Public Knowledge

1818 N St, NW
Suite 410
Washington, DC 20036

October 31, 2014

Federal Trade Commission, Office of the Secretary
Room H-113 (Annex X)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Big Data: A Tool for Inclusion or Exclusion? Workshop
Project No. P145406

Dear Chairwoman Ramirez and Commissioners:

Public Knowledge respectfully responds to the FTC's request for comments regarding issues related to the September 15 "Big Data: A Tool for Inclusion or Exclusion?" workshop. Public Knowledge writes in particular regarding issues at the intersection of competition policy and big data. We urge the Commission to examine unique questions arising in this area.

Big data may affect competition among companies that collect and/or use data, such as social media, internet search, online retail, and other companies that operate online. In turn, this raises questions about whether effects on competition impact different consumers differently.

The Commission should examine issues at the intersection of competition and big data. Public Knowledge urges the Commission to examine questions in three areas in particular:

1. What distinct competition issues might be applicable to companies that collect or use big data?

2. Does big data reinforce market power and tend to foster monopolies?

3. How do competition issues intersect with concerns about uses of big data that reinforce social inequities?

Are There Distinct Competition Issues Applicable to Companies that Collect or Use Big Data?

Certain competition issues may be distinctly present among companies that collect and/or use big data. For example, many companies whose businesses rely on user-generated content or user profiles exhibit strong network effects. The incumbents have large user bases that create value. This value draws new users, strengthening the network and reinforcing the dominance of the incumbent.[1] Unless and until a new competitor reaches a "tipping point"—a critical mass of users willing to switch networks—it can be very difficult to compete with a preexisting network.

The Commission should examine network effects as they apply to companies that deal in big data. It should also examine whether there are other competition issues that are particularly significant among companies that collect or use big data.

Does Big Data Tend to Foster Monopolies?

Beyond identifying competition issues that may arise in the big data sector in particular, the FTC should examine whether monopolies are more likely to form in this sector. As noted above, there may be strong network effects at play in markets among companies that collect or use big data. And at least one commenter in this docket asserts that big data reinforces market power.[2] The competitive barriers for new entrants to sectors that rely on large datasets may simply be too high to overcome. Some companies that collect or use big data may therefore operate as natural monopolies.

The Commission should examine this possibility carefully. Does big data in fact reinforce market power? Does big data constitute a barrier to market entry? If so, how can innovative privacy practices enter and compete meaningfully in

---

[1] "[Instant messaging] is an example of a market that involves strong *network effects*. Like most communication networks, IM is thought to follow Metcalfe's law: the value of a network as a whole is proportional to the square of the number of participants. In other words, the more people in the network, the more valuable the network." Eric Ries, *The Lean Startup* 39 (2011).

[2] Comments of Nathan Newman to Big Data: A Tool for Inclusion or Exclusion? Workshop, P145406-00015 at 2 (Aug. 15, 2014), *available at*
http://www.ftc.gov/system/files/documents/public_comments/2014/08/00015-92370.pdf
.http://www.ftc.gov/system/files/documents/public_comments/2014/08/00015-92370.pdf.

the marketplace? The Commission should consider whether new policies are needed to encourage new entrants.

What Are the Implications for Concerns About Discrimination and Disparate Impact?

To the extent that there are competition concerns distinctly applicable to companies that deal in big data, the Commission should consider the implications for concerns about discrimination and disparate impact in big data. For example, if incumbent data practices are found to reinforce and exacerbate social disparities, this may motivate the FTC to seek out ways to foster development of new, less-discriminatory big data practices. One way to do this may be by ensuring that there are opportunities for new entrants with innovative data practices.

Conclusion

Companies that deal in big data may raise distinct competition issues. Indeed, it may even be that big data is an anticompetitive force. The Commission should examine these issues in determining how to wield its antitrust power. It should also examine how these issues intersect with concerns about uses of data that are discriminatory or have a disparate impact on disadvantaged communities.

Respectfully submitted,

/s/ _____
Nicholas Garcia
Law Student Intern

Laura M. Moy
Staff Attorney

Public Knowledge
1818 N St, NW
Suite 410
Washington, DC 20036
(202) 861-0020 ext. 106