Senator Rand Paul (R-KY), famous for his Jefferson Smith-style delivery, recently gave an impassioned speech on the floor of the United States Senate objecting to activist approaches to antitrust enforcement. He opened by saying, “The proponents of antitrust enforcement are famously zealous in their desire to eradicate the curse of bigness.”

He’s right.

Since Lina Khan was sworn in as chair of the Federal Trade Commission (FTC), the agency has substantially altered its approach to competition policy and enforcement practices. As the American Action Forum has repeatedly noted, the agency has broadened its interpretation of unfair methods of competition, introduced novel theories of harm, routinely challenged mergers absent evidence of wrongdoing, and ignored established agency procedures. This activist approach to antitrust enforcement has snubbed the consumer welfare standard, the guiding principle of antitrust enforcement for more than 40 years, all to address the unfairness of “bigness.”

The FTC’s mission to ensure business success is based on competitive merit rather than anticompetitive behavior is an important one. It ensures lower prices and more choices for consumers. Straying from this mission to address subjective concerns, such as fairness and whether a firm has grown too large, leaves antitrust enforcement to the behest of political whim, not sound economics. Activist enforcement risks sowing uncertainty among businesses, stifling innovation, and slowing economic growth.

The FTC has employed these new theories in court in an attempt to stretch the bounds of antitrust law. These high-risk cases have resulted in a series of defeats for the agency, yet Chair Khan remains undeterred. Essentially, she argues that losing such cases proves that current antitrust law is not adequate to address anticompetitive harms, and so Congress must change it. Congress is mistakenly considering doing exactly that.

In the case of Illumina’s acquisition of startup cancer diagnostic firm Grail and Meta’s acquisition of Within, a virtual fitness app developer, the FTC argued that the tie-ups would risk potential competition in the future since the markets for these products are not fully developed. Senator Paul pointed out the government’s lackluster track record at predicting what future competition will look like. He cited the FTC’s opposition of the merger between Blockbuster and Hollywood Video at the time when Netflix was starting to grow. We know how that turned out. But as Netflix continued to gain market share, there was worry that it would become a monopoly. Paul noted that “No such fear exists today…as Netflix…competes with Hulu, Peacock, Amazon Prime Video, Disney Plus, HBO Max, Apple TV, Paramount Plus and others.”

Senator Paul championed the market’s ability to work. He recognized that firms become large, not because of foul play, but as a reward for providing superior goods and services consumers want. Congress should take note.