitrust laws is widely acknowledged by both Democrats and Republicans. For example, the bipartisan Antitrust Modernization Commission, established by Congress in 2002, produced a final report in 2007, stating: "The antitrust laws stand as a bulwark to protect free-market competition. They prohibit anticompetitive restraints that harm consumer welfare."[3]

III. Statutory Exemptions to the Antitrust Laws Displace Competition and the Goal of Promoting Consumer Welfare

Congress has created a number of exemptions, in whole or in part, to the U.S. antitrust laws.[4] Such decisions are based on the idea that the costs of displacing competition and promoting consumer welfare in a sector or market are exceeded by the benefits of promoting other societal goals. These goal might include worker protection, reducing destructive price wars, increasing the stability of supply chains, promoting investment and innovation, encouraging standardized practices and coordinated services, and improving bargaining power for smaller market participants.

Congressionally-mandated exemptions to the antitrust laws in some sectors and markets include (1) full statutory exemptions and (2) statutory exemptions created as part of a regulatory regime.[5] In the first case, economic activity in a market is fully exempted from application of the antitrust laws. In the second case, exemptions apply to certain types of conduct, for example, under an existing regulatory regime.[6]

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[2] 15 U.S.C. §§ 1–7**,** 5 U.S.C. § 18, and 5 U.S.C. §§ 41–58**.**
[3] Antitrust Modernization Commission, Report and Recommendations, 2007, at pp. 334 and 348, https://govinfo.library.unt.edu/amc/report_recommendation/chapter4.pdf.
[4] Id., see Annex A, p. 378.
[5] Id., Chapter IV.B.
[6] A third type of antitrust immunity is a judicially created exemption, such as the filed rate and state action doctrines.

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Leading statutory exemptions to the antitrust laws include the Capper-Volstead Act, which exempts cooperative associations that process, handle, and market agricultural products.[7] There is also the Sports Broadcasting Act, which exempts professional sports leagues that collectively negotiate television deals as a single entity, versus a collection of competing teams.[8] The Webb-Pomerene Export Act exempts the formation of associations to fix prices, divide up markets, or engage in other cartel-like activities for the purpose of selling products in foreign markets.[9]

High profile examples of statutory exemptions created as part of a regulatory regime include The Shipping Act, which is the subject of today's hearing exempts an array of agreements filed with the Federal Maritime Commission (FMC).[10] These include those established by shipping "conferences," or groups of competing ocean liner shipping companies, that agree to specific terms of service, including fixing rates. There is also the air transportation exemption, which exempts joint venture agreements, subject to approval by the U.S. Department of Transportation (DOT), between international airlines to set rates on overlap routes.[11]

As high profile as statutory antitrust exemptions are, it is important to note that Congress has been careful at times to specify proactively in statutes that application of the federal antitrust laws is *not precluded*. Explicit antitrust "savings clauses," or language stating so in effect appear, for example, in the Dodd-Frank Act[12] and Federal Power Act.[13] By doing so, Congress ensured comprehensive competition enforcement across both federal sector regulation and an antitrust authority.

IV. There is Growing Advocacy and Evidence For Repealing Antitrust Exemptions

Antitrust exemptions can facilitate anticompetitive consolidation and business practices that harm consumers. These include exemptions from antitrust liability for collusive pricing and rate-setting agreements, anticompetitive market allocation, and cooperatives for joint marketing, processing and distribution of commodities that squeeze out smaller market players. In protecting anticompetitive activity through antitrust exemptions, Congress has explicitly weighed harm to consumers against the economic, social, or regulatory benefits created by displacing competition.

The private rewards from an antitrust exemption are enormous. They come in the form of weak, if any, incentives to compete on the merits, squeezing out smaller rivals, and monopoly and oligopoly profits. This protection spurs ongoing efforts to retain

[7] 7 U.S.C. §§ 291–92.
[8] 15 U.S.C. §§ 1291–95.
[9] 15 U.S.C. §§ 61–66.
[10] 46 U.S.C. app. §§ 1701–19.
[11] 49 U.S.C. §§ 41308–09, 42111.
[12] 12 U.S.C. § 5303.
[13] 16 U.S.C. § 2603.

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exemptions and even to create new ones. Lawmakers, the courts, and antitrust enforcers have stressed for decades that antitrust exemptions should be disfavored.[14] This includes outright repeal, rapid sunset provisions, and the narrow construction of the language of exemptions. Some jurisdictions have already acted on these imperatives. For example, the European Union terminated its exemption for shipping conferences in 2006.[15]

There are a number of compelling arguments for why antitrust exemptions should be disfavored. First, the benefits of exemptions accrue to small groups of stakeholders. However, the costs of displacing competition are passed through to potentially enormous groups of consumers through restrictions on market output, higher commodity prices from anticompetitive agreements or the exclusion of smaller rivals, lower quality and service, and less innovation.

Second, there is a growing body of evidence that indicates that antitrust exemptions do not pass the cost-benefit test. For example, there are 13 DOT-authorized antitrust immunized alliances that exempt joint venture agreements between airlines to coordinate on fares, scheduling, and capacity on trans-oceanic routes.[16] But a growing body of economic research shows that the costs to consumers of higher fares from the elimination of competition on overlapping routes are not outweighed by benefits of coordination in other parts of airline networks.[17]

Third, many of the sectors and markets that enjoy antitrust exemptions have become more concentrated over time including, notably, shipping, railroads, and airlines. Higher levels of concentration virtually guarantee that antitrust exemptions will cover most industry participants and ensure that prices are uniformly higher as a result of anticompetitive coordination.

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[14] See, e.g., Deputy Assistant Attorney General Dina Kallay Delivers Virtual Remarks at the 2025 Chatham House Competition Policy Conference on Competition in the Airline Industry, U.S. Department of Justice, Nov. 20, 2025, https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-dina-kallay-delivers-virtual-remarks-2025-chatham.

[15] Press Release, European Union, Competition: Repeal of Block Exemption for Liner Shipping Conferences-Frequently Asked Questions (Sept. 25, 2006), http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/344&format=HTML&aged=l&language=EN&guiLanguage=en.

[16] U.S. Department of Transportation, List of Active Antitrust Immunized Alliances *(*last updated 11/18/2025)*,* https://www.transportation.gov/office-policy/aviation-policy/dot-aviation-antitrust-immunity-cases. See also, Diana L. Moss Revisiting Antitrust Immunity For International Airline Alliances, Am. Antitrust Inst., Mar. 28, 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3332651.

[17] William Gillespie and Oliver M. Richard, Antitrust Immunity and International Airline Alliances, U.S. Department of Justice, Economic Analysis Group, EAG-11 (Feb. 2011), https://www.justice.gov/atr/antitrust-immunity-and-international-airline-alliances?

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V. The Antitrust Exemption in The Shipping Act

The Shipping Act contains one of the oldest antitrust exemptions on the U.S. books. The Act "…expressly confers an exemption from the antitrust laws for agreements on shipping rates, pooling arrangements, and shipping route allocations, so long as those agreements are first submitted to and reviewed by the FMC."[18] These arrangements occur within the ocean shipping "conferences," or cartelized collectives of ocean shippers that are immunized from antitrust liability, for example, for rate discussing agreements, capacity management, vessel sharing agreements, scheduling, and information sharing.

The FMC has questioned the applicability of the antitrust exemption for some agreements filed under The Shipping Act. This includes, most recently, a decision that cancelled provisions under the World Shipping Council's proposed Cooperative Working Agreement based on exceeding the scope of the statute's antitrust exemption.[19] The Shipping Act has also been the subject of scrutiny, including most recently, The Ocean Shipping Reform Acts of 1998 and 2021.[20]

These decisions and legislation, however, do not fully address the ill effects of the antitrust exemption for ocean shipping that has raised concerns for years.[21] The DOJ has "long taken the position that the general antitrust exemption for international ocean shipping carrier agreements is no longer justified."[22] The container shipping industry is now highly concentrated. In 2002, the top four ocean carriers controlled about 30% of the market.[23] Today, they control about 60% of the market. However, the 10-13 global ocean carriers are organized into three major alliances--2M Alliance, Ocean Alliance, and THE Alliance[24]--that control over 80% of capacity and 90% of trade to and from the U.S.[25]

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[18] Working Party No. 2 on Competition and Regulation, Competition Enforcement and Regulatory Alternatives – Note by the United States, OECD, Jun. 7, 2021, https://www.justice.gov/atr/media/1347631/dl?inline. See also, Peter Carstensen, Replacing Antitrust Exemptions for Transportation Industries: The Potential for a 'Robust Business Review Clearance, 89 Oregon L. Rev. (2011), https://ssrn.com/abstract=3260696,

[19] FMC Draws a Line on Carrier Coordination: Implications of the Commission's WSC Agreement Order, Holland & Knight, Mar. 12, 2026,https://www.hklaw.com/en/insights/publications/2026/03/fmc-draws-a-line-on-carrier-coordination.

[20] Federal Maritime Commission, Ocean Shipping Reform Act of 2022 Implementation, https://www.fmc.gov/ocean-shipping-reform-act-of-2022-implementation/.

[21] See, e.g., Erika, M. Douglas, Antitrust Abandonment, 42 Yale J. On Regulation (2025).

[22] Letter from Renata B. Hesse, Acting Assistant Attorney General, to Secretary, FMC, Re: The OCEAN Alliance Agreement, at 2, FMC No. 012426, Sept. 19, 2016, https://www.justice.gov/atr/file/909131/dl?inline=.

[23] Dylan Gyauch-Lewis and Mekedas Belayneh, Shipping Cartels Are Spiraling Out Of Control. The Agency Set To Regulate Them Doesn't See The Problem, Revolving Door Project, Mar. 28, 2022, https://therevolvingdoorproject.org/shipping-cartels-are-spiraling-out-of-control-the-agency-set-to-regulate-them-doesnt-see-the-problem/.

[24] Giannis Nikolakis, Global Container Rankings by TEU Capacity, May 27, 2025, https://container-news.com/container-lines-rankings-2025/.

[25] Wyatt Fore, A Rising Tide for Competition Enforcement: The Federal Maritime Commission Revitalizes its 'Anti-Monopoly' Tradition, 38(1) Antitrust Magazine Fall 2023,

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At these high levels of concentration, anticompetitive coordination between firms on prices, schedules, and capacity is presumptively illegal under the antitrust laws. An antitrust exemption is particularly troubling for consumer commodities where transportation costs are both passed through, and account for a significant portion of the final price to consumers.[26] Transportation costs account, for example, for 13% of food prices, 16% of lumber and wood prices, and 8% for textile prices.[27] About sixty percent of global trade relies on containerized oceanic shipping.[28]

Continuing to protect anticompetitive conduct in a highly concentrated industry like ocean shipping guarantees that shipping rates will be at oligopoly levels and that those rates will be passed on to U.S. consumers for commodities that transit in U.S. foreign trade. Moreover, increases in container fees that apply across the board, higher detention and demurrage charges, additional logistics costs on trucking and shipping intermediaries have an outsized effect on smaller players. This reduces their ability to apply competitive pressure on pricing and service quality. This calls into question—much like in the case of the international airline alliances—whether the harmful effects of exemptions outweigh the purported benefits.

Collectively, these arguments make a strong case for why Congress should consider repealing the antitrust exemption in The Shipping Act. Because many of these arguments also apply to exemptions in other sectors and markets, Congress may also be well-positioned to consider broader reform, across the collection of antitrust exemptions currently on the books.

VI. The Problems With Antitrust Exemptions Put Competition Front and Center in U.S. Economic Policy

It is hard to frame public policy discourse about the high cost of living in the U.S. without considering the broader role of competition and antitrust enforcement as a major tool for protecting consumers and workers. Consumers and the dollars they spend are the backbone of the U.S. economy. For example, almost 70% of spending in the U.S.

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https://www.americanbar.org/groups/antitrust_law/resources/magazine/2023-fall/rising-tide-for-competition-enforcement/.

[26] Leslie Sheng Shen and Hillary Stein, The Impact of Global Shipping Cost Surges on US Import Price Inflation, Federal Reserve Bank of Boston, Nov. 14, 2024, https://www.bostonfed.org/publications/current-policy-perspectives/2024/the-impact-of-global-shipping-cost-surges-on-us-import-price-inflation.aspx.

[27] Share of Transport Costs in Product Prices and Average Domestic Haul Length, The Geography of Transport Systems, https://transportgeography.org/contents/chapter3/transportation-and-economic-development/transport-costs-prices-domestic-haul-united-states/.

[28] A perfect storm for container shipping: Will prolonged disruptions shift the pattern of trade?, The Economist, Sept. 16, 2021, https://www.economist.com/finance-and-economics/a-perfect-storm-for-container-shipping/21804500.

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economy in the first quarter of 2024 was attributable to personal consumption expenditures.[29]

Congress is, without doubt, aware of how certain policies adversely affect competition and consumers. For example, a recent Progressive Policy Institute (PPI) study raises concerns that antitrust is not doing enough to protect consumers from the exercise of market power in critical markets.[30] For example, consumers allocate most of their budgets to five major categories of goods and services: housing, transportation, food, insurance and retirement, and health care. Together, these categories accounted for about 75% of total consumer spending between 2020-2023.[31]

However, these consumer-facing sectors have faced decades of consolidation and rising concentration, sluggish growth in productivity, and bottlenecked supply chains that contribute to high consumer prices.[32] Merger enforcement is considered the "first line of defense" in heading off high concentration that can foster the emergence of dominant firms and tight oligopolies. Yet the most consumer-facing sectors in the U.S. economy exhibit a lackluster record of merger enforcement.[33]

Another emergent problem is the pattern of recent, early settlements in antitrust cases when a fully-litigated trial and strong remedies for restoring competition would have served consumers far better in lowering prices. For example, the DOJ settled two antitrust cases with remedies that are actually likely to *harm* consumers. One is the Hewlett Packard-Juniper Networks merger.[34] The DOJ initially intended to seek an injunction to stop the merger, which would have created intense pressure to raise prices in the market for local area networks, driving up costs for businesses. But the case was abruptly settled with a small divestiture that is highly unlikely to restore competition in a way that protects consumers.

Just last week, a similar settlement emerged in the DOJ and state antitrust case against Live Nation-Ticketmaster.[35] The case is one of the largest and most important antitrust monopolization cases in the U.S. Only a few days into trial in the Southern District of New York, the DOJ announced a settlement with remedies that will do little to restore competition in ticketing and reduce high ticket fees to consumers. Only a full break-up of

[29] How Does Consumer Spending Impact the Health of the Economy?, US Bank, October 11, 2024, https://www.usbank.com/investing/financial-perspectives/market-news/consumer-spending.html.
[30] Diana L. Moss, Can Antitrust Be Doing More to Protect Consumers? Progressive Policy Institute, December 2024, https://www.progressivepolicy.org/wp-content/uploads/2024/12/PPI-Antitrust-Consumers-1210.pdf.
[31] Id.
[32] Moss, supra note 29.
[33] U.S. Dept. of Justice and Fed. Trade Commn., 2023 Merger Guidelines, December 18, 2023, https://www.justice.gov/atr/merger-guidelines.
[34] U.S. v. Hewlett Packard Enterprise Co. and Juniper Networks, Inc., Case 3:25-cv-00951 (N.D. Cal.).
[35] U.S. and Plaintiff States v. Live Nation Entertainment, Inc and Ticketmaster L.L.C., 1:24-cv-03973-AS (S.D.N.Y.).

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the company, which now appears out of reach, would have delivered relief to consumers. This abrupt settlement also effectively shut out the 40 states and District of Columbia AGs that are seeking relief for years of monopoly ticketing fees.

Finally, the DOJ filed an antitrust case last year against digital rental housing platform RealPage.[36] The case alleged that prices for apartment rentals were fixed at anticompetitive high levels through the use of a digital algorithmic price fixing scheme on the RealPage platform. Rather than litigate the case to an outcome that would have produced strong remedies to restore competition, the DOJ settled the case early with remedies that will be almost impossible to enforce.

Current policies that harm competition and hit consumers hard in their pocketbooks and paychecks do not stop with antitrust. Tariffs imposed on imported commodities over the last year under the International Emergency Economic Powers Act (IEEPA) have, according to the Digital Data Design Institute's Tariff Tracker, raised the price of imported consumer goods subject to tariffs by about 7.0%, and the price of similar locally produced goods by about 4.6%.[37] Based about $21 trillion in U.S. total personal consumption spending for 2025, this reflects about $410 billion in extra costs paid by U.S. consumers.[38]

Just as concerning is how tariffs reduce the competitiveness of U.S. producers. Tariffs increase the costs of imported materials, parts, and components. They drive up the cost of finished U.S. goods relative to foreign alternatives. This harms U.S. producers and has negative spillover effects on labor and innovation markets—effects that can be long term and damaging to U.S. competitiveness. Retaliatory tariffs in response to U.S. tariffs have also decimated certain sectors, like soybeans, by eliminating markets for exports that U.S. farmers rely on for long-term income security.

The foregoing antitrust enforcement trends and other policies that directly and adversely affect competition in the U.S. do a disservice to consumers. Congress has enormous resources to exercise oversight over the DOJ and the FTC through appropriations and inquiries into what antitrust concerns the agencies pursue, and how they pursue them. PPI encourages Congress to take a proactive role in ensuring that antitrust enforcement and competition policy in the U.S. works for consumers by keeping competition healthy, reining in market power, and keeping the cost of living down.

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[36] U.S. v. Realpage, Inc., 1:24-cv-00710, (M.D.N.C.).
[37] Digital Data Design Institute, Tariff Tracker, https://www.pricinglab.org/tariff-tracker/.
[38] Ed Gresser, Supreme Court: Presidents cannot use 'international emergencies' as pretexts to create their own tariff systems, Progressive Policy Institute, Feb. 25, 2025, https://www.progressivepolicy.org/supreme-court-presidents-cannot-use-international-emergencies-as-pretexts-to-create-their-own-tariff-systems/.

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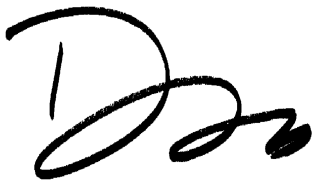
I appreciate the opportunity to submit testimony for this hearing and look forward to answering questions from the committee members.

Respectfully submitted,



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