

March 07, 2023

The Honorable Amy Klobuchar
Chairwoman
Subcommittee on Competition Policy,
Antitrust, and Consumer Rights
Committee on the Judiciary
United States Senate
Washington, DC 20510

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

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

Re: Hearing on Reining in Dominant Digital Platforms: Restoring Competition to Our Digital Markets

Dear Chairwoman Klobuchar and Ranking Member Lee:

Consumer Reports is pleased that the Subcommittee is continuing its focus on addressing the problematic market power of the largest online platforms.

There is broad agreement that the market power of the largest online platforms is persistent.

A recent G7 communique notes:¹

There are certain common features present in many digital markets which often lead to firms gaining a large and powerful position. These features may tend to increase market concentration, raise barriers to entry, and strengthen the durability of market power. These common features include: (i) network effects; (ii) multi-sided markets; and (iii) the role of data. This can cause markets to ‘tip’ in favour of one or a small number of large firms.

This position is based on contributions from the US Federal Trade Commission, the US Department of Justice as well as the:

<ol style="list-style-type: none">1. Competition Bureau Canada;2. Autorité de la Concurrence, France;3. Bundeskartellamt, Germany;4. Autorità Garante della Concorrenza e del Mercato, Italy;5. Japan Fair Trade Commission;6. UK Competition and Markets Authority;	<ol style="list-style-type: none">7. European Commission Directorate-General for Competition;8. Australian Competition and Consumer Commission;9. Competition Commission of India;10. Competition Commission South Africa; and11. Korea Fair Trade Commission.
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¹ Compendium of approaches to improving competition in digital markets, G7 Germany, 12 October 2022.

Many foreign jurisdictions are taking action to address this market dominance and shift the balance of power back to consumers.

Multiple investigations and studies have found that this persistent market power is resulting in harm to consumers and businesses that rely on these platforms. These investigations include this Committee’s examination of this problem, the House Antitrust Subcommittee’s investigation during the 117th Congress, and numerous investigations by competition enforcers around the world.

Following these investigations multiple jurisdictions have already enacted or are in the process of enacting antitrust law reforms and/or fair market rules to address discriminatory and exclusionary conduct by the largest online platforms. Examples include:

- The European Union’s Digital Market Act.²
- The establishment of the UK Competition and Markets Authority Digital Markets Unit to develop a pro-competitive regime for digital markets.³
- Germany’s update of its competition law for digital ecosystems.⁴
- Japan’s Act on Improving Transparency and Fairness of Digital Platforms.⁵

US consumers are being left behind.

This means that increasingly consumers outside the US, *but not US consumers*, will benefit from more choices and control when it comes to online services and connected devices. We also expect more innovation in Europe and other jurisdictions spurred by a more competitive online marketplace.

Congress must take action to restore competition to our Digital Markets and to ensure US consumers benefit from online choice, innovation, and competition.

Consumer Reports urges this Subcommittee and Congress to consider and vote on legislation such as the American Innovation and Choice Online Act (S2992)⁶ and the Open App Markets Act (S2710)⁷ that previously passed the Senate Judiciary Committee with strong bipartisan support.

As we explain in our primers on [S2992](#) and [S2710](#) and in our paper ‘[The Case for Fair Market Rules for the Largest Online Platforms](#)’ these proposals are:

² https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en

³ <https://www.gov.uk/government/collections/digital-markets-unit>

⁴ The 10th amendment to the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen) was enacted to establish a new concept of “paramount significance for competition across markets” (Section 19a). This will enable the Bundeskartellamt to intervene earlier and more effectively when it comes to anticompetitive market activities of large digital companies. See here for more details:

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/19_01_2021_GWB%20Novelle.html

⁵ https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/tfdpa.html

⁶ <https://www.congress.gov/bill/117th-congress/senate-bill/2992>

⁷ <https://www.congress.gov/bill/117th-congress/senate-bill/2710>



- well-crafted and focused legislation that strike the right balance between introducing more competition and incentivizing the largest online platforms to keep innovating and competing on the merits.
- include appropriate safeguards to ensure consumer privacy and security.

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,

Sumit Sharma

Senior Researcher,
Consumer Reports