



August 17, 2018

Mr. Donald S. Clark  
Secretary of the Commission  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Mr. Clark:

The Free & Fair Markets Initiative (“FFMI”) appreciates the opportunity to comment on the Federal Trade Commission’s (“the Commission”) request for comments for its “Competition and Consumer Protection in the 21st Century Hearings,” Project Number P181201 dated June 20, 2018. This comment is respectfully submitted with regards to Topic 1 on the state of antitrust and consumer protection law and enforcement, and their development.

FFMI is a non-profit coalition of businesses, consumer advocacy groups, workers and community activists committed to scrutinizing and highlighting emerging market trends that are stifling competition and innovation, influencing federal and local government spending, putting consumer data in harm’s way and limiting consumer choice.

FFMI applauds the efforts of the Commission to organize this series of public hearings on “Competition and Consumer Protection in the 21st Century.” These hearings will bring to the forefront an urgent conversation that needs to be convened on how to safeguard consumers and businesses of all sizes in a time of evolving business practices, new technologies and international developments.

In particular, FFMI views the hearings as an opportunity for the Commission to give serious thought to platform power, and in particular the emergence of broad digital ecosystems in which a platform operates a variety of overlapping businesses and services while exercising substantial power in at least one of those business lines. These ecosystems have the potential to harm consumers and limit competition, as well as inhibit innovation. For instance, the dynamics of platforms that bundle a diverse set of offerings or have the incentive to misuse data under a hybrid business model are worth close examination and further discussion.

This is not about all of technology; rather it is about making sure sufficient attention is being paid to circumstances when competition and consumer choice — the hallmarks of the Internet — are no longer able to protect consumers and innovation. Accordingly, FFMI will focus our comment in the following areas:

## **Acquisition of Potential Competitors and Stymieing Startup Growth**

Ensuring vigorous competition has been a guiding principle of the Commission. However, recent critiques suggest that there are reasons to question whether M&A enforcement has been sufficiently diligent and firm, particularly in the area of vertical and conglomerate mergers.

The largest tech companies have been able to leverage their massive market growth to purchase new businesses at an unprecedented rate. Between 2013 and 2017, these firms collectively acquired [182 companies](#), many of which represent promising competitors in industries that dominant tech companies seek to enter.

Recent events clearly illustrate this problem. For example, consider the case of Amazon. In its rise from a small online bookseller to the third-richest company in the world, Amazon has been able to ramp up its acquisition strategy to purchase scores of startups, nascent businesses and other major competitors. Just this year alone, Amazon paid [\\$1 billion](#) for home doorbell-maker Ring and roughly the same for online pharmacy startup [PillPack](#).

It is exactly this kind of acquisitive business strategy, designed to stamp out competition before it even has a chance to get off the ground, which is significantly contributing to such low rates of new business creation. At the same time that the largest tech companies have geometrically increased their market capitalization and concentration of power, new business growth has been slashed [nearly in half](#).

Platforms frequently advocate that all sides of their business should be taken into account when considering whether any of their business practices is anticompetitive. For example, they will argue that it is not problematic to provide a service to consumers for free on one side of the platform because they make money through advertisements on the other side of the platform. But only looking at both sides of *one* aspect of a platform's business fails to identify and expose the entire impact of a potential acquisition.

The Commission should be careful to consider the current real-world business dynamics about how an acquisition will impact and reinforce the entire digital ecosystem. This is of particular relevance when an acquisition is being proposed by a company that derives its market power from bundling its diverse products and services.

Across a broad range of industries, from groceries to home security and pharmaceuticals, dominant tech companies have cornered the market by gaining the ability to offer consumers all-inclusive bundle packages that are not replicable and lack price transparency. For example, take [Prime](#) — Amazon's flagship subscription service that includes free two-day shipping on more than 100 million items, one-day free shipping on more than one million items and limitless streaming access to a vast digital library of videos, podcasts, books and music.

An analysis of any transaction by Amazon should consider the practical realities of how the Prime offering would be strengthened, whether through lock-in on the delivery and fulfillment side or the addition of another digital service with minimal marginal costs.

Deals like these offered to purportedly benefit consumers disguise how the largest tech companies are able to deploy their acquisition strategy to create a race to the bottom on prices that other businesses cannot match, as well as an environment in which other businesses can't survive. Amazon has pursued a [unique strategy](#) of deferring short term profits in favor of greater and greater market share while a supportive equity market provides the capital to acquire competitors at an unprecedented rate. With these companies in tow, it can then further reduce prices and run other competitors out of the market — further enhancing its own concentration of power. This significantly reduces the incentive for others to innovate in a broad range of sectors and will create an environment in which Amazon is able to raise prices with little concern about competition in the long-term.

A renewed focus on thoughtful, diligent and firm merger review will be critical to bring sustained benefits to consumers and the development of entrepreneurship across the country. Small businesses — the bedrock of local communities — have fared especially poorly in the wake of the growth of these dominant tech companies. There are over [28 million](#) small businesses in the United States, which account for more than [63 percent](#) of net new jobs. However, many of the largest tech companies pose a direct and imminent threat to the millions of Americans who depend on these businesses to earn a living and provide for their families.

Free enterprise is dependent on the ability of small businesses to participate and compete in fair markets that reward innovation. But concentration of market power by the largest tech companies has created growing barriers to entry that inhibit innovation among small businesses. Unable to make the same risky investments that companies with tremendous market capitalization — particularly dominant tech companies — can, small businesses are no longer capable of competing with them nor [challenging their market dominance](#).

### **New Models of Antitrust in the Age of E-Commerce**

As many experts have [raised](#), there are serious and legitimate questions about whether traditional antitrust regulation is equipped to address the dynamic capabilities of the very largest tech companies in the 21st century.

A significant challenge is presented by the emergence of the hybrid e-commerce business model in which a very large technology company acts both as a platform for sellers and a seller itself, amassing troves of consumer data as well as data on third-party sellers that do business on their sites. Amazon, for example, has developed a hybrid model replete with conflicts of interests, enabling the company to influence sales trends, manipulate prices and [drive consumers](#) to its own products and services — which [third-party sellers](#) have long [voiced concerns about](#).

Previous examinations by the Commission have held prices in the short-term as the predominant indicator of consumer welfare. However, as the very largest technology-based companies are able to leverage their massive market growth and ability to gather and manipulate platform-generated data — including from their competitors — they are also able to [weaken the overall competition structure](#) by controlling a greater share of the supply chain. The consequences of this

unprecedented concentration of power were clear this year when Amazon hit third-party sellers with increased fees just to run discounts during Prime Day — not to mention what will happen to consumer prices in the long-term.

Companies like Amazon are also able to leverage their hybrid business model to develop a distinct advantage by utilizing the data they have acquired to promote its own products and services. Experts have [noted](#) that powerful word-search algorithms derived from competitors' sales allow the company to promote its own private labels at the [expense of other brands](#). The German Competition Authority [recently validated](#) this concern by indicating it plans to open an investigation into Amazon's hybrid business model and how sellers are being disadvantaged.

The condition already exists today in which the company's share of online commerce with a [dominant share of search for goods](#) amongst consumers leaves sellers with few choices but to continue offering their products and services on these platforms — further fortifying Amazon's dominance and continuing this vicious cycle that eat into sellers' own operating margins.

## **Conclusion**

FFMI expresses its sincere thanks to the Commission for this opportunity to submit comments regarding the hearings on “Competition and Consumer Protection in the 21st Century.” The Commission has made numerous advances in this area, and we appreciate the critical focus on additional advances that must be made as business practices and technologies continue to rapidly evolve.

This is why we strongly believe the Commission must focus on understanding the implications of the complexities and pitfalls of broad digital ecosystems during these hearings. This will be the only way to design contemporary common-sense rules of the road that put consumers first, promote competition and innovation and provide protection to a free market.

Given its unique position as integrated online retailer, digital marketplace platform, physical logistics services platform, cloud services hosting platform, digital entertainment services provider and voice-enabled services platform, Amazon represents the bellwether as the Commission addresses what have become anticompetitive practices in the 21st century economy.

We strongly urge the Commission to build off their good work and consider the changes necessary to re-establish a level playing field that benefits all consumers and businesses. If you have any questions or require any additional information regarding these comments, please do not hesitate to reach out at [info@freeandfairmarketsinitiative.org](mailto:info@freeandfairmarketsinitiative.org).

Sincerely yours,



Robert B. Engel  
*Chief Spokesperson*  
Free & Fair Markets Initiative