

## Digital Regulator Proposal: Frequently Asked Questions

### 1. Why do we need a [digital regulator](#)?

A specialized regulator is essential for digital platforms due to the dynamic and diverse nature of the industry. Digital platforms are now a distinct sector of the economy that impinges on nearly every aspect of our lives. However, current efforts to address their impacts are insufficient, particularly in tackling monopolistic tendencies. Enforcers often lack comprehensive knowledge of the industry and its technology, while existing individual legislation may become obsolete or fail to cover relevant platforms. Establishing an agency with specialized expertise and oversight capability would enhance transparency for government, researchers, and the public.

### 2. Would this replace existing agencies like the Federal Trade Commission?

No. A sector-specific regulator provides complimentary protections to the FTC's antitrust enforcement power. To mitigate the concerns over agency inaction or agency abuse, Congress should avoid the preemption of other existing agencies. No single agency, however well-equipped, can possibly hope to monitor a sector as vast and as quickly evolving as digital platforms.

### 3. Would this preempt the states?

No. To mitigate the concerns over agency inaction or agency abuse, Congress should avoid the preemption of state regulators. State enforcement is complementary to federal enforcement.

### 4. Why a new agency rather than expanding an existing one like the FTC or FCC?

Because expanding existing agencies like the FTC or FCC is insufficient to address the problems in the digital platform sector. The FTC lacks the specific experience and proactive regulatory approach for digital platforms, while expanding the FCC's jurisdiction could blur the line between network and content regulation – potentially favoring the networks it has traditionally regulated. Additionally, both agencies may lack the expertise to regulate digital platforms effectively. Although investing in these agencies to acquire expertise is an option, [establishing a new agency dedicated to digital platforms](#) would likely be more cost-effective and efficient.

### 5. What is the role of antitrust in regulating digital platforms?

Antitrust and a digital regulator play complementary roles in regulating markets and promoting consumer welfare. Currently, enforcement in the digital realm has fallen behind, highlighting the need for collaboration between antitrust and regulation to fill regulatory gaps and prevent harmful behavior. While antitrust aims to maintain competition, the primary focus of a digital regulator should be *actively fostering competition between* digital platforms. Furthermore, antitrust is not designed to provide general consumer protection. A digital regulator would combine promoting competition and other consumer protection.

Finally, antitrust evolves slowly. Cases take years, and apply only to the specific parties before the court. An agency with the power to create regulations will have the nimbleness and flexibility to address problems as they arise and make rules binding on all platforms.

## **6. Is this digital regulator a privacy regulator, too?**

The new regulator should also oversee consumer protection regulations for digital platforms, particularly regarding user privacy (without preempting existing privacy protections established by Congress and overseen by other agencies). But it would not act as a comprehensive regulator for consumer privacy outside the digital platform space. For that, we need [comprehensive privacy legislation](#) at the federal level. For example, stringent data protection legislation limiting the collection and use of personal data by large platforms could level the playing field for smaller or newer companies without access to vast user data, and could limit the ability of digital platforms to use personal information generally. But this would not address all the ways companies exploit personal information.

## **7. Will a digital regulator oversee ALL platforms?**

Yes. While competition policy focuses on platforms with sufficient power to exercise unfair influence over competition, general consumer protection extends to companies of all sizes. People do not feel any better when cheated by a small company rather than a large company. At the same time, a digital regulator designed to promote competition would take care not to impose the same kind of regulation on small platforms as on large platforms. Additionally, commerce platforms like Amazon or Etsy raise different issues than social media platforms or generative AI platforms like ChatGPT.

In other words, a digital regulator would have jurisdiction over all platforms. But it would distinguish between the different types of platforms and the different size of platforms.

## **8. How would this new agency regulate AI?**

AI regulation should adopt a comprehensive approach, treating AI as both a tool and a digital platform. This means considering not only the specific algorithms and applications but also the broader digital ecosystems within which AI operates. A new regulatory agency is needed to fill in gaps in consumer protection within the AI industry. Currently, AI companies rush to gather data through licensing, web scraping, or leveraging existing data. Moreover, the industry's structure, characterized by a small pool of skilled professionals and high capital costs, impedes dynamic competition.

Establishing a digital regulator is crucial to protect against the real harms of AI systems including racial bias, labor exploitation, disinformation, and invasions of privacy and autonomy. This regulator must comprise diverse experts, have rulemaking authority, and maintain a pro-competition focus to protect data portability and broader consumer choice. Additionally, it should recognize shifts in conduct and communities across platforms based on community standards and platform structure.