On Friday, April 17, 2020, ICLE President and Founder, Geoffrey A. Manne, submitted written testimony to the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law. Mr. Manne contends that underlying much of the contemporary antitrust debate are two visions of how an economy should work.

> One vision, which tends to favor more intervention and regulation than the status quo, sees the economy and society as being constructed from above by laws and courts. In this view, suspect business behavior must be justified to be permitted, and . . . the optimal composition of markets can be known and can be designed by well-intentioned judges and legislators.
>
> On the other hand, there is the view of individual and company behavior as emerging from each person's actions within a framework of property rights and the rule of law. This view sees the economy as a messy discovery process, with business behavior often being experimental in nature. This second conception often sees government intervention as risky, because it assumes a level of knowledge about the dynamics of markets that is impossible to obtain.

In Manne's view,

> Antitrust law and enforcement policy should, above all, continue to adhere to the error-cost framework, which informs antitrust decision-making by considering the relative costs of mistaken intervention compared with mistaken non-intervention. Specific cases should be addressed as they come, with an implicit understanding that, especially in digital markets, precious few generalizable presumptions can be inferred from the previous case. The overall stance should be one of restraint, reflecting the state of our knowledge. We may well be able to identify anticompetitive harm in certain cases, and when we do, we should enforce the current laws. But dramatic new statutes that undo decades of antitrust jurisprudence or reallocate burdens of proof with the stroke of a pen are unjustified.

Manne goes on to address several of the most important and common misperceptions that seem to be fueling the current drive for new and invigorated antitrust laws. These misperceptions are that:

1. We can infer that antitrust enforcement is lax by looking at the number of cases enforcers bring;
2. Concentration is rising across the economy, and, as a result of this trend, competition is declining;
3. Digital markets must be uncompetitive because of the size of many large digital

platforms;
4. Vertical integration by dominant digital platforms is presumptively harmful;
5. Digital platforms anticompetitively self-preference to the detriment of competition and consumers;
6. Dominant tech platforms engage in so-called “killer acquisitions” to stave off potential competitors before they grow too large; and
7. Access to user data confers a competitive advantage on incumbents and creates an important barrier to entry.

See his full testimony, here.