



# Public Knowledge

December 17, 2024

The Honorable Amy Klobuchar  
Chairwoman, Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
Senate Judiciary Committee  
U.S. Senate  
Washington, D.C. 20510

The Honorable Mike Lee  
Ranking Member, Subcommittee on Competition Policy, Antitrust, and Consumer Rights  
Senate Judiciary Committee  
U.S. Senate  
Washington, D.C. 20510

CC: Members of the Senate Judiciary Committee

Re: Senate Judiciary Committee's Antitrust Subcommittee Hearing, "Continuing a Bipartisan Path Forward for Antitrust Enforcement and Reform."

Dear Chairwoman Klobuchar, Ranking Member Lee, and Members of the Committee,

Public Knowledge would like to express its sincere gratitude to Senators Amy Klobuchar and Mike Lee for their leadership in holding the hearing entitled, "Continuing a Bipartisan Path Forward for Antitrust Enforcement and Reform." Public Knowledge is a nonprofit whose mission is to promote freedom of expression, an open internet, and access to affordable communications tools and creative works. We help shape policy on behalf of the public interest, working with policymakers, regulators, and other stakeholders to advance policies that promote competition, protect free speech, and ensure universal access to broadband.

This hearing represents a critical step in advancing meaningful discussions on antitrust policy, and we commend the subcommittee for its commitment to fostering bipartisan dialogue in addressing the challenges of ensuring fair competition and protecting consumers. The members' dedication to bridging divides and working together on this important issue is a testament to the importance of finding common ground in the pursuit of effective, balanced reform.

## Looking Back

### *Litigation*

The wave of antitrust cases stemming from both the Trump and Biden Administrations against major technology companies represents a crucial step toward addressing the growing concentration of power in the digital economy, as well as a renewed commitment to maintaining competitive markets and protecting consumer interests.<sup>1</sup> However, the success of these cases will largely depend on the remedies implemented. Both behavioral and structural remedies are necessary to effectively address anticompetitive practices in the tech sector. While the *Microsoft* settlement included important behavioral requirements that helped foster competition in the browser market, its limited structural components were critiqued for requiring long-term regulatory oversight and were less forceful than a more robust structural solution.<sup>2</sup> This mixed legacy suggests that future antitrust remedies must go further, potentially including measures like mandatory divestitures or operational separations to ensure lasting competitive dynamics.

However, litigation alone cannot adequately address the unique challenges posed by digital platforms. The rapid pace of technological change, strong network effects, and complex technical interactions between products and services demand sector-specific legislation. Traditional antitrust frameworks, developed in the industrial era, struggle to capture the nuances of data-driven business models, zero-price markets, and the winner-take-all dynamics common in digital markets. We need Congress to pass targeted legislation like the American Innovation and Choice Online Act (AICOA)<sup>3</sup> and the Advertising Middlemen Endangering Rigorous Internet Competition Accountability Act (AMERICA)<sup>4</sup>, which could establish clear rules for digital platforms that foster a competitive and open internet like mandatory interoperability, prohibiting platform self-preferencing, and eliminating conflicts of interest to provide more regulatory certainty while preserving innovation.

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<sup>1</sup> Cecilia Kang & David McCabe, *After Google Antitrust Ruling, Here's Where Other Big Tech Cases Stand*, N.Y. TIMES, Aug. 5, 2024, <https://www.nytimes.com/2024/08/05/technology/antitrust-google-amazon-apple-meta.html>.

<sup>2</sup> *The Microsoft Settlement: A Remedy That Pleases Almost No One*, KNOWLEDGE@WHARTON (Dec. 5, 2001), <https://knowledge.wharton.upenn.edu/article/the-microsoft-settlement-a-remedy-that-pleases-almost-no-one/> (“But to be effective with this you almost need a regulator watching it all the time. These conduct and behavioral remedies just aren’t enough because Microsoft’s track record is that it will always find a way to get around them.”).

<sup>3</sup> *Reining in Dominant Platforms: Restoring Competition to our Digital Markets: Hearing Before the Subcomm. on Antitrust, Competition Pol’y & Consumer Rts. of the S. Comm. on the Judiciary, 118th Cong. (2023)* (statement of Chris Lewis, President and CEO, Public Knowledge) <https://publicknowledge.org/policy/chris-lewis-senate-judiciary-subcommittee-testimony-on-restoring-competition-to-digital-markets/>.

<sup>4</sup> Letter from Public Knowledge et al. to Senate Judiciary Comm. Urging Congress to Establish Clear Legal Standards that Promote Competition and Innovation by Advancing Key Antitrust Bills (May 3, 2023) (signed by 11 organizations and 7 advocates), <https://publicknowledge.org/policy/joint-letter-on-competition-bills/>.

Furthermore, effective oversight of digital platforms requires specialized technical and economic expertise that existing regulatory bodies may lack. A dedicated digital regulatory agency would be better equipped to understand and respond to the complex technical architecture of platform businesses, assess the competitive implications of algorithmic systems, and evaluate data-related practices. This agency could work alongside existing antitrust enforcers, providing technical expertise while developing and enforcing platform-specific regulations. The rapid evolution of digital markets demands regulators who can keep pace with technological change and understand its competitive implications, making a specialized agency essential for effective long-term oversight.

### *Regulation*

The antitrust enforcement agencies made significant strides in modernizing antitrust enforcement through their updated Merger Guidelines. These guidelines represent a crucial advancement in antitrust policy by establishing a unified framework that addresses horizontal, non-horizontal, and vertical mergers under a single comprehensive approach.<sup>5</sup> The guidelines demonstrate particular sophistication in addressing the unique challenges posed by digital markets. They provide clear direction on how agencies will evaluate competitive concerns in multi-sided platforms and assess threats to nascent competitors – issues that are increasingly central to maintaining healthy competition in the digital economy.

Equally noteworthy is the bipartisan advancement of updated Hart-Scott-Rodino Premerger Notification Rules, which passed the commission with unanimous 5-0 support.<sup>6</sup> This update to the premerger notification process represents a critical moment of cross-party consensus on the importance of effective merger review procedures, demonstrating that strengthening antitrust enforcement can transcend political divisions when focused on protecting market competition.<sup>7</sup>

However, these policy advancements can only be effective if the enforcement agencies have adequate resources to implement them. Recent proposals to significantly reduce agency staffing and resources, such as those advocated by figures like Elon Musk and Vivek Ramaswamy through their Department of Government Efficiency initiative, pose a serious threat to effective

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<sup>5</sup> Comments of Public Knowledge in Response to Request for Public Comment on Proposed Merger Guidelines, FTC-2022-0003-0001, U.S. Dep't of Just. & Fed. Trade Comm'n (Sept. 18, 2023), <https://publicknowledge.org/policy/public-knowledge-ftc-doj-draft-merger-guidelines-comments/>.

<sup>6</sup> Press Release, Fed. Trade Comm'n, FTC Finalizes Changes to Premerger Notification Form, (Oct. 10, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/10/ftc-finalizes-changes-premerger-notification-form>

<sup>7</sup> Comments of Public Knowledge in Response to Request for Public Comment on Hart-Scott-Rodino Coverage, Exemption, and Transmittal Rules, FTC-2023-0040, U.S. Dep't of Just. & Fed. Trade Comm'n (Sep. 27, 2023), <https://publicknowledge.org/policy/comments-in-response-to-hsr-form-update/>.

antitrust enforcement.<sup>8</sup> These suggested cuts would severely hamper the agencies' abilities to review mergers, investigate anticompetitive conduct, and enforce antitrust laws at a time when market concentration and competitive concerns are at historic highs.

Rather than reducing agency resources, there is a compelling case for expanding them. The increasing complexity of modern markets, particularly in the digital sector, requires sophisticated economic analysis and technical expertise. Effective enforcement demands adequate staffing levels, competitive salaries to attract and retain talented professionals, and additional resources for conducting thorough investigations and litigation. Without proper funding, even the most well-designed guidelines and rules will fail to achieve their intended effects. The agencies need more resources, not fewer, to effectively fulfill their mandate of protecting competition and consumers in an increasingly complex economic landscape.

## **Moving Forward**

The rapid advancement of artificial intelligence technology has created new and complex challenges for competition policy that demand careful attention from regulators and lawmakers across the political spectrum. One significant concern is the growing pattern of partnerships and acquisitions between established Big Tech companies and emerging AI firms. These collaborations, while potentially driving innovation, also risk concentrating AI capabilities within a small number of already-dominant companies.<sup>9</sup> Such partnerships have already gotten the attention of the FTC,<sup>10</sup> as they have the potential to limit the development of competing AI solutions and potentially foreclose opportunities for new entrants to challenge established players in both AI development and application markets.

The consolidation occurring in the semiconductor industry presents another critical competition concern. As AI development and deployment demand the use of increasingly sophisticated and specialized chips, aspects of the semiconductor market trend toward consolidation among major manufacturers.<sup>11</sup> Similarly, the cloud computing sector has experienced significant consolidation, with a few major providers dominating the market for the computational resources necessary for

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<sup>8</sup> Holman W. Jenkins, Jr., *Musk and Ramaswamy's 'Doge' Plan to Reform Government, Supreme Court Guidance End Executive Power Grab*, WALL ST. J. (Dec. 18, 2024), <https://www.wsj.com/opinion/musk-and-ramaswamy-the-doge-plan-to-reform-government-supreme-court-guidance-end-executive-power-grab-fa51c020>.

<sup>9</sup> Comments of Public Knowledge and Responsible Online Commerce Coalition in Response to Request for Information for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies, Fed. Trade Comm'n (Sep. 24, 2024), <https://publicknowledge.org/policy/ai-and-competition-comments/>.

<sup>10</sup> Press Release, Fed. Trade Comm'n, FTC Launches Inquiry into Generative AI Investments and Partnerships (Jan. 25, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-launches-inquiry-generative-ai-investments-partnerships>.

<sup>11</sup> Katherine Dunn, *Nvidia Gets DOJ Subpoena in Escalating Antitrust Investigation*, BLOOMBERG (Sept. 3, 2024), <https://www.bloomberg.com/news/articles/2024-09-03/nvidia-gets-doj-subpoena-in-escalating-antitrust-investigation>.

AI development and deployment.<sup>12</sup> This concentration in cloud services could give these providers significant control over the infrastructure required for AI innovation, potentially allowing them to influence which AI companies succeed or fail through pricing and access decisions.

These interrelated challenges require a coordinated and bipartisan policy response that balances the need for innovation and investment with the importance of maintaining competitive markets. Policymakers must consider how existing antitrust frameworks can be applied or adapted to address these emerging issues, while also passing legislation that prevents the stifling of market disruptors like AI that fuel technological innovation and economic progress.

## **Conclusion**

We commend the subcommittee for its dedication to fostering bipartisan cooperation in antitrust enforcement and reform. The challenges ahead – from ensuring lasting sector-specific industry standards for protecting consumers online, to addressing emerging AI competition concerns, and beyond – require sustained collaboration across party lines. While recent developments like the updated Merger Guidelines and HSR rules are significant achievements, adequate agency resources and potential new regulatory frameworks are essential for effective enforcement. Public Knowledge stands ready to work with the Senate Judiciary Committee to advance these critical competition policy objectives in service of the public interest in the 119th Congress.

Sincerely,

Public Knowledge

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<sup>12</sup> Charlotte Slaiman, Challenging Big Tech in the Age of AI, *Public Knowledge* (Feb. 27, 2024), <https://publicknowledge.org/challenging-big-tech-in-the-age-of-ai/>.