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*Submitted Electronically to comments@amc.gvb*

**Re: Comments regarding Commission Issues for Study**

To the Antitrust Modernization Commission:

I propose six pressing issues regarding the antitrust laws for the Commission to study:

- 1. The scope and cost of nonstatutory exemptions from the antitrust laws:** The Federal Trade Commission last year published a comprehensive analysis of the current state of the State Action doctrine and proposals for reform. The Commission should study the scope of this and other nonstatutory exemptions and recommend appropriate steps to modernize them in light of modern understanding of the competitive process and regulatory and legislative processes.
- 2. The need for modernization of statutory exemptions from the antitrust laws:** There are numerous statutory exemptions from the antitrust laws that impose substantial costs on the economy and consumers. The Commission should study statutory exemptions and recommend their modification or repeal. In addition, statutory exemptions may be particularly immune to “modernization” in the ordinary course of events through judge-made law that reflects updated understanding of the exemptions in question. This problem has been exacerbated by arguments and decisions that can expand the scope of the exemptions, rather than treating them narrowly. The Commission should study these exemptions and recommend to judges techniques for narrowing their adverse consequences for consumers and the economy. In particular, the Commission should review the Capper-Volstead and McCarron-Ferguson immunities from the antitrust laws.
- 3. The effect of “legacy” laws on creating barriers to competition in e-commerce:** Many states have laws on the books that may be appropriate for the regulation of traditional bricks-and-mortar businesses that operate in those states. But these regulations are wholly inappropriate to the regulation of Internet businesses whose operation are uniquely interstate in nature and for which different regulatory systems are appropriate. Nonetheless, many states have applied these traditional regulations to e-commerce without a proper understanding of the differences between the economic media, thereby interfering with competition and injuring consumer choice and welfare.

**4. The Commission should recommend that Congress overrule the Supreme Court’s decision in *U.S. Postal Service v. Flamingo Industries (USA) Ltd.*, 124 S. Ct. 1321 (2004):** The Supreme Court in *U.S. Postal Service v. Flamingo Industries* held that the United States Postal Service is not a “person” for purposes of the antitrust laws, even when acting outside of its express statutory monopoly. This decision is manifestly contrary to sound antitrust and postal reform policy and should be reversed by Congress.

**5. The Commission should recommend the adoption of “antitrust injury” analysis to the application of anti-dumping laws regarding international trade:** Currently, anti-dumping laws can be used by American businesses to prevent competition from international competitors that would not be actionable under the antitrust laws if taken by domestic competitors. The Commission should urge the adoption of an “antitrust injury” standard to application of the anti-dumping laws.

**6. The Commission should review the proper application and interpretation of the antitrust laws as they apply to “dynamic competition”:** Given the rapid changes in technology today and the ease by which new technologies and firms can produce and market products, many firms with a dominant market position may be “transient monopolies.” The Commission should review the application of the antitrust laws to dynamic markets and determine how to best apply those laws to these new markets.

Sincerely,

Todd J. Zywicki