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## **CONNECTED COMMERCE COUNCIL'S COMMENTS ON COMPETITION AND CONSUMER PROTECTION IN THE 21<sup>ST</sup> CENTURY**

August 20, 2018

The Connected Commerce Council (3C) is a non-profit membership organization with a single goal: to promote small businesses' success through the adoption of essential digital technologies and tools. 3C provides small businesses with services to facilitate access to the market's most effective digital tools, delivers education and coaching to help small businesses optimize growth and efficiency, and works to cultivate a policy environment that considers and respects the interests of today's small businesses and that thereby promotes consumer welfare.

The digital economy has drastically changed how small businesses operate, and so 3C and its small business members have a strong interest in these hearings. Before, a small business might connect to consumers via the Yellow Pages and other print advertising, direct mail, billboards, brick-and-mortar stores, radio and television advertising, and trade shows. Small businesses would often need local lawyers, accounting firms, human resource managers, payroll providers and conference rooms for on-site meetings.

But now there are digital platforms, including Facebook, eBay, Google, Amazon, YouTube, Snap, Oath, Etsy, Expensify, Quickbooks, OpenTable, Slack, Square, Houzz, Pinterest and a host of others, that allow businesses to reach more potential customers, operate more efficiently and internationally, and offer better and innovative products at lower prices. For small businesses, especially startups with very small budgets, today's digital platforms and tools offer inexpensive ways to operate their business, reach prospective customers, learn which products and features customers value most, and then offer that value at competitive prices that drives sales and increases revenue.

Some 3C companies operate entirely digitally; some have physical product that they source, market and sell digitally; and many are traditional brick-and-mortar businesses that have adopted digital opportunities to increase revenue more quickly, operate more efficiently, and be more successful. One common thread is our member companies' delight upon discovering new digital tools.

*"I had avoided hiring employees for so long because the paperwork involved with different states, tax systems and red tape seemed like a nightmare. Because Gusto made it easy I've been able to transform my team and create 5 new jobs in the last 18 months."*

*"I remember making my first website using Microsoft Front Page. Making that website launched my real estate career."*



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*“There are many firsts that I was excited about, but the first that comes to mind was being able to list my products for sale on Amazon. This now accounts for 15% of our revenue – a sizeable chunk that I would not be able to achieve through my wholesale customers.”*

*“Our a-ha moment was when we started playing around with Facebook. We joined because it was free and we had no marketing budget left. We had spent hundreds of thousands of dollars on print and television advertising and had seen no marked increase in sales volume. In contrast, Facebook delivered almost immediate growth in our day-to-day bookings.”*

As the FTC turns its attention to digital tools, 3C urges the Commission to appreciate and accommodate the needs of small businesses that rely on these tools to compete (often against large industry incumbents), to gain digital economies of scale that small businesses simply cannot generate independently, and thereby to facilitate the supply of higher quality and lower-priced products to consumers from small businesses. Small businesses need “off the shelf” digital products that work quickly and seamlessly. Small businesses benefit tremendously by utilizing no-cost and low-cost services and tools offered by platforms, and as a result consumers benefit when small businesses can compete more aggressively and price more competitively.

Efforts to regulate digital networks, products and tools by “fixing” competition and data protection concerns may reduce those products’ capabilities – which will harm small businesses and cost consumers, who will face higher prices, reduced quality, and stunted innovation. It is critical that the FTC consider the cost and impact of potential regulation, investigation, and enforcement on the millions of small businesses that drive today’s economy—and on the consumers who benefit as a result.

**(3) The identification and measurement of market power and entry barriers, and the evaluation of collusive, exclusionary, or predatory conduct or conduct that violates the consumer protection statutes enforced by the FTC, in markets featuring “platform” businesses**

Millions of small businesses are enabled and boosted by digital platforms, and our economy and society are stronger as a result.

- Digital platforms compete against one another, constantly improving product and price, and adding new features.



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- By simplifying customer acquisition, product sourcing and distribution, access to markets and low-cost advertising, and legal/financial compliance, digital platforms enable small businesses to be created, to compete against each other and against big businesses, and to compete nationwide and internationally.

When discussing their businesses, 3C members frequently reference well-known brands that are foundations of small businesses, including Wix, Wordpress, Shopify, Slack, Basecamp, Square, Evernote and Pinterest, as well as various properties owned by Amazon, Facebook and Google. Additionally, however, 3C members mention new competitors that they are using, such as Zoho, AirTable, ManyChat and Canva. This illustrates the dynamic digital platform and product marketplace that is continuing to attract investment, excitement and new competition.

Today's digital platforms are more powerful and provide more value than ever before. Instead of building a website and driving people to visit it, today's digitally-powered small businesses use modern platforms that help find customers and help determine what products and services they need.

*“My first successful use of a digital platform was launching a Facebook-based business in 2011. Using only Facebook for sales and PayPal for invoicing, in our first year we booked \$1M in revenue.”*

*“Square enables me to sell my products at fairs and conventions nationwide.”*

Modern digital platforms – including Facebook, eBay, Amazon, Shopify and many more – democratize the power of algorithms and artificial intelligence by delivering these technologies to small businesses at very low cost. Barriers to entry have almost been eliminated by the ability to quickly create elegant websites, access on-demand server space, buy low-cost high-impact advertising, utilize on-demand logistical support and customer service, and include best practices compliance software.

*“Shopify helps me build a good-looking e-commerce store **that incorporates best practices.**” (emphasis added)*

For some 3C small companies, digital platforms power national and international success.

*“We operate a global community platform. We have members on six continents. Because our job is to network them together, our business literally could not exist without digital tools, and for many of our members the same is true for their businesses.”*

*“Google GSuite and Skype allow me to live part-time in Costa Rica and Jamaica while running a business and managing teams in the United States and Canada.”*



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With these and many more digital marketing and business tools, small businesses spend less on customer acquisition and earn more—and consumers benefit from lower prices and products that better fit their needs.

It is also the case that digital powers more than basic business leads and transactions – it enables small companies to share their culture and values with prospective customers in ways that previously would have cost many thousands of dollars.

*“When you are on paper you can make something pretty but that doesn’t help anyone get a feel for who you are and what is your culture. The real advantage of digital, like with Facebook and YouTube, is that people get a real feel for your company and your people, and with reviews and public comments on Facebook and Google they get a real feel for what your customers think of you. The people are touching and feeling you and your business ethic.”*

As indicated here, many 3C members combine digital platforms and tools into a unified modern-day marketing strategy that works for their small business.

*“You do a Facebook Live video, upload it to YouTube, embed it into your webpage and then spread the word on LinkedIn and Pinterest. Then use your email list to drive early hits and see if your video climbs the Google rankings because people are watching the entire video and posting positive comments.”*

Perhaps most important to small businesses is that so many digital tools are free or very low-cost.

*“When I am not leading digital marketing for my company I give tips to individual ‘nail girls’ and hair stylists who work in salons but are independent businesswomen. They can become amazing marketers for themselves by using lots of free tools. My stylist tells me that she definitely got new clients after experimenting with social media, and I have seen \$5 advertising spends lead to real revenue gains.”*

*“Our a-ha moment was when we started playing around with Facebook. We joined because it was free and we had no marketing budget left. We had spent hundreds of thousands of dollars on print and television advertising and had seen no marked increase in sales volume. In contrast, Facebook delivered almost immediate growth in our day-to-day bookings.”*

At the heart of these digital platforms are products that work “out of the box” for small businesses. This is critically important, as small non-software businesses generally do not have



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the technical or financial capability to build or substantially customize their business operations software or marketing/e-commerce software. This difference, between small and large businesses, is critically important when the Commission considers the competition aspects of software platforms.

Antitrust law is currently evolving in response to the economic complexity of digital platforms and software tools. For example, the Supreme Court's recent opinion, *Ohio v. American Express* instructs that in certain two-sided transaction markets courts and regulators cannot only consider the impacts of platforms on one side of the market (i.e., the consumers using the platform products), but rather must also consider how those platforms affect the other side as well (i.e., the businesses using those platforms). In this regard many digital platforms are like credit cards, as both connect consumers and merchants. Regulators should heed this guidance also, particularly when addressing complex multi-sided software platforms.

Although *American Express* did not explore this issue, courts and regulators should also explore the differences within the “seller” side of a multisided platform, considering the contrast between large corporations and small businesses that operate on platforms. For example, many large corporations may have the ability to replicate software platforms if needed, or to replicate various functions if regulators deemed them anticompetitive when provided by the platform. In contrast, small businesses rely on platform products to work immediately “off the shelf,” and are unable to replicate or even approximate functions or audience reach provided by platforms.

Some have called for competition and consumer protection authorities to regulate platform software algorithms or platforms' data collection, but here again these limitations would primarily harm small businesses. Small businesses simply do not have the resources to collect and analyze the data necessary to make digital tools – especially multisided platforms – work effectively. If the government limits platforms' ability to collect, aggregate, and analyze data, or to offer tools and services that leverage this data, small businesses will not be able to make up the difference. The resulting loss of platform capabilities will be felt not only by small businesses, but consumers as well when competition is severely reduced. The beneficiaries will be large incumbents in those industries (that are currently being disrupted by small business entrants) that have in-house technical capabilities, vast volumes of internal data, and the funds to purchase more data and more technical support.

A valuable feature of digital networks, as compared to traditional physical networks, is the ability of new competitors to build on top of the largely public Internet. This contrasts quite significantly with traditional physical networks, such as railroads and wired communications, that required new entrants to have millions or billions of investment dollars to build alternative networks before realizing the first dollar of revenue. Investors and entrepreneurs seem to have insatiable appetites for new competitors in digital products and services. For example:

- Some believe that Expedia and Priceline are long-term dominant players in online travel, a multi-sided digital platform industry that many small hotel and activity businesses



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participate in. But there are constantly new entrants in the digital travel industry and it is easy for individual providers to promote new competition by uploading their hotel or service to the new platform.

- Email, texting and even voice communications services continue to innovate and competition remains fierce, notwithstanding the once-apparent market dominance of traditional mobile carriers and device manufacturers. Switching providers – even for business services – has become almost seamless due to a proliferation of APIs that move Contacts data, Email history and other key data from old to new providers.
- Small 3C businesses have many choices in offline and online advertising. When one 3C company reduced annual spend on Yellow Pages by hundreds of thousands of dollars, its competitors thought it was going out of business. But this company had discovered Facebook and was spending 95% less on advertisements that also delivered more revenue. More recently, a small e-commerce company reported shifting a substantial portion of its advertising spend to Amazon – an option that barely existed even three years ago.
- It is quite common for small businesses to utilize multiple platforms for the same content, e.g., posting the same video on Vimeo, YouTube and Facebook Live, or the same blog post on a corporate website, Medium and Facebook. Having multiple alternatives illustrates the healthy competitiveness of these platforms and the options for small business consumers.