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Testimony of

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Before the

Joint Economics Committee

Hearing on

"Breaking Through the Regulatory Barrier: What Red Tape Means for the Innovation Economy"

May 22, 2018

1100 Longworth House Office Building

Washington, DC

Chairman Paulsen, ranking member Heinrich, and members of the Committee, thank you for inviting me to be here today. I am Joe Kennedy, Senior Fellow with the Information Technology and Innovation Foundation. A recent study by the University of Pennsylvania ranked ITIF as the world's leading think tank on science and technology policy. The Foundation focuses on developing better policy to promote innovation, increase competitiveness, and improve productivity.

The task of regulating the economy is a necessary, but very difficult problem. Congress and regulators need to view the problem from a dynamic viewpoint: develop rules that encourage firms to discover new ways to achieve social goals as efficiently as possible. Regulation is most justified when it addresses market imperfections. Rules that use market tools like price signals and information to fix the problem are most likely to do a better job of encouraging innovation than command and control, technology-specific rules. So is regulation that gives companies clear long-term and achievable goals.

The Information Technology and Innovation Foundation has written widely on the need for regulatory reform, both in general and as applied to specific sectors. Some of the sectors we have examined include automation of the transportation industry, telecommunications, agricultural biotechology, and pharmaceuticals. In addition, we have focused extensively on regulations affecting the Internet, including privacy and cybersecurity.

Our study of the freight transportation industry showed that railroads, freight trucks, drones, and even airplanes are making rapid advancements in automation.[1] Although many problems still need to be worked out, this technology promises to reduce transportation costs and save lives. Regulators should find ways to speed its development while still protecting public safety. At the same time, because each of these industries competes with the others, regulators also need to make sure that regulations do not cause one industry to fall behind others in introducing valuable technology.

Another ITIF report examined the likely impact of the European Union's new General Data Protection Regulation and concluded that it would harm the EU's ability to compete in the development of artificial intelligence.[2] By unnecessarily creating barriers to the use of even de-identified data and threatening disproportionate fines, the new rules will likely deter companies from developing or using algorithms in member countries.

An ITIF literature review of the impact of regulation on innovation in several industries concluded that regulations can either inhibit innovation or encourage it, depending upon how they are written. Good rules tend to increase the amount of public information, reduce uncertainty about future regulation, and set goals but allow flexibility in achieving them.[3] A forthcoming ITIF review of the literature on environmental regulation and innovation arrives at similar conclusions about when and how regulation can actually spur companies to innovate faster. Among these are that regulators need a sophisticated understanding of the industry, they should set ambitious long-term goals but use performance standards to achieve them, and they should worry about effects on competitiveness.

ITIF believes that better regulation is needed and, compared to existing regulation, can improve innovation. Intelligent rules can increase the amount of competition in a market. Reforms that improve market competition, possibly by reducing barriers to entry, increasing the flow of information, or allowing new approaches to comply with existing regulations, can significantly increase productivity by speeding the adoption of existing innovations.

Regulators can support innovation by following a set of general principles:[4]

1. Anticipate innovation. Regulators should assume technology will continue to advance. Rules should not only anticipate innovation: they should encourage it.
2. Embrace transparency. Congress, regulated entities, and the general public should have a clear view into the decision making process of regulators, including any evidence or studies they use to back their conclusions.
3. Place more trust in the consumer. Given sufficient information, consumers can often be their own most effective advocates. Firms that violate the public's trust often pay a heavy price in terms of profits and market share.
4. Place more emphasis on reducing the cost of over-regulation. Regulators should actively seek input from industry and major stakeholders on ways to reduce the cost of compliance without affecting public goals
5. Every major rule should undergo some level of public cost/benefit analysis in which the agency clearly explains why and how a rule will increase social welfare. To the extent possible, this analysis should be backed by quantitative studies.
6. Regulators should focus on competitiveness effects. We increasingly live in a global economy in which firms in traded industries have to compete not just for foreign markets but also those here at home. Overly rigid regulations in these industries can reduce U.S. competitive advantage.

Congress can further this effort by enacting legislation that does four things:

1. Encourage interagency cooperation to undertake a comprehensive study of the competitive environment facing specific industries, including a review of their regulatory structure. The United States has already lost competitiveness in a number of traded industries and its strength in others is being challenged by other countries. The federal government needs to undertake a careful examination of every major traded industry to assess its strengths and weaknesses and then develop a strategy for improving its competitiveness. A key part of this effort should be a review of federal regulations governing its performance.
2. Direct the Office of Management and Budget to evaluate the effect of major rules on innovation within the regulated industry. Regulatory agencies often fail to consider how a major rule will affect innovation. The Office of Management and Budget already reviews major rules for substance and consistency. OMB should develop an expertise in innovation and then apply this knowledge to agency rules to ensure that they encourage rather than impede innovation.
3. Update legislation in ways that give agencies more guidance and revoke obsolete rulemaking authority. Also hold more frequent oversight hearings to discuss regulatory approaches with the agency. Congress can help in this effort by viewing major statutes with a fresh eye. In the process of updating old statutes to reflect modern times, Congress can revoke the authorization for many rules and require the agency to issue new ones. Congress should also try to give agencies more guidance about its intentions

when delegating rulemaking authority. More frequent oversight hearings on specific rules and policy issues are the best way to ensure that agencies can justify the impact of prospective rules.

4. Ensure that regulators have enough resources to attract the best people and acquire a deep understanding of the industry. Agencies need to attract and keep experts in an industry. They also need to be able to keep up with how new innovations will affect a certain sector. Agencies also need the ability to restructure their personnel to reflect changes to the industry.

These suggestions can be implemented rather easily, provided the necessary leadership exists. If enacted they will have a noticeable positive effect on the quality of regulation.

REFERENCES

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