



March 24, 2020

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

RE: March 10 hearing on Competition in Digital Technology Markets: Examining Self-Preferencing by Digital Platforms

Dear Chairman Lee and Ranking Member Klobuchar:

Recognizing that Congress has now rightly shifted its attention to the urgent challenges of addressing the Coronavirus, we want to submit this letter for your hearing record on behalf of Consumer Reports, to assist you as you resume and continue your work.

We appreciate the Subcommittee having held this hearing to examine the competitive implications of dominant online platforms abusing, and potentially further entrenching, their dominance by manipulating the choices presented to consumers, to preference their own offerings or the offerings of sellers who pay extra.

A principal promise of commerce on an open internet was that it would empower consumers to more conveniently comparison shop. In turn, this would increase healthy competitive pressure on businesses to look for ways to offer better products and services at more affordable prices, ultimately benefitting consumers with a rich variety of good choices.

Unfortunately, that promise has been only partially realized. It is being undermined by the rise of dominant online platforms whose market power enables them to exercise undue control over market access and consumer choice. This power is being further amplified by the platforms' ability to use vast and constantly growing troves of market and consumer data, and data-collecting capabilities, to monitor and manipulate consumer preferences, in ways that are still not fully understood and appreciated. What is abundantly clear, however, is that this power

threatens the ability of the marketplace to work for consumers, and for those who seek to reach them.

A dominant platform can use the data it amasses, regarding private commercial interactions that pass through its platform, to target discriminatory favoritism among sellers, advertisers, or information providers who use the platform to reach consumers, or to tailor new product and service offerings of its own to take profitable business identified in the data, even to target a seller's customers. And the data amassed can further solidify the platform's dominance, by creating formidable barriers to entry by would-be competitors, while intensifying its ability to monitor and manipulate – and monetize – our personal interactions as consumers, and as citizens.

Sound and vigorous antitrust enforcement will be key to addressing these concerns. Congress is also appropriately considering legislation to better ensure that antitrust enforcers are well-equipped. In addition to calling for strengthened funding, we are supporting the following bills:

- S. 3426, the Anticompetitive Exclusionary Conduct Prevention Act, introduced by Senators Klobuchar, Blumenthal, and Booker, to strengthen the ability of the antitrust laws to reach this anticompetitive exclusionary conduct before the violator achieves a full monopoly;
- S. 2237, the Monopolization Deterrence Act, introduced by Senators Klobuchar and Blumenthal, to authorize the Justice Department and the FTC to impose civil penalties for unlawful monopolizing;
- S. 1937, the Merger Filing Fee Modernization Act, introduced by Senators Klobuchar and Grassley, to strengthen antitrust enforcement resources by increasing pre-merger filing fees for giant mergers; and
- S. 307, the Consolidation Prevention and Competition Promotion Act, introduced by Senators Klobuchar, Markey, Blumenthal, Booker, and Gillibrand, to strengthen merger enforcement by shifting the burden of proof for extremely large mergers.

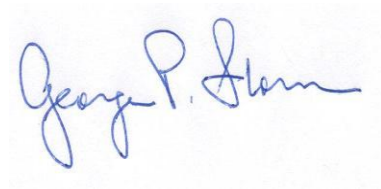
These measured proposals address our antitrust laws more broadly than just with respect to the online marketplace; but all of them would materially improve antitrust enforcement capabilities specifically in this challenging area.

And more will likely be needed beyond these steps. Ultimately, we may need a more comprehensive restructuring of the online marketplace, in order to make it more open to new competition, as Congress undertook for the telecommunications marketplace 25 years ago.

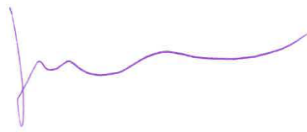
The internet has revolutionized commerce and communication, in extraordinarily beneficial ways. But these benefits are undercut when a handful of tech giants amass overwhelming market power that threatens to restrict and diminish our choices, and the pathways for all who seek to reach us – including manufacturers, service providers, content creators, and other voices.

We appreciate your Subcommittee’s examination of these matters and your continuing efforts to ensure that the online marketplace works for consumers, and for all who depend on it. We look forward to continuing to work with you.

Sincerely,



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cc: Members, Subcommittee on Antitrust, Competition Policy, and Consumer Rights