ConsumersUnion®
POLICY & ACTION FROM CONSUMER REPORTS

December 13, 2017

The Honorable Mike Lee, Chairman
The Honorable Amy Klobuchar, Ranking Member
Subcommittee on Antitrust, Competition Policy
and Consumer Rights
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Lee and Ranking Member Klobuchar:

Consumers Union, the policy and mobilization division of Consumer Reports, is pleased you are holding this hearing to consider, against the backdrop of the consumer welfare standard, whether the antitrust laws are living up to their promise of protecting and promoting competition and the array of benefits it fosters for consumers and the economy.

As a leading consumer organization, we fully agree that consumers belong at the forefront of the beneficiaries of an open, competitive marketplace. However, we also believe that, at times, some of the corollaries of economic theory that have been put forward in recent years to define consumer welfare have unduly constricted it. As the Supreme Court affirmed in *National Society of Professional Engineers v. United States*, 435 U.S. 679, 695 (1978), "all elements of a bargain – quality, service, safety, and durability – and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers."

As we see it, competition benefits consumers first and foremost by giving them meaningful choice, which empowers them to give businesses the incentive to offer consumers a greater variety of better products and services at more affordable prices, and the incentive to be continually improving the offerings in all those respects. A more affordable price is just one of the array of beneficial byproducts of consumers having choice.

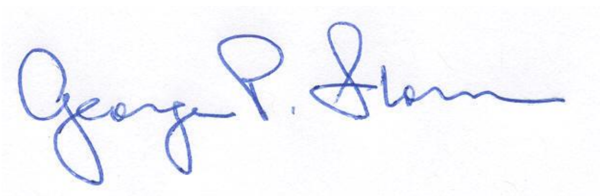
For that reason, it is important that antitrust analysis not devote outsized attention to measuring immediate-term price effects, to the exclusion of accounting for consumers' broader, more abiding interest in a marketplace where competition is functioning effectively, at all levels and in all quarters. Consumers have choice when suppliers and distributors and inventors and workers also have choice.

As one example, giving outsized weight to "efficiencies," on the premise that reducing costs for business necessarily benefits consumers, loses sight of that broader interest – even assuming that the company would share the savings with its customers. Combining two competing operations into one always creates opportunities for the two merging companies to cut costs by cutting the workforce, for example. But those laid-off workers, viewed as redundant by the merged company, are essential when the two companies are separate; they are integral to enabling the two companies to compete effectively. Consumers do not need infinite choices, but they benefit from having meaningful choices. And that means sufficient numbers of independent companies, and workers, at all levels in the production and marketing chain, to generate those choices. Reducing the workforce is often a by-product of reducing competition and consumer choice.

Likewise, there are parts of the internet marketplace where the price charged to consumers for the service appears to be zero. We know that consumers are being enticed to these internet platforms so their presence there, and the information they leave behind, can be sold to advertisers. But does the fact that consumers pay no money mean they do not have an interest in the choice competition provides – and the role choice plays in promoting not only better and more innovative and more affordable products, but also better privacy and data security protections? And an interest in the ability of sellers – large and small, established and innovative – to reach them?

Properly understood, the welfare of consumers encompasses all the benefits that meaningful choice provides – all of which, as the Supreme Court has recognized, are a proper focus for antitrust law.

Respectfully,



George P. Slover
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cc: Members, Subcommittee on Antitrust, Competition Policy, and Consumer Rights