ConsumersUnion®
THE ADVOCACY DIVISION OF CONSUMER REPORTS

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Suite CC-5610 (Annex C)
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Comments of Consumers Union—Antitrust and Competition Issues

Hearings on Competition &
Consumer Protection in the 21st Century
Federal Trade Commission
FTC-2018-0048

Consumers Union, the advocacy division of Consumer Reports,[1] is pleased to submit these comments in preparation for the Federal Trade Commission's upcoming hearings on keeping competition and consumer protection enforcement policy resilient and effective in the marketplace of the 21st Century.

These comments focus on issues related to the Commission's competition authority. Consumers Union is filing separate comments on issues related to the Commission's consumer protection authority. We look forward to following the hearings, and to having further opportunities to comment as the record is developed.

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[1] Consumers Union is the advocacy division of Consumer Reports, an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumers Union works for pro-consumer policies in the areas of antitrust and competition policy, privacy and data security, financial services and marketplace practices, food and product safety, telecommunications and technology, travel, and other consumer issues, in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 6 million members and publishes its magazine, website, and other publications.

Our antitrust laws are instrumental in helping make the marketplace work for consumers, by empowering them with the leverage that comes with having meaningful choices in deciding where to shop and where to buy. That leverage creates incentive for businesses to try harder to give consumers what they want—a greater variety of better products and services at more affordable prices—and, over the longer term, incentive to continually improve their offerings in all those respects.

More broadly, effective competition at all levels of the supply and marketing chain—from development to labor and component supply, to manufacture, to distribution, advertising, and retail—in all sectors of the marketplace, creates more and better choices for consumers, as well as more and better opportunities for businesses and workers to provide those choices—including new entry by smaller and start-up businesses, and new jobs—benefitting the overall economy as it benefits consumers.

These are enduring values in the face of changes in technology and in the marketplace. And for these reasons, we believe the proper touchstone for evaluating mergers and conduct under the antitrust laws is and should remain the effect on consumer choice.

Consumers Union has been a steadfast supporter of the antitrust laws, from our earliest years, advocating for ensuring that those laws are kept strong and are vigorously enforced. In recent years, with the growing recognition that many market sectors have become highly concentrated, to levels that raise significant concerns about whether competition can operate effectively, we have urged the Commission to maintain and increase its investigative and enforcement efforts, so as to ensure that antitrust lives up to its promise.

Importantly, this includes closely monitoring new competition concerns presented by technological and market relationship changes, such as the move to more online shopping, and the related amassing of vast amounts of consumer data in the hands of internet platforms.

Among the important competition policy questions the Commission is raising in preparation for these hearings are questions regarding application of the consumer welfare standard; appropriate use of economic analysis; the rise of online commerce and dominant online platforms; product standardization and interoperability; personal data aggregations; the incipiency standard in merger enforcement; buyer-side market power; pro-competition limits for intellectual property rights; and vertical merger enforcement. We have been engaged in all of these areas, with the Commission and with Congress. As the Commission undertakes its review, we urge you to keep the following considerations in mind.

<u>The consumer welfare standard</u>

The Commission asks whether the "consumer welfare standard" is the most appropriate standard for evaluating mergers and conduct under the antitrust laws, and whether it is being applied appropriately. Properly conceived and implemented, it is an appropriate standard; but "properly conceived and implemented" is an important qualification.[2]

Consumers belong at the forefront of the beneficiaries of an open, competitive marketplace, and as an organizing focus for evaluating competitive harm under the antitrust laws. 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*, "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."[3]

Because competition benefits consumers, first and foremost, by giving them the leverage of meaningful choice, consumer choice is the right lens through which to view consumer welfare. Detaching the consumer welfare analysis from consumer choice runs the risk of abstracting it, in ways that fail to account for the actual interests of consumers. It risks creating a marketplace in which businesses dictate to consumers what is in their interests, rather than listening to them. Consumers should be the ones to ultimately determine what is in their best interest, not those who profit by selling to them.

It is also important that antitrust analysis not devote outsized attention to measuring only immediate-term price effects, to the exclusion of accounting for consumers' broader, more abiding interests in a marketplace where competition is functioning effectively, at all levels and in all quarters. Consumers most reliably have meaningful choice when suppliers and distributors and inventors and workers also have meaningful choice. Lower prices in the immediate term is just one of the array of beneficial byproducts of consumers having choice.

For example, the goal of efficiency, detached from considerations of consumer choice, could lead to reducing the choices, in order to "make it easier" for "busy" consumers to make their purchasing decisions. Giving outsized weight to the goal of improving business efficiency, 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. For one thing, a merger that combines two competing operations into one often leads to reduced product differentiation, and thus fewer choices for consumers, when the merged company decides it can reduce costs by standardizing its products. Further, such a merger always creates opportunities to cut costs by cutting the workforce. But consumers benefit from having the choices that the two companies, competing independently, decide to make available. Likewise, those laid-off workers, viewed as excess redundancy by the merged company, are essential when the two companies are

[2] *See* letter from George P. Slover, Consumers Union, *The Consumer Welfare Standard in Antitrust: Outdated or a Harbor in a Sea of Doubt?*, Hearing Before Subcomm. on Antitrust, Competition Policy, and Consumer Rights, Senate Comm. on the Judiciary (Dec. 13, 2017), https://consumersunion.org/wp-content/uploads/2018/08/CU-letter-Sen-Judiciary-consumer-welfare-12-13-17-FINAL.pdf.
[3] 435 U.S. 679, 695 (1978).

separate; they are integral to enabling the two companies to compete effectively. Ensuring meaningful choices means sufficient numbers of independent companies, and workers, at all levels in the supply and marketing chain, to generate those choices. Cost-cutting product eliminations and workforce reductions after a merger are often a by-product of *reducing* competition and consumer choice.

As the Supreme Court declared in *FTC v. Procter & Gamble Co.*: "Possible economies cannot be used as a defense to illegality. Congress was aware that some mergers which lessen competition may also result in economies but it struck the balance in favor of protecting competition."[4]

What's good for a business's bottom line is not necessarily good for consumers. Accordingly, a business's rationale for conduct that restricts choices for consumers—whether directly, or indirectly, by restricting choices for others involved in serving consumers from anywhere in the supply and marketing chain—needs to be regarded with skepticism.

Likewise, there are parts of the internet marketplace where the price charged to consumers for the service appears to be zero, but the actual cost—in terms of lost privacy and security—can be significant. 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 protecting 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 protecting 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.

Appropriate use of economic analysis

The introduction of greater economic rigor into antitrust investigations in recent decades has generally been positive overall for antitrust enforcement, making it easier for businesses to understand and predict the boundaries of appropriate conduct and, therefore comply. It has likewise made it easier for enforcers and the courts to be more confident in their decisions.

But as with application of the consumer welfare standard, economic analysis has at times veered too far, and been misused to thwart the values underlying sound antitrust enforcement. The antitrust laws are about more than just an abstract intellectual exercise in economic theory. They

[4] 386 U.S. 568, 580 (1967).

are about helping ensure that our real-world economy actually works to provide the best opportunities for consumers and for all those who serve them.

Appropriately employed, economic analysis should be an important tool that supports and strengthens sound antitrust enforcement, by illuminating and informing it consistent with its core underlying values; it should not be used in a way that undermines the effectiveness of antitrust, by challenging the legitimacy of those values and second-guessing concrete evidence that consumer choice is being constrained.

Specifically, any economic theory that de-emphasizes the importance of meaningful consumer choice in favor of business efficiency is, in our view, not consistent with the values of antitrust. Likewise, any economic theory that justifies restricting meaningful choice, at any level in the supply and marketing chain, on the basis that such restrictions ultimately benefit consumers, should be regarded with skepticism and carefully scrutinized.

<u>The rise of online commerce and dominant online platforms</u>

The fundamentals of the antitrust laws are sound, resilient and adaptable, adaptable even to the kinds of dramatic changes in technology and the marketplace we have witnessed in recent years. Maintaining the vitality of the antitrust laws has been and will remain an ongoing task for the Commission, Department of Justice's (DOJ) Antitrust Division, and the wider antitrust community.

The rise of dominant online platforms in our era has created competition concerns and challenges every bit as formidable as those created by the rise of other dominant platforms for commerce in earlier eras. Those earlier concerns and challenges led to regulation of the railroads and telephone companies, through Congressional enactment of the Interstate Commerce Act and the Communications Act, and to the protection of competitive access for electric power, through court development of the essential facilities doctrine in antitrust law, *Otter Tail Power Co. v. United States*.[5]

Similar kinds of approaches are rightly under consideration for the new dominant platforms for online commerce. Thus far, Congress has largely opted to rely on the antitrust laws to protect and promote a functioning competitive online marketplace. The Federal Communications Commission has essentially repealed the core of its net neutrality rules for online access and communication, and Congress has declined to act to restore them. And the dominant platforms for conducting online commerce—for bringing buyers and sellers together—are essentially unregulated.

[5] 410 U.S. 366 (1973).

The antitrust laws are, for now, the only available recourse. The Commission, and the Justice Department, need to be committed to addressing competition problems involving dominant online platforms, to the full extent that the antitrust laws can reach those problems. In this regard, the Commission should continue to press for the removal of the common carrier exemption from section 5 of the FTC Act. The Commission needs to be unhindered in its authority to address competition problems in all parts of the digital marketplace, without having to worry about bumping into an antiquated barrier that now has the potential to interfere with effective enforcement far more broadly than when it was enacted more than a century ago.

But as important as the antitrust laws are, we know there are inherent limits to what they can do. The antitrust laws cannot stop the simple, straightforward exploitation of intractable market power by a company that already has it, even if it is clearly harming consumers. The antitrust laws require either proof that a dominant company is abusing its power to sabotage competitive efforts of its rivals, in order to gain or maintain a monopoly, or proof that two separate companies are working together to stifle competition between them, or proof that a merger between two separate companies threatens to substantially lessen competition.

When this is the case, such as when a dominant platform abuses its position to spot lucrative products and services being offered for sale, and then to move into its own manufacture and sale of those products and services, and then to manipulate the presentation of its own offerings on the platform to block or disadvantage the offerings of others, the antitrust laws can and should be used forcefully, wherever they can be, to put a stop to that kind of abuse.

But attempting to stretch and contort the antitrust laws to do more than they were designed to do is probably unwise. As explained below, we do believe merger enforcement can and should be reinvigorated, so that it stops new trends of market concentration in their tracks earlier. But in already concentrated markets, the best the antitrust laws can do is to prevent market concentration from getting even worse through new mergers, and to prevent companies in those already concentrated markets from attempting to freeze out new competition, or from sliding into the temptation to stop competing and join forces with each other against their customers.

There may be potential to investigate certain restrictive practices regarding customer and supplier data as possible unlawful monopolization. But for the most part, the more intractable dysfunctions resulting from current online platform market concentration will likely have to be dealt with in other ways, as Congress did to protect the marketplace against the abuses of the dominant platforms of yore.

Product standardization and interoperability

The competition principles that should apply to standardization and interoperability have not changed fundamentally since the dawn of mass production. Product standardization, to enable interoperability of components and connectors made by different manufacturers, should be enabled and encouraged, so that consumers have the benefits of meaningful choice to create the combination of components that best suits their needs. At the same time, standardization should not always be strictly mandated, so that innovation is possible to improve products and to meet evolving consumer needs and preferences.

Standards development led by knowledgeable experts, with input from the companies that will be using those standards, is often acceptable, and can even be preferable to government taking on that task—provided there is accountability for safety, and for competition purposes, provided that the standards development process is open enough so that a company with market power, or with key intellectual property rights, is not permitted to commandeer the process to impose a standard that benefits that company at the expense of its competitors, and thereby deprives consumers of meaningful choice.

Established case law and enforcement policy are consistent with these principles.[6] As the potential interfaces between products continue to multiply, it is more important than ever that the Commission remain vigilant to ensuring that those principles are observed. One approach for helping maintain the appropriate balance in interoperability, between keeping the marketplace open and allowing for innovation, might be to have a uniform standard for the main interconnection, which all would have to adapt their components to, while permitting and even encouraging innovation by individual companies in how they connect their products and services to that main interconnection—as long as the main interconnection is included.

<u>Incipiency standard in merger enforcement</u>

Consumers today face a marketplace that has grown ever more concentrated, in sector after sector, over the past few decades, offering them less and less choice. One of the principal purposes of enacting Section 7 of the Clayton Act more than a century ago was to prevent market concentration from ever reaching levels of concern, by "provid[ing] authority for arresting mergers at a time when the trend to lessening of competition in a line of commerce is still in its incipiency...to brake this force at its outset and before it gathered momentum."[7]

This purpose is embodied in the text of Section 7, which prohibits acquisitions where "the effect of such acquisition *may be* substantially to lessen competition or to tend to create a monopoly" (emphasis added).[8]

In recent decades, the courts and, therefore, the enforcement agencies, have become too reluctant to apply this standard as vigorously as it was intended. They have effectively read the "may" out of Section 7. The standard has devolved instead into something closer to a burden on

[6] *See* Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492 (1988); Broadcom Corp. v. Qualcomm Inc., 501 F.3d 297 (3d Cir. 2007).
[7] Brown Shoe Co. v. United States, 370 U.S. 294, 317-18 (1962).
[8] 15 U.S.C. § 18.

the government to prove demonstrable, concrete, imminent, quantifiable harm by a preponderance of the evidence. This has resulted in consideration of each merger in too piecemeal a fashion, in isolation, discounting the unmistakable trends until they have already reached the point where one more merger is demonstrably too many. This allows no safeguard against miscalculation, let alone against unanticipated later changes in the marketplace that can exacerbate the effects of concentration without another merger taking place. And it also neglects the cumulative effects of growing concentration in multiple sectors.

We encourage the Commission to look for appropriate opportunities to reaffirm the incipiency standard as embodied in the text of Section 7. If the agencies will commit to this, and if the courts likewise can be persuaded, the current Section 7 can be sufficient to arrest further market concentration. Reinvigorated application of potential competition analysis may be one pathway for accomplishing this. At the same time, we are encouraging Members of Congress in their efforts to explore revisions to Section 7 that would restore clarity to the incipiency standard without risking inadvertently undermining the vitality of merger enforcement policy in other respects.

Personal data aggregations

The dangers to personal privacy and security resulting from vast accumulations of personal data in the hands of internet service providers, online commerce platforms, and websites are discussed in our other comments. In addition to those dangers, there is the potential for these accumulations to lock in the dominance of an internet service provider (ISP) or online platform, by creating barriers to entry by new competitors who lack access to comparable data. And there is also the potential for an ISP or platform to use the data it gathers on sales of products and services taking place on its network or platform to enter the market for selling competing products and services itself, while making it more difficult for consumers to find and purchase an original seller's products and services. The potential disruptive business strategies enabled by online commerce are yet to be fully understood and appreciated. Some may ultimately work to the benefit of competition and consumers; others may be harmful. It is important to keep the focus on protecting meaningful choice for consumers—and for businesses seeking to serve them.

In addition, consumers' interest in protecting the privacy and security of their personal data can be—and should be—an important emerging dimension of competition, an aspect of product and service quality. In some respects, consumers may have been slow to recognize the importance of protecting their data privacy and security. Online businesses encouraged this attitude by presenting business-skewed terms of service and privacy policies as routine to accept but as difficult to understand. But consumer attitudes are changing, with well-publicized personal data breaches, and well-publicized exploitation of personal data to direct targeted commercial and opinion messaging to consumers, raising concerns. Efforts to address these concerns on the consumer protection side could be augmented by competitive incentives to improve privacy protections. For this to work, there needs to be enough transparency for consumers to be able to discern whose protections are better than others.[9] And we need to avoid a situation in which competing platforms and sellers are able to restrict competition in this area by agreeing on a standard that falls short of the mark and then agreeing not to improve it.

Buyer-side market power

Concern about market power on the buyer side of a transaction that reduces the need for a business to negotiate competitively with a seller is fully consistent with an ultimate focus on consumer welfare as the touchstone for antitrust. As discussed above, meaningful consumer choice is most reliably ensured when businesses that want to participate in providing that choice to consumers also have meaningful choice—including suppliers and employees. Pressures on businesses to keep costs down can be healthy, and beneficial for consumers, if they are the by-product of a competitive marketplace. But if they are not, they are oppressive and ultimately interfere with the ability of consumers to receive the best choice of products and services.

Pro-competition limits for intellectual property rights

While intellectual property rights are an important part of the legal framework that encourages and protects creative efforts and innovation, some businesses have sought to stretch the dominion of intellectual property beyond the specific, limited monopoly rights they have traditionally been intended to confer to the creator or inventor. The Commission, along with DOJ's Antitrust Division, has been active in working to respect intellectual property rights, but to keep them within their proper bounds, so that competitive market forces can operate outside those bounds to provide consumers with meaningful choice. We have supported these efforts to strike the right balance—for example, the Commission's sustained efforts to clarify that "pay for delay" deals between brand-name and generic drug makers are not immunized from antitrust enforcement by excessive deference to patent assertions, leading to the Supreme Court's decision in *FTC v. Actavis, Inc.*,[10] and still continuing.[11]

One area of intellectual property overreach has been with respect to aftermarkets. Previously, manufacturers have sought to prohibit the use of non-brand parts through punitive contractual requirements, such as those the Supreme Court ruled, in *Eastman Kodak Co. v. Image Tech. Servs.*,[12] could constitute unlawful monopolization. Unfortunately, the *Kodak* decision has since been effectively narrowed to situations in which the seller of the product restricts the terms

[9] Our Digital Standard is designed to ultimately help improve transparency and consumer awareness as to how well particular web-connected products and services, including ISPs and platforms, protect the privacy and security of consumer data. *See infra*, note 14.
[10] 570 U.S. 136 (2013).
[11] *See, e.g.*, Statement for Record of George P. Slover, Consumers Union, *Pay-for-Delay Deals: Limiting Competition and Costing Consumers*, Hearing Before Subcomm. on Antitrust, Competition Policy, and Consumer Rights, Senate Comm. on the Judiciary (July 23, 2013), https://consumersunion.org/wp-content/uploads/2013/12/generic_drug_pay_for_delay_statement_0813.pdf.
[12] 504 U.S. 451 (1992).

for aftermarket sales only after the initial product sale has occurred and the consumer is locked in. Meanwhile, as increasing numbers of products have come to depend on computer software for their operation, the decision by Congress in the 1970s to declare computer code to be a "literary work" has encouraged manufacturers to use copyright restrictions as a vehicle for impeding aftermarket competition.

We have advocated in Congress and in the Copyright Office to stop this anticompetitive overreach, so that consumers can have the right to choose where to obtain repair of products they have purchased, consistent with traditional expectations of incidents of ownership.[13] These issues are also part of the Digital Standard project that Consumer Reports has been conducting to establish criteria to evaluate safety, security, and legal protections for software, digital platforms and services, and internet-connected products offered in the marketplace.[14] And we are also working in the states for laws to require manufacturers to make information and tools needed for performing repairs available to independent service providers.[15]

One potentially promising avenue still available for addressing anticompetitive aftermarket restrictions is the Magnuson-Moss Warranty Act. Some manufacturers attempt to condition warranty coverage on the consumer's using only manufacturer-approved service providers, where the manufacturer can effectively monopolize the business and keep repair prices inflated, even forcing consumers to travel or ship long distances to have their devices repaired, or to give up and get a new device, tossing their old one in the trash—not only needlessly costly, but wasteful. Magnuson-Moss prohibits this, unless the manufacturer offers the repair parts and service to consumers at no extra charge, or obtains an explicit waiver from the Commission. The Commission successfully enforced Magnuson-Moss against BMW of North America in 2015,[16] and recently warned several manufacturers against making statements to consumers indicating that warranty coverage depended on using only manufacturer-approved parts and service.[17]

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[13] *E.g.,* Comments of Consumers Union to U.S. Copyright Office, Software-Enabled Consumer Products Study, Consumers Union (Mar. 18, 2016), http://consumersunion.org/research/comments-to-the-u-s-copyright-office-regarding-software-enabled-consumerproducts/.

[14] The Digital Standard (theDigitalStandard.org) was launched on March 6th, 2017 and is the result of a collaboration with our cybersecurity partners, Disconnect, Ranking Digital Rights, and the Cyber Independent Testing Lab. The Standard is designed to hold companies accountable and equip Consumer Reports and other organizations to test and rate products for how responsibly they handle our private data. This is a collaborative and open source effort. The Standard is designed to empower consumers to make informed choices about the connected products, apps, and services consumers use every day.

[15] *See, e.g.,* Letter from Consumers Union to Hon. Joseph D. Morelle, Majority Leader, NY State Assembly, Consumers Union (Feb. 26, 2018), https://consumersunion.org/wp-content/uploads/2018/02/Consumers-Union-Right-to-Repair-A-8192-A.pdf.

[16] *FTC Approves Final Consent Order Against BMW of North America*, Fed. Trade Comm'n (Oct. 22, 2015), https://www.ftc.gov/news-events/press-releases/2015/10/ftc-approves-final-consent-order-against-bmw-north-america.

[17] *FTC Staff Warns Companies that It Is Illegal to Condition Warranty Coverage on the Use of Specified Parts or Coverage*, Fed. Trade Comm'n (Apr. 10, 2018), https://www.ftc.gov/news-events/press-releases/2018/04/ftc-staff-warns-companies-it-illegal-condition-warranty-coverage.

We encourage the Commission to continue to enforce Magnuson-Moss as a means of ensuring meaningful consumer choice in aftermarkets, while also scrutinizing intellectual property restrictions that appear to restrict competition beyond appropriate bounds.

Vertical merger enforcement

There is renewed interest in the potential harms to competition and consumer choice that can result from so-called "vertical mergers," between companies operating at two different levels in the supply and marketing chain. There was a time, 30 or 40 years ago, when the harms that could result from a vertical merger were being dismissively discounted by some antitrust scholars, and by the antitrust enforcement agencies and the courts, in what was then considered the "new thinking." But economic understanding of how the marketplace functions has evolved and deepened since then.

There is now greater recognition of how a company operating at two levels in the supply and marketing chain, if it has enough market power at one level, can arrange its dealings with the other level as to favor itself at that other level. And the merger may give the company new market-straddling incentives to do so, if that can thereby make it harder, or more costly, for rivals at that other level to connect to the market and ultimately to reach consumers. Before the merger, the company has no reason to discriminate—to make it harder or more costly—for anyone. It's in the company's profit-maximizing interest to deal with one and all. After the merger, however, the company may still have an interest in dealing with those other companies, but the terms it wants will change. The line as to where it can take optimum profit-maximizing advantage will shift. And if the rivals at that other level don't have meaningful options, and are at the mercy of the merged company, that translates into less choice at all levels up and down the chain—including, ultimately, less choice for consumers.

We have engaged with Congress and the agencies on two recent vertical mergers, the merger between AT&T and Time/Warner,[18] and the merger between CVS and Aetna.[19] In both of those mergers, there are prominent concerns with potentially creating these market-straddling anticompetitive incentives.

Bureau of Competition Director Bruce Hoffman reaffirmed in January that the Commission is committed to continuing appropriately vigorous enforcement against anticompetitive vertical mergers. He noted that the Commission and DOJ have together brought

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[18] Statement for Record of Jonathan Schwantes and George P. Slover, Consumers Union, *Examining the Competitive Impact of the AT&T–Time Warner Transaction*, Hearing Before Subcomm. on Antitrust, Competition Policy, and Consumer Rights, Senate Comm. on the Judiciary (Dec. 7, 2016), https://consumersunion.org/wp-content/uploads/2016/12/FINAL.statement.cu-to-senateatr.att-tw.12716-1.pdf.

[19] Statement of George P. Slover, Consumers Union, *Competition in the Pharmaceutical Supply Chain: The Proposed Merger of CVS Health and Aetna*, Hearing Before Subcomm. on Regulatory Reform, Commercial and Antitrust Law, House Comm. on the Judiciary (Feb. 27, 2018), https://judiciary.house.gov/wp-content/uploads/2018/02/Slover-Testimony.pdf.

22 vertical merger challenges since 2000, and that the Commission had several vertical merger investigations underway.[20] We urge the Commission to continue bringing vertical merger challenges when the facts warrant.

We look forward to reading the comments submitted, to following the hearings, and to further opportunities to assist the Commission in this and its other endeavors to protect the competitive process and ensure that the 21st Century marketplace works for consumers by giving them meaningful choice.

Respectfully submitted,

George P. Slover
Senior Policy Counsel
Consumers Union

1101 17th Street, NW
Suite 500
Washington, DC 20036

[20] *Vertical Merger Enforcement at the FTC*, Remarks of D. Bruce Hoffman, Fed. Trade Comm'n (Jan. 10, 2018), https://www.ftc.gov/system/files/documents/public_statements/1304213/hoffman_vertical_merger_speech_final.pdf.