



February 24, 2020

The Honorable David N. Cicilline
Chairman
Subcommittee on Antitrust,
Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Ken Buck
Ranking Member
Subcommittee on Antitrust,
Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: Committee hearing on proposals to Address Gatekeeper Power and Lower Barriers to Entry Online

Dear Chairman Cicilline and Ranking Member Buck:

Consumer Reports is pleased the Subcommittee is embarking on the next phase of its efforts to ensure that competition works in online marketplaces for the benefit of consumers, workers, independent businesses, and the economy. As our survey last summer found, consumers for whom we advocate for do not have confidence that the online marketplace is working for them, and they support corrective action by Congress.¹

Alphabet/Google, Amazon, Apple, and Facebook are among the most powerful companies in the world today, not only because they've bested the marketplace, but because they've *become* the marketplace. This requires consideration of legislative changes to set market rules that enable a more competitive market structure that remains competitive and to ensure that firms with market power operate with a duty of care for consumers.

The Subcommittee's investigation in the last Congress, culminating in the staff report released in October, lays the groundwork very effectively for this corrective action. It documents a marketplace dominated by a handful of giant digital platforms that increasingly control commerce and communications over the internet – the information consumers obtain, the products and services they are offered, and their connections to friends and the world. And it

¹ https://advocacy.consumerreports.org/press_release/consumer-reports-survey-finds-that-most-americans-support-government-regulation-of-online-platforms/.

documents that these platforms are engaging in anticompetitive behaviors that perpetuate their dominance at the expense of choice and opportunity for others, whether they be consumers, sellers, or communicators.

The staff report identifies a number of proposals for improving the competitive functioning of the online marketplace that warrant the Subcommittee's consideration. These include many proposals that Consumer Reports supports and has been proposing.

Among them are the following complementary reforms to restore competition in the digital economy and for general strengthening of the antitrust statutes:

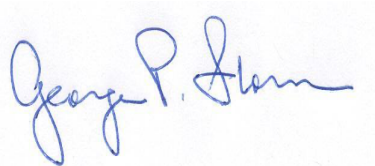
- Imposing non-discrimination requirements to limit self-preferencing by dominant online platforms.
- Requiring interoperability under appropriate conditions to lower barriers to entry and enable effective consumer choice among alternatives.
- Prohibiting abuses of superior bargaining power to impose unfair commercial conditions on businesses or consumers such as discriminating against consumers who do not consent to or who opt out of secondary data collection and usage.
- Reversing the burden of proof for both mergers and exclusionary conduct for dominant corporations with persistent market power (reflected in high and enduring market shares) and strategic market positions (reflected in widespread effects of the market power across the supply and distribution chain). These attributes are particularly pronounced for online gatekeeper platforms that operate across the digital/online value chain.
- Strengthening merger enforcement to revive the “incipiency standard” that Congress intended to underlie section 7 of the Clayton Act, so that trends toward harmful market concentration can be arrested before it is too late and the harm is occurring and cannot be easily reversed.
- Strengthening the prohibition against exclusionary conduct so that it reaches conduct by corporations before they are on the verge of actually securing a monopoly.
- Clarifying the broader goals of the antitrust laws, and that market definition is not a strict requirement but rather is one tool for understanding the presence or absence of competitive constraints.
- Strengthening antitrust enforcement resources to be commensurate with the resources of the corporations.

We believe these are all sound proposals with a solid foundation in antitrust and economic principles that will enable our laws to achieve their mission of preserving and promoting competition and the benefits it brings to us all.

Throughout our 80+ year history, Consumer Reports has emphasized the fundamental importance of competition for ensuring a marketplace that works for consumers, by empowering them with the leverage of choice, the ability to go elsewhere for a better deal, which means businesses have to be responsive to consumers' interests. Addressing dominant online platforms' gatekeeper role and lowering entry barriers online is crucial to achieving this.

We look forward to working with you to ensure that the online marketplace works for consumers, for businesses big and small that seek to serve their needs, and for all who seek to reach them on the internet.

Sincerely,



George P. Slover
Senior Policy Counsel
Consumer Reports



Sumit Sharma
Senior Researcher, Technology Competition
Consumer Reports

cc: Members, Subcommittee on Antitrust, Commercial and Administrative Law