



**Testimony of Chris Lewis
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**Before the
Senate Committee on the Judiciary
Subcommittee on Competition Policy, Antitrust, & Consumer Rights**

**Reining in Dominant Platforms: Restoring Competition to our Digital
Markets**

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Thank you Chair Klobuchar and Ranking Member Lee for the opportunity to testify today on behalf of Public Knowledge, a nonprofit working in the public interest for over 20 years. I'm Chris Lewis, President and CEO of Public Knowledge where we fight for an open internet, free expression, and access to affordable communications tools and creative works. We see promoting robust competition online as a key part of that mission. I want to thank the Subcommittee for holding this hearing, and for all of the work you have done towards our shared goal of improving the antitrust laws and promoting competition online.

People are increasingly feeling like they have no power over – and yet are stuck with – tech giants online. Big tech companies are popular for the democratic speech they support, the ease of purchasing products, and the communities they foster. However there is a distinct downside. Consumers don't know or understand how they are being tracked and influenced. Small businesses, and often even medium and large businesses, must accept that their products will be unfairly demoted in search results, their ability to communicate with their customers limited, and their competitively sensitive business information misused, in order to access consumers through the digital platforms that dominate the internet. On social media, where so much of our modern political debate takes place, women, people of color, and other marginalized groups face harassment that pushes us out of the conversation—and radicalization pipelines have offline consequences.

I. The Problem

Surrounded by these huge and difficult problems, we have lost our collective imagination for what a better internet could look like. In advocating for consumers, we at Public Knowledge often find ourselves advocating for new innovations and new businesses that don't exist yet. Competition is one of the best ways to promote innovation. In fact, competition drives

innovation. And this is a space that desperately needs innovation to be a part of the solution to some of the scariest problems we face online.

Over the last four years, Congress has done an impressive job of researching this problem, educating Members and the public, and giving a voice to key stakeholders in hearings like this one.¹ That work was also taking place in civil society and in academia.² That work was also taking place in other jurisdictions across the globe.³ Through that extensive research from so many experts, advocates, and representatives of the people, some key themes have emerged. Digital platforms form a distinct sector that need new laws and rules to address their power and protect users. Existing antitrust law will not be sufficient, yet antitrust law does have an important role to play.

Dominant digital platforms have great power in a distinct sector. These companies are embedded in so much of our lives that their power is not just economic. They control not only how we purchase products and services, but also our communications with each other, how we access news and information, and how we discuss politics and form opinions. Even consumers and

¹ Investigation of Competition in Digital Markets, Subcommittee on Antitrust, Commercial, and Administrative Law of the Committee on the Judiciary of the House of Representatives (July 2022) <https://www.govinfo.gov/content/pkg/CPRT-117HPRT47832/pdf/CPRT-117HPRT47832.pdf>; Senate Judiciary Committee Hearings, The Impact of Consolidation and Monopoly Power on American Innovation, Dec. 15, 2021, <https://www.judiciary.senate.gov/committee-activity/hearings/the-impact-of-consolidation-and-monopoly-power-on-american-innovation>; Antitrust Applied: Examining Competition in App Stores, April 21, 2021, <https://www.judiciary.senate.gov/committee-activity/hearings/antitrust-applied-examining-competition-in-app-stores>; Big Data, Big Questions: Implications for Competition and Consumers, Sept. 21, 2021 <https://www.judiciary.senate.gov/committee-activity/hearings/big-data-big-questions-implications-for-competition-and-consumers>; Protecting Competition and Innovation in Home Technologies, June 15, 2021, <https://www.judiciary.senate.gov/committee-activity/hearings/protecting-competition-and-innovation-in-home-technologies>; Competition in Digital Technology Markets: Examining Acquisitions of Nascent or Potential Competitors by Digital Platforms, Sept. 24, 2019, <https://www.judiciary.senate.gov/committee-activity/hearings/competition-in-digital-technology-markets-examining-acquisitions-of-nascent-or-potential-competitors-by-digital-platforms>; Competition in Digital Technology Markets: Examining Self-Preferencing by Digital Platforms, March 10, 2020, <https://www.judiciary.senate.gov/committee-activity/hearings/competition-in-digital-technology-markets-examining-self-preferencing-by-digital-platforms>; and House Judiciary hearings <https://www.congress.gov/event/116th-congress/house-event/110883>.

² Harold Feld, The Case for the Digital Platform Act, <https://www.digitalplatformact.com/>; George J. Stigler Center for the Study of the Economy and the State, Committee for the Study of Digital Platforms Market Structure and Antitrust Subcommittee Report (July, 2019), <https://www.chicagobooth.edu/research/stigler/news-and-media/committee-on-digital-platforms-final-report>; Fiona Scott Morton & David Dinielli, “Roadmap for a Monopolization Case Against Google Regarding the Search Market,” (June 2020), <https://omidyar.com/wpcontent/uploads/2020/09/Roadmap-for-a-Monopolization-Case-Against-Google-Regarding-the-Search-Market.pdf>.

³ Online Platforms and Digital Advertising Market Study, United Kingdom Competition & Markets Authority, (July 2020) <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study>; Competition Policy for the Digital Era (May 2019) <https://op.europa.eu/en/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1/language-en>; Digital Platforms Inquiry Final Report, Australian Competition and Consumer Commission (July 2019) <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>.

businesses that would prefer not to use these services find that they cannot avoid dominant platforms.⁴ Their impact is so huge that inadvertent and small errors can pose serious consequences for individuals and businesses, and even for our democracy. Their level of importance has surely risen to the level where they need sector-specific laws and rules setting guardrails for their conduct.

Existing antitrust law will not be sufficient. First, because we face problems that will not be addressed by more competition alone, but second, because achieving competition in these markets is especially difficult. As with telephone communications and internet infrastructure, dominant digital platforms require additional pro-competition policy intervention for Americans to experience the benefits of dynamic competition. This requires recognizing sources of power beyond traditional market power. Dominant digital platforms often derive power from vertical integration and conglomerate integration (integration of multiple seemingly unrelated products that are neither horizontally nor vertically related), control of key bottlenecks between consumers and the products or services they seek, and from network effects. These markets tend towards tipping, making it especially difficult for antitrust enforcement and antitrust remedies to achieve lasting competition.

Antitrust has an important role to play. Especially as Congress has so far been unable to move forward with the new laws we need. We applaud the Department of Justice and Assistant Attorney General Kanter for their antitrust cases against Google, and the Federal Trade Commission and Chair Lina Khan for their antitrust case against Facebook, as well as state attorneys general who have brought similar cases. We believe these lawsuits are well-grounded in facts and law, and indicate the breadth and seriousness of the competition concerns here. The fact that these lawsuits have garnered bipartisan support of both the Biden and Trump antitrust enforcers, as well as state attorneys general of both parties, should also be a signal to Congress that this is not a partisan issue.

I want to thank this Subcommittee and Chair Klobuchar and Ranking Member Lee for ushering through the Merger Filing Fee Modernization Act last Congress to support our antitrust enforcement agencies with more funding. At Public Knowledge we look forward to working with you to make sure that this funding is appropriated and actually makes it to the FTC and DOJ so they can increase enforcement under existing law. We were also proud to have endorsed Chair Klobuchar's Competition and Antitrust Law Enforcement Reform Act (CALERA) which will help our agencies operate more efficiently and stop more anticompetitive conduct and mergers.

II. Solutions

⁴ For detailed examples of this, I recommend this 2019 series from Kashmir Hill in Gizmodo. Hill, Kashmir, 2019, "I tried to Block Amazon from My Life. It Was Impossible," Gizmodo (January 22, 2019), <https://gizmodo.com/i-tried-to-block-amazon-from-my-life-it-was-impossible-1830565336>; "I Cut Facebook Out of My Life. Surprisingly, I Missed It," Gizmodo (January 24, 2019), <https://gizmodo.com/i-cut-facebook-out-of-my-life-surprisingly-i-missed-i-1830565456>; "I Cut Google Out of My Life. It Screwed Everything Up," Gizmodo (January 29, 2019), <https://gizmodo.com/i-cut-google-out-of-my-life-it-screwed-up-everything-1830565500>; "I Cut the 'Big 5' Tech Giants Out of My Life. It Was Hell," Gizmodo (February 7, 2019), <https://gizmodo.com/i-cut-the-big-five-tech-giants-from-my-life-it-was-hel-1831304194>.

Here's the framework for how I think we can best address the variety of challenges posed by dominant digital platforms. First, the subject of this hearing: competition. We need sector-specific, pro-competition legislation to empower consumers and business users by incentivizing market entry and facilitating switching to new platforms. Second, we need transparency so that consumers and business users can make informed choices. Third, we need consumer protection laws and rules to address platform harms that won't be improved by competition. The first and most important of these would be comprehensive privacy legislation like ADPPA. Lastly, these responsibilities should be housed in a new agency: an expert digital regulator.

Competition empowers customers to choose the option that is best for them. In many markets that's the best price, but in digital platforms, where the price is often zero dollars, competition may happen along a variety of quality measures. Consumers might prefer to see fewer ads, more relevant search results, more reliable information, more customizability like filtering tools and anti-harassment tools, or even more (or less) content moderation. Business users might prefer lower prices, as well as more direct communication with their users, greater assurances that their private business data won't be used to compete against them, less lock-in and tying of platform services they don't want or need, and more options for interoperable services from a trusted third party, like fraud detection. Today, digital platforms are not accountable to the government because of a lack of regulation, or their customers because of a lack of competition. With a combination of competition and regulation, we can hold these powerful companies accountable and see better outcomes.

Competition also spurs innovation. Fighting to win or keep customers is a great incentive to find new ways to improve your products or processes. Further, a company striving to gain market share, not yet holding a strong competitive position--such as a new entrant or maverick firm--has an incentive to disrupt the status quo with big changes. It's this type of disruptive innovation that we want to see in online platforms. Is it true that ad-supported or paid content are the only two viable business models for online content? Are these content moderation fights inevitable? Does social media need to prioritize the content that makes us most angry to maximize engagement? I'd like to see what disruptive innovators might come up with to respond to these problems if given the opportunity.

Several strong bills have already garnered lots of support in Congress to promote fair competition on and against dominant digital platforms. We need new fair competition rules, like the prohibitions on self-preferencing and anticompetitive discrimination in the American Innovation and Choice Online Act (AICOA) and the Open App Markets Act (OAMA). This will make sure consumers are actually seeing the products that are best for **them**, not just the products that are best for Big Tech's bottom line. And, by taking away some of the key tools that Big Tech uses to stifle competitors and potential competitors online, fair competition rules like those found in AICOA and OAMA will also encourage new innovators to enter the market, since they'll know they can have a fair shot to actually reach consumers.

We need interoperability requirements, like those in AICOA or in the ACCESS Act, so that users can more easily leave a social media platform that isn't working for them. It often seems like no

one is happy with how social media companies are doing content moderation today, but repealing Section 230 is absolutely not the answer. It's clear that most users want content moderation, and we believe content moderation is crucial to having constructive conversations online. But there's a lot of disagreement on just what exactly that content moderation should look like. When users have a diversity of preferences, it's important to have a diversity of options available. Yet, because of a lack of interoperability, users are stuck on the platform where their friends are, instead of being able to choose based on features, like content moderation.

To actually build a better internet that works for everyone, we are going to need a new digital regulator.⁵ This regulator would work together with antitrust enforcers, not in lieu of antitrust enforcement. It would have competition, privacy, and other consumer protection authorities. It could also address content moderation concerns through transparency and due process requirements, and help carefully craft the future of algorithmic oversight and accountability.

A digital regulator can improve the effectiveness of antitrust enforcement. The breakup of the Bell System is a strong example for policymakers today to learn from.⁶ In that case, the Federal Communications Commission played a critical role in the breakup, helping to broaden the array of remedies the judge was able to pursue in that antitrust case. An expert regulator can be invaluable for fact-checking the claims of an antitrust target, for providing the regulatory framework on which an antitrust remedy can be based, and for shoring up an antitrust remedy where shortcomings appear.

Most importantly, it would house the expertise needed to get each of these tricky questions right. Yes, Congress has done an admirable job examining this industry and identifying problems and solutions. But this highly technical industry with complex economics is a difficult one to manage directly from Congress. Congress is responsible for addressing so many of the problems our nation faces, and they often lack the full technical expertise to examine each one in great depth and if Congress gets a detail wrong, it literally takes an act of Congress to fix it. Regulatory agencies play a critical role and can act much closer to the speed of innovation. A digital regulator can build expertise in the sector over time. It can update rules as facts on the ground change, or as new problems are revealed. Yes, Congress must give clear guidance to the regulator, but once that work is done, oversight of the agency is a much more appropriate task for Congress on an ongoing basis than trying to oversee this mammoth industry directly.

On both sides of the aisle, and on both sides of the Atlantic, there is a clear agreement that dominant digital platforms have become too powerful and must be reined in. The question remains: Can Congress meet the moment? Last Congress, there was incredible bipartisan support for platform accountability solutions like AICOA, OAMA, and ADPPA. There was so much work done to iron out the details and bring key stakeholders into the discussion. It's so

⁵ For the best explanation of the digital platform regulator, why it's needed, and how it should be structured and operate, see Harold Feld, The Case for the Digital Platform Act (Oct. 2019) <https://www.digitalplatformact.com>.

⁶ For an excellent detailed account of this important history and the lessons we should take from it for how to manage the power of dominant digital platforms today, see Al Kramer, "A Lesson From the Landmark AT&T Breakup: Both a Sector-specific Regulator and Antitrust Enforcers Were Needed." <https://publicknowledge.org/independent-but-together-how-antitrust-and-regulation-can-work-synergistically-to-benefit-consumers/>.

disappointing that we weren't able to get any of the bills focused on tech over the finish line. Republicans and Democrats have a responsibility to come to the table and find a workable solution, because the American people cannot wait any longer.