



March 11, 2021

Senator Amy Klobuchar
Chairwoman
Subcommittee on Competition Policy,
Antitrust, and Consumer Rights
425 Dirksen Senate Building
Washington, DC 20510

Senator Mike Lee
Ranking Member
Subcommittee on Competition Policy,
Antitrust, and Consumer Rights
361A Russell Senate Office Building
Washington, DC 20510

Chairwoman Klobuchar and Ranking Member Lee,

Public Knowledge applauds the Subcommittee for holding this hearing to examine competition policy in the 21st century and the need for antitrust reform. This hearing comes at a critical moment for competition policy in America. We are now faced with an opportunity to address the problem of out-of-control corporate power. We don't know when we might have this opportunity again. We must, and we believe the Subcommittee will, seize this moment to pass important antitrust reforms, as well as to provide regulators with new pro-competition tools, on top of antitrust law, to promote competition in digital platform markets.

The sector-by-sector approach is a good one because each industry has its own unique competition problems. In particular, Public Knowledge would recommend a series of hearings on digital platform markets. The power of Big Tech has been at the forefront of calls for revitalizing antitrust, and we urge the Subcommittee to explore the unique issues facing each platform submarket, from app stores to social networking to online advertising and marketplaces.

Digital platforms have several unique characteristics that a would-be legislator must account for, including network effects and economies of scope and scale. Consumers naturally gravitate toward the platforms with the largest network of users, and platforms can experience unbounded and exponential growth once they reach a critical mass of users. Platform markets also run on data which has massive increasing returns to scale. Companies with more data on more people are far more effective competitors than those companies just starting out. The cost of signing up an additional user is also negligible, further fueling the growth and promise of digital platform companies. Finally, digital platforms use their unprecedented control of the user interface to make themselves the default option. Most users never bother to change, further reinforcing dominance.

Public Knowledge supports Chairwoman Klobuchar's *Competition and Antitrust Law Enforcement Reform Act of 2021* (S. 225) as a comprehensive bill that would greatly improve antitrust enforcement in this country. The bill's rebalancing of presumptions, new offices and powers within the Federal Trade Commission, and further guidelines in the area of exclusionary conduct are meaningful reforms that should be enacted. If we want our enforcers to bring the

cases we need—to do more and go further to protect consumers—then bills like this one would give our enforcers a fighting chance. Increased funding for enforcers is long overdue. Complicated market definition requirements can distract from very real competition issues. Merger standards should be strengthened to restore the original purpose of the Clayton Act: to protect competition. This bill would accomplish all those reforms, and we urge the Subcommittee to follow the Chairwoman’s long history of leadership on antitrust reform and pass this bill.

In addition to the smart antitrust reforms in the Chairwoman’s bill, we also need sector-specific rules that go farther than antitrust alone to really address the power of dominant digital platforms.

Digital platform markets are characterized by a distinct shortage of competition, due in part to the platforms’ exploitation of gatekeeper power and significant barriers to entry—not just antitrust violations. This is where Congress needs to step in. In markets as fast-moving and prone to tipping as these, case-by-case antitrust litigation is too slow and limited. In dealing with quickly changing technology, we need speed and flexibility. In dealing with markets prone to tipping, we need ongoing monitoring and enforcement. Public Knowledge believes that competition-inducing regulation is the best, most agile and efficient tool in our arsenal.

That is why this Subcommittee should not discount the importance of a regulatory toolkit in its legislative work. Public Knowledge would recommend two specific reforms that we believe could have big impacts in technology markets: interoperability and non-discrimination.

Interoperability

A strong interoperability rule will open up platform markets to make competition possible. Currently, large platforms use their network effects as an aura of competitive invincibility, secure in the knowledge that they can cut off any upstart competitors that threaten their dominant position. Interoperability requirements would remove this power from the grasp of the platforms. Dominant platforms such as social networks would be forced to innovate or lose their customers. Interoperability is an absolutely necessary tool if we want actual, sustained competition in digital markets. It will be difficult to encourage entrepreneurs or investors to launch potential competitors to a platform if the glaring Achilles’ heel of the dominant platforms’ ability to withhold or cut off interoperability is not accounted for.

Non-Discrimination

Today's platforms are masters of using power in one market as a way to stave off competition in another, often controlling multiple products in a marketplace. When the platform controls both the marketplace and a market participant, such as an ecommerce marketplace or an app store, the platform can rig the markets to maximize its financial windfall and/or to minimize competitive threats. A non-discrimination rule would prohibit this type of behavior. This would facilitate fair competition on the platforms, opening up these markets as a source of potential competitors against the platforms themselves.

We urge the Subcommittee to consider legislation to make these tools into law. Public Knowledge welcomes the opportunity to advise and assist the Subcommittee as it embarks upon this important work.

Sincerely,

/s/ Charlotte Slaiman

Charlotte Slaiman
Competition Policy Director
Public Knowledge

/s/ Alex Petros

Alex Petros
Policy Counsel
Public Knowledge