

## The Federal Trade Commission's Request for Information (RFI) on the Identification of Anticompetitive Regulations That Fall Within the Scope of Section 3(a) of the President's April 9, 2025, Executive Order on Regulatory Barriers

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Request for Public Comment Regarding Reducing Anticompetitive Regulatory Barriers

Agency: Federal Trade Commission

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Docket No. FTC-2025-0028

We are pleased to respond to the Request for Information (RFI) from the Federal Trade Commission (FTC or Commission),<sup>1</sup> for comments on the identification of anticompetitive federal regulations, as defined in section 3(a) of the President's April 9, 2025, Executive Order on Anti-Competitive Regulatory Barriers.<sup>2</sup> That Order establishes key roles for the FTC and the U.S. Department of Justice (DOJ) in promoting procompetitive federal regulatory reform. We trust that the views we express may prove helpful to the FTC and the DOJ.

Founded in 1980, the Mercatus Center at George Mason University is a premier university-based source for market-oriented ideas, bridging the gap between academic thinking and real-world problems. It advances knowledge about how markets work to improve people's lives through graduate training, research, and the application of economics to society's most pressing challenges. The Mercatus Center's mission is to generate knowledge and understanding of the institutions that shape the freedom to prosper and to find sustainable solutions that overcome barriers that prevent individuals from living free, prosperous, and peaceful lives. This comment, therefore, does not represent the views

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<sup>1</sup> Federal Trade Commission, "Request for Public Comment Regarding Reducing Anti-Competitive Regulatory Barriers" (April 14, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P859900AnticompetitiveRegulationsRFI.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P859900AnticompetitiveRegulationsRFI.pdf).

<sup>2</sup> The White House, Executive Order on Reducing Anti-Competitive Regulatory Barriers (April 9, 2025) (WH Order), <https://www.whitehouse.gov/presidential-actions/2025/04/reducing-anti-competitive-regulatory-barriers/>. In these comments, we employ the more commonly-used spelling "anticompetitive" instead of "anti-competitive."

of any particular affected or special interest group; it is intended to assist the FTC in its decision-making.

One of the authors of this response is Alden Abbott,<sup>3</sup> a senior research fellow at the Mercatus Center. His research focuses on competition policy, regulation, international trade, and intellectual property. He is a former general counsel of the FTC (2018–21) and an adjunct professor at the Scalia Law School at George Mason University.

Coauthor Shanker Singham<sup>4</sup> is one of the world's leading international trade experts and CEO of Competere Group. He is a recognized author and adviser and is cochair of the Growth Commission, a non-partisan group of international economists focused on how to deliver economic growth in the G7 and other leading Western nations. Singham has worked on anticompetitive market distortions (ACMDs) and the effort to reduce trade barriers around the world.

Competere Group<sup>5</sup> is a trade law and economic policy consultancy and an established thought leader in its field. It advises clients in the areas of international trade law and policy including customs, competition, and regulatory law and policy, as well as economic policy during these times of rapid geopolitical and geoeconomic change.

We have two recommendations for the Commission's consideration:

1. We recommend that, in reviewing agency regulations for anticompetitive features, the FTC and the Department of Justice jointly urge federal agencies<sup>6</sup> to employ the Organization for Economic Cooperation and Development (OECD) Competition Assessment Toolkit.
2. We recommend that, in developing a consolidated list of anticompetitive regulations for repeal or modification,<sup>7</sup> the FTC consider applying an econometric model recently developed by Shanker Singham and his colleagues to evaluate ACMDs.<sup>8</sup>

## Discussion

1. The Federal Trade Commission should urge federal agencies to employ the OECD Competition Assessment Toolkit.

The Competition Assessment Toolkit was developed by the OECD to help governments identify and remove unnecessary restrictions on competition, fostering more competitive markets and dynamic economies. The OECD is an intergovernmental research organization founded in 1961,<sup>9</sup> and the United States was one of its founding members. Member countries support the OECD financially and participate in its work through subject-matter-specific committees.

The OECD Council is the organization's overarching decision-making body, composed of representatives from all member countries and the European Commission. The OECD Council is

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<sup>3</sup> See Mercatus Center Scholars, Alden Abbott, <https://www.mercatus.org/scholars/alden-abbott>.

<sup>4</sup> See Competere, About Us, <https://competere.co.uk/shanker-singham-trade-expert-bio/>.

<sup>5</sup> See About Competere, <https://competere.co.uk/>.

<sup>6</sup> Section 3 of the WH Order, note 1 *supra*, directs all federal agencies to carry out reviews of their regulations, in consultation with the FTC and the Department of Justice (DOJ). The WH Order covers all federal agencies exercising executive functions, including independent agencies.

<sup>7</sup> Section 3(e) of the WH Order, note 1 *supra*, orders the FTC, in consultation with the White House, the DOJ, and federal agencies, to provide the Office of Management and Budget with "a consolidated list of regulations that warrant rescission or modification in light of their anti-competitive effects, along with recommended modifications."

<sup>8</sup> See Shanker Singham, "How to foster growth by advancing Anti-Competitive Market Distortion-focused trade policy reform in the United States," The Growth Commission (April 2025), <https://www.growth-commission.com/>.

<sup>9</sup> See OECD, Who we are, <https://www.oecd.org/en/about.html>.

chaired by the OECD Secretary-General and meets regularly to discuss key work, share concerns, and make decisions by consensus. An annual Ministerial Council Meeting brings together heads of government, economy, trade, and foreign ministers to set priorities and discuss global issues.

A November 2019 Recommendation of the Council on Competition Assessment<sup>10</sup> (joined by the United States) urged that “[g]overnments should introduce an appropriate process to identify existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for competition assessment, including the preparation of screening devices.” The Recommendation also urged that “[g]overnments should introduce an appropriate process for revision of existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for evaluating suitable alternatives.” The Council added that implementation of the Recommendation would be supported through application of an OECD Competition Assessment Toolkit (Toolkit).<sup>11</sup> Toolkit guidance is set forth in three volumes.

The first volume sets forth the Toolkit principles, describing the benefits of competition and introducing a competition checklist and its role in the competition assessment process. The checklist provides four principles for identifying anticompetitive regulations, focusing on provisions that (1) limit the number or range of suppliers; (2) limit the ability of suppliers to compete; (3) reduce the incentives of suppliers to compete; and (4) limit the choices and information available to consumers. The first volume provides a detailed analytical methodology for evaluating regulations that raise anticompetitive concerns based on the checklist.

The second and third volumes present the Toolkit’s implementation procedures. The second volume provides detailed technical guidance on key issues to consider when performing a competition assessment. The third volume is an operational manual, which provides a step-by-step process for performing competition assessment.

Both individual countries and OECD analysts carrying out discrete projects have used the Toolkit to assess policies and regulations for their potential impact on competition. According to the OECD, member countries Canada, South Korea, and Mexico have incorporated the Toolkit into their competition assessment processes.<sup>12</sup> Brazil, Greece, Iceland, Mexico, Portugal, Romania, Tunisia, Iceland, and ten Association of Southeast Asian Nation (ASEAN) countries have also used the Toolkit to assess competition-distorting rules in various sectors.<sup>13</sup> In Tunisia, OECD analysts used the Toolkit to assess Tunisian government regulations in the tourism sector, and the Organization identified burdens related to licensing and operational requirements.<sup>14</sup>

In sum, the Toolkit is the most widely used instrument worldwide for assessing the impact of regulations on competition. U.S. federal agencies could benefit from OECD reports that describe the experiences of individual countries employing the Toolkit. The FTC and the DOJ may also benefit

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<sup>10</sup> See OECD, Recommendation of the Council on Competition Assessment (Nov. 2019), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0455>.

<sup>11</sup> See OECD, *The OECD Competition Assessment Toolkit*, <https://www.oecd.org/content/dam/oecd/en/about/programmes/grc/grc-see/integrity/Competition-Toolkit-Policy-Briefing-Note.pdf>.

<sup>12</sup> See OECD, *The OECD Competition Assessment Toolkit*, <https://www.oecd.org/content/dam/oecd/en/about/programmes/grc/grc-see/integrity/Competition-Toolkit-Policy-Briefing-Note.pdf>.

<sup>13</sup> See OECD, “Competition Assessment,” <https://www.oecd.org/en/topics/sub-issues/competitive-and-fair-markets/competition-assessment.html>.

<sup>14</sup> See OECD, “OECD Competition Assessment Reviews: Tunisia 2023,” [https://www.oecd.org/en/publications/oecd-competition-assessment-reviews-tunisia-2023\\_a80cda01-en.html](https://www.oecd.org/en/publications/oecd-competition-assessment-reviews-tunisia-2023_a80cda01-en.html).

from consulting with scholars who have expertise using the Toolkit when developing guidance for federal agencies.<sup>15</sup> Such consultations could assist the FTC and the DOJ in evaluating whether Toolkit analysis should be tailored to better meet the needs of federal agencies.

2. The FTC, in consultation with the Department of Justice, should consider applying an econometric model recently developed by Shanker Singham and his colleagues while creating a list of anticompetitive regulations for potential repeal or modification.

The various models were developed by Singham and his colleagues to enable agencies to review the impact of anticompetitive market distortions, including anticompetitive regulation on GDP per capita. We developed an econometric framework known as the SRB-CE<sub>≥</sub> model to analyze these distortions. Central to the model is the notion that a competitive, high-growth economy relies on three fundamental pillars: property rights protection, domestic competition, and international competition. The pillars are interdependent, and any weakness in one undermines the others and reduces their productivity. The main components of the model are explained below:

- **Property Rights Protection:** A well-functioning economy depends on strong property rights. When rights to land, intellectual property, or assets are insecure, investment declines, and economic agents lose incentives to innovate. Effective property rights ensure productivity by enabling the creation, improvement, and transfer of assets. Weak property rights lead to economic stagnation, particularly in developing nations where legal enforcement remains inconsistent.
- **Domestic Competition:** A competitive domestic market fosters innovation, efficiency, and consumer benefits. The ACMD model measures how government policies either enhance or restrict firm-level competition. Over-regulation or government favoritism can reduce competition, undermining market efficiency. However, regulations addressing market failures (e.g., monopolistic behavior or environmental damage) can be beneficial. An optimal policy environment balances competition enforcement with regulatory necessity.
- **International Competition:** International competition evaluates a country's openness to trade and foreign investment. Policies that impose tariffs, restrict financial flows, or hinder market access limit economic efficiency. Trade liberalization, when paired with strong domestic competition and property rights protection, fosters innovation and economic growth. Conversely, restrictive trade policies create distortions that raise costs and reduce competitiveness.
- **Economic Growth:** Productivity and GDP growth suffer greatly under ACMDs. Distortions remove the pressures that drive innovation and efficiency, and resources end up stuck in unproductive uses. Studies consistently show that protectionist or anticompetitive measures lower productivity, reduce innovation, and ultimately drag down economic growth. High tariffs or heavy state control might boost a domestic industry in the short run, but the economy-wide cost is slower growth as consumers and other businesses pay higher prices or lack access to better inputs. ACMDs also often correlate with corruption and rent-seeking, which further divert

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<sup>15</sup> In particular, the DOJ and the FTC may wish to contact Professor Sean Ennis of the University of East Anglia, the lead OECD staffer responsible for developing the Toolkit. Ennis has had extensive experience in assessing programs for regulatory agencies around the world. He also has consulted with the DOJ and served as a DOJ economist early in his career. For more information on Sean Ennis, see <https://www.seanennis.com/>.

economic energy from productive activities. The cumulative global cost of all ACMDs is enormous.

- **Competition and Market Health:** By definition, ACMDs erode the healthy competition that fuels market efficiency. When certain firms are shielded or propped up, market meritocracy is replaced by artificial advantage, leading to higher prices, lower quality, and less choice for consumers. Dynamic competition dwindles, and incumbents grow complacent. The result can be oligopolistic or monopolistic markets entrenched by policy. In international markets, ACMDs also provoke trade tensions with companies from open economies finding themselves unable to compete abroad on fair terms, leading to disputes and retaliation.

Further information on the model can be found in *Trade, Competition and Domestic Regulatory Policy* (Routledge, 2023) by Shanker A. Singham and Alden F. Abbott, and at [www.shankersingham.com](http://www.shankersingham.com). We have also applied this type of distortion analysis to a case study of India.<sup>16</sup>

Our economic models can be used to show the importance of GDP per capita improvements in the domestic competition pillar of the ACMD model. Indeed, improvements to domestic competition (i.e., elimination of anticompetitive regulation) have a three to four times greater impact on GDP per capita than similar border trade openings. We have also developed a typology of ACMDs that offers a useful starting point for identifying harmful types of regulation.<sup>17</sup>

## Conclusion

The OECD Competition Assessment Toolkit is a widely used, internationally recognized framework for detecting and eliminating anticompetitive regulatory provisions. The Toolkit can be a useful tool for federal agencies to successfully identify anticompetitive regulations ripe for rescission or modification, as required by the Executive Order on Anti-Competitive Regulatory Barriers. As such, we respectfully recommend that the FTC and the DOJ jointly support federal agencies' utilization of the Toolkit in carrying out their required regulatory assessments. We recognize, of course, that the Toolkit may have to be adapted to conform to the specific needs of particular federal agencies, in consultation with the FTC and the DOJ.

The new econometric tools for evaluating ACMDs, developed by Singham and his colleagues, may prove helpful to the FTC in assembling a final consolidated list of anticompetitive regulations for submission to the OMB. We respectfully recommend that the FTC, in consultation with the DOJ, consider application of those tools.

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<sup>16</sup> See Shanker A. Singham and A. Molly Kiniry, *Introduction to Anti-Competitive Market Distortions and the Distortions Index* (Legatum Institute and Economics of Prosperity, September 2016), <https://shankersingham.com/wp-content/uploads/2023/08/LIIntro-to-ACMDDistortionsIndex.pdf>. See also Shanker A. Singham et al., *Anti-Competitive Market Distortions and Their Impact: A Case Study of India*, (Legatum Institute and Economics of Prosperity, May 2016), <https://shankersingham.com/wp-content/uploads/2023/08/LIACMDIndia.pdf>.

<sup>17</sup> See Shanker A. Singham and Srinivasa U. Rangan, "Anti-Competitive Market Distortions: A Typology," *Economic Affairs* 38, no. 3 (October 2018): 339–47, <https://doi.org/10.1111/ecaf.12311>.