

Before the  
**FEDERAL TRADE COMMISSION**  
Washington, DC 20530

In the Matter of )  
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Hearings on Competition and Consumer Protection ) Project Number P181201  
in the 21<sup>st</sup> Century )  
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**COMMENTS OF ORACLE**

Oracle appreciates this opportunity to provide comments to the Federal Trade Commission (“Commission” or “FTC”) in connection with the Commission’s public hearings on competition and consumer protection in the 21st century.<sup>1</sup> Oracle commends the Commission for undertaking this effort modeled after Chairman Pitofsky’s 1995 hearings. Those hearings occurred fully five years before AOL announced its merger with Time Warner, and before Google, Amazon and Facebook even existed. It’s hard to overstate how much has changed in the intervening 23 years from dial up internet access to massive datacenters storing and serving consumer information in the “cloud;” from CompuServe to the mobile revolution; and from Nintendo 64 to Fortnite.

As the Commission plans its 2018 hearing sessions, we believe the Commission should explore: 1) the complexity and opacity of digital advertising technology (“ad tech”) platforms, which increasingly fuel today’s digital economy; 2) whether the regime of notice and choice remains adequate in light of the mass and often surreptitious collection of consumer data (often

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<sup>1</sup> *Hearings on Competition and Consumer Protection in the 21st Century*, Notice of Hearings and Request for Comments, 83 Fed. Reg. 38,307, 38,308 (Aug. 6, 2018) (seeking comment on “[w]hether the platform business model has unique implications for antitrust and consumer protection law enforcement and policy”).

highly sensitive data) as well as the ubiquitous and indispensable use personal digital technology; 3) whether the collection of valuable personal data has become untethered from the services provided to consumers; and 4) whether consumers would be better served if market forces (as opposed to dominant platforms) determined the value of a consumer's data.

As part of this process, a 21<sup>st</sup> Century Federal Trade Commission needs to reexamine traditional boundaries of consumer and competition enforcement and whether relatively new technologies warrant new approaches to enforcement. Oracle, like much of the technology industry, strongly supports a very light touch when it comes to government regulation of the technology sector. At the same time, we are very concerned that real or perceived platform abuses may result in a regulatory over-reaction from policy makers around the world. In Oracle's view, it is far preferable for the FTC to enforce existing laws against dominant players than to enable a broad over-regulation of the technology sector, particularly if that regulation comes from outside the United States.

Oracle helped build the data-driven economy.<sup>2</sup> Throughout the company's history, Oracle has pioneered software platforms that help customers to turn information into intelligence in order to compete and thrive in a global business environment. Oracle's application suites, platforms, and infrastructure leverage both the latest technologies and emerging ones – including artificial intelligence, machine learning, and the Internet of Things – to help our customers better serve their own clients and customers. In addition, Oracle competes in the ad tech marketplace by offering Oracle Data Cloud, which brings together data, analytics, and measurement

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<sup>2</sup> Oracle offers an integrated array of applications, databases, servers, storage, and cloud technologies to empower modern business. More than 430,000 customers in 175 countries have harnessed Oracle technology to accelerate their digital transformation.

capabilities to help companies connect with their customers across multiple communications channels and devices.

Based on years of experience in the digital economy, Oracle is positioned to see the benefits of the evolving ad tech market as well as developments that threaten consumers and competition. To be sure, ad tech-enabled digital advertising supports business models that bring significant benefits to consumers. However, ad tech platforms are also opaque, obscuring the competitive forces at work as well as the choices – or lack of choices – available to consumers. Many parts of the ad tech ecosystem are controlled by dominant industry players and prices for essentially matching buyers with sellers of digital ad inventory in a scaled-out electronic marketplace seem to evade competitive market forces, despite an obvious opportunity for disruption.

Further, to view today's digital advertising marketplace primarily in terms of consumer privacy misses a critical part of the larger story. Consumer data has immense value, both to companies, but also to consumers themselves. While there is “value” in free services, such as email or a social network, the FTC needs to ask whether consumers are actually receiving a fair exchange; whether this market in consumer data should be opened for new competitors and different forms of consideration; or whether consumers should have an ownership interest in the data they are creating. Justice Gorsuch recently considered an ownership interest in data writing in his recent *Carpenter* dissent, “(T)he fact that a third party has access to or possession of your papers and effects does not necessarily eliminate your interest in them. Ever hand a private document to a friend to be returned?... Just because you entrust your data—in some cases, your modern-day papers and effects—to a third party may not mean you lose any Fourth Amendment interest in its contents.”

The fact is that while consumers do receive many valuable “free” services across the internet, the economic relationship between what consumers receive and what they pay in the form of data has become untethered. The quantity and value of an individual’s data offered as consideration for “free” services has increased exponentially over time, while the value of the service may have only improved marginally. Moreover, mass data collection has become so widespread that there is no longer a functional nexus between data that is being collected and the service being offered. Stated differently, consumer prices are rising when one understands that consumer data is the currency driving ad tech.

The Commission has long viewed the collection, use, and exchange of personal information in connection with digital advertising primarily as a privacy issue and, accordingly, has recommended ways that companies can provide consumers with greater transparency and more meaningful choices.<sup>3</sup> Unfortunately, the concepts of transparency and choice have been turned on their heads. Consumers are often met with “take-it-or-leave-it” privacy policies that are indecipherable to all but the most sophisticated users or market participants. Privacy policies are often comingled with terms of service and opting out of such policies could mean the abandonment of expensive devices, the breaking of third party service contracts, or forgoing vast amounts of today’s digital ecosystem.

We also believe the Commission needs to establish clearly the categories of information that would be deemed “sensitive” to consumers and make clear the collection of “sensitive” information requires opt-in as opposed to opt-out consent. In this regard, the Commission should also evaluate whether the vast aggregation of “non-sensitive” information would be viewed by

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<sup>3</sup> See, e.g., FTC, *Cross-Device Tracking* (staff report) (Jan. 2017); FTC, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (Mar. 2012); FTC, *Self-Regulatory Principles for Online Tracking* (staff report) (Feb. 2009).

consumers as “sensitive” when combined into detailed highly personal profiles including virtually all of a consumers movements in both the virtual and physical worlds.

A key challenge for ad tech market participants is the lack of transparency in the electronic marketplace of online advertising. Ad tech stands in the center of a complicated, technical and opaque multi-sided market. One side is composed of consumers, their devices, their internet activity, and a vast array of other data. One side is made up of the creators of content, the online portals of traditional businesses, and entrepreneurs like app developers- all of whom want to connect with consumers online and monetize their investment by selling advertising. And one side, is made up of various internet platforms who disintermediate consumers from their data, monetizing access to it through ad placement, tracking, and analytics. Understanding how this ecosystem works, how personal information flows across it, how various market participants transact over this personal information, and why platforms are seemingly in an arms race to extract more consumer data is essential to assessing whether there are competition and consumer protection issues that warrant the FTC’s further attention.

Lastly, legacy regulations and the asymmetric regulation of market participants (and potential participants) have also distorted the digital advertising marketplace. For example, telecommunications carriers, cable operators, and financial institutions are subject to restrictive privacy regulations,<sup>4</sup> while firms that collect more data and have a more comprehensive view of consumers’ activities – and often provide similar services – do not have to follow the same rules. Distinct treatment of these entities’ privacy practices may have made sense in the pre-internet era, but there is no longer a plausible rationale for these regulatory distinctions. Unfortunately,

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<sup>4</sup> See 47 U.S.C. § 222 and 47 C.F.R. § 64.2001 *et seq.* (telecommunications carriers); 47 U.S.C. § 551 (cable operators); and 16 C.F.R. Part 313 (recodified at 12 C.F.R. § 1016) (financial institutions).

the digital advertising marketplace matured in the shadow of these disparities. This situation underscores the importance of including an examination of inconsistent regulatory schemes as part of any attention to ad tech and digital marketing during the Commission’s hearings.

The economic stakes of these issues are enormous. Digital advertising revenue exceeds \$125 billion. But digital advertising’s ripple effects are far broader. Entire industries are being restructured around it. And, as mobile advertising has become the predominant form of digital advertising, the returns to controlling mobile platforms are increasing.<sup>5</sup> Given digital advertising’s direct and indirect economic effects, it is worthwhile for the Commission to use its hearings to develop a detailed understanding of this marketplace.

The Commission appropriately sought comment on competition and consumer protection issues together as they relate to platform business models.<sup>6</sup> The two sides of the Commission’s authority – antitrust and consumer protection – serve the larger purpose of promoting free markets. The Commission has long recognized that leaving consumers with “insufficient information for informed comparisons” can “unjustifiably hinder . . . free market decisions.”<sup>7</sup> Antitrust law, of course, addresses situations in which monopolies and unreasonable restraints of trade deprive consumers of choices that they might otherwise have in the market. The Commission should bring both perspectives to bear on ad tech.

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The Hearings on Competition and Consumer Protection in the 21st Century will build an important intellectual and factual foundation for the FTC’s and all of government’s

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<sup>5</sup> Spending on mobile advertising increased at a compound annual growth rate of 71.4% from 2007 through 2017 and accounted for nearly 60 percent of all digital advertising (\$49.9 billion out of \$88 billion) in 2017. *Id.* at 9.

<sup>6</sup> *See* 83 Fed. Reg. 38,308 (seeking comment on “[w]hether the platform business model has unique implications for antitrust and consumer protection law enforcement and policy”).

<sup>7</sup> Unfairness Policy Statement, 104 F.T.C. 949, \_\_\_\_.

policymaking in the years to come. Addressing these issues holistically from a consumer's perspective should animate the agency's agenda, as was the case with the 1995 Pitofsky hearings and similar Commission efforts. Oracle looks forward to working with the Commission to ensure that the hearings generate a record that guides and supports the next generation of thoughtful policymaking.

Respectfully submitted,

Kenneth Glueck  
Senior Vice President, Office of the CEO