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Donald Clark
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex C)
Washington, DC 20580

RE: Competition and Consumer Protection in the 21st Century Hearings, Project Number P181201

Dear Secretary Clark,

The Information Technology & Innovation Foundation (ITIF) is pleased to submit these comments in response to the request for comment (RFC) from the Federal Trade Commission (FTC) on whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection enforcement law, enforcement priorities, and policy.¹

ITIF is a nonprofit, non-partisan public policy think tank committed to articulating and advancing a pro-productivity, pro-innovation and pro-technology public policy agenda internationally, in Washington, and in the states. Through its research, policy proposals, and commentary, ITIF is working to advance and support public policies that boost innovation, e-transformation, and productivity.

Please find our response to the following topic:

¹ "Hearings on Competition and Consumer Protection in the 21st Century," Federal Trade Commission, n.d.
<https://www.ftc.gov/policy/hearings-competition-consumer-protection>.

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

By now there is a well-established literature on the nature and role of market platforms. The consensus is that market platforms can offer both sellers and buyers tremendous benefits, largely by reducing the transaction costs of finding other parties to interact with.² In many cases a combination of efficiencies of scale and network effects push platform markets toward concentration. But that does not mean these markets will lack competition or innovation. In fact, the presence of even large platforms can increase both competition and innovation at the level that matters most; the case of an individual customer seeking the best supplier. In cases where lack of competition due to anti-competitive conduct is a concern, normal antitrust principles and remedies still hold. But regulators need to carefully study the effect of both alleged anticompetitive behavior and proposed remedies on all sides of the platform before reaching conclusions on the best policy response.

Today, most discussion of antitrust issues and platform markets seems to focus on the largest Internet companies (Apple, Amazon, Facebook, Google, and Microsoft), but both medium and smaller Internet platforms play important roles in helping match suppliers and customers for a wide range of goods and services. However, platform businesses were and are important parts of the traditional economy. They include shopping malls, job placement services, and newspaper classified ads. If software and Internet companies present unique antitrust concerns, it is largely because of the growing value of on-line commerce in the economy and the rapidly changing nature of both the technology and (as a result) the business models firms pursue.

Does the platform business model have unique implications for antitrust and consumer protection law enforcement and policy?

The rapid increase in both usage and value for some platforms has produced a number of calls for greater regulation. The motivations behind these outcries vary, but they include fears of market power, exploitation of workers, concerns about data security and privacy, opposition from incumbent suppliers, and in the case of Europe, concerns about lagging regional competitiveness in the digital economy. By and large these calls for new regulatory action are misplaced. In fact, by showing how efficiently specific markets can work, Internet platforms often point out the need for reduced regulation of existing industries, such as taxis, lodging, and product marketing, so that they can do a better job responding to the demand that platforms create.

² Joseph V. Kennedy, “Why Internet Platforms Don’t Need Special Regulation,” (Information Technology and Innovation Foundation, October 2015), <https://itif.org/publications/2015/10/19/why-internet-platforms-don't-need-special-regulation>.

While Internet platforms are new, market platforms are not. But the former do play a unique role in the marketplace by bringing large groups of users together and reducing one of the most important barriers to economic activity: transaction costs. Because Internet platforms are different from traditional businesses, they often do not fit well into the normal regulatory system. Regulators therefore need to have a good understanding not only of platforms generally, but also of the role that specific platforms play in the market, including the source of the value they create, their relationship to customers and competitors, and the alternatives to them.

It is important for regulators to understand the benefits platforms can provide. A previous submission to the FTC listed five ways in which these firms add value:

1. Improving resource use;
2. Increasing competition;
3. Reducing transaction costs;
4. Reducing asymmetric information between buyers and sellers; and
5. Bringing new buyers and sellers into the market.³

With the growing importance of national and even international markets, many businesses, including platforms need to be large to maximize these benefits. Moreover, size brings considerable buyer and seller benefits.

While Internet platforms are just as capable of anticompetitive behavior and bad business practices as any other company, the traditional powers available to injured parties and government regulators can handle virtually all actual (as opposed to possible) harms. There is therefore little need at this point for new laws or regulatory actions aimed solely at platforms per se. However, in specific case such as pricing below marginal cost, regulators will need to adapt standard theory to account for the ways in which platforms add market value.

Critics and some regulators have expressed five general concerns about the role of Internet platforms. The first is that some of these platforms have become too powerful and are precluding platform competition in the marketplace. Second, some express concern that businesses are increasingly dependent on platforms for sales and therefore are subject to capricious and harmful action by the platform. Third, some regulators and privacy groups have worried about the misuse of consumer data and inadequate precautions to protect the massive amounts of data these companies collect. The fourth concern is that some platforms take advantage of

³ Christopher Koopman, Matthew Mitchell, and Adam Thierer, “The Sharing Economy: Issues Facing Platforms, Participants, and Regulators,” (Public interest comment submitted to the Sharing Economy Workshop, Federal Trade Commission, May 26, 2015, 2-3), <http://mercatus.org/sites/default/files/Koopman-Sharing-Economy-FTC-filing.pdf>.

their suppliers by classifying them as independent contractors rather than employees. Finally, some regulators and incumbent industries have expressed concern at the threat that platforms pose to competitors.

Note that only some of these concerns involve traditional antitrust concerns. In specific cases, these antitrust concerns can be legitimate, but the approach to them should continue to be driven by the standard metric of maximizing consumer welfare and economic efficiency. With regard to the first concern specifically, the nature of internet platforms is such that in many markets only one major platform will succeed in the marketplace at a time. The presence of network effects and efficiencies of scale often moot the traditional assumption of diminishing marginal returns and confer advantages on the platform that succeeds in capturing a larger share of the market. But a larger market share does not only benefit the platform. It also maximizes the social value for users.

With regard to the other concerns, the FTC should reject growing appeals to use antitrust tools to address noncompetitive harms. It should also resist calls to regulate bigness per se, as overall large firms generate significantly greater welfare gains than small firms do.⁴

The first four items are legitimate concerns about market problems. However, these problems already exist in more traditional industries. Although their existence can impose social costs, for the most part these problems are contained by market competition, civil litigation by injured parties, and targeted regulatory enforcement against specific abuses. Internet platforms do not pose unique challenges in this regard, because they are subject to these same checks and balances. Specifically, it is far from clear that new legislation is needed to deal with imagined problems. Existing laws give agencies sufficient powers to deal with any actual problems.

The fifth concern frankly deserves less or even no attention. It is for the most part the creative destruction that Joseph Schumpeter portrayed as driving market innovation and higher productivity.⁵ Those who lose out to market competition, especially by new entrants who may not face the same regulatory burdens, often feel that the latter benefit from an unfair advantage. In fact, because of lobbying, public policy often tilts toward

⁴ Robert D. Atkinson and Michael Lind, *Big is Beautiful: Debunking the Myth of Small Business*, (Cambridge: MIT Press, 2018).

⁵ Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy*, (London: Routledge, 1942).

incumbent firms and has provided them with benefits for decades.⁶ But this usually imposes costs that limit economic growth.⁷

Where there are legitimate antitrust concerns, long-standing laws, including the Sherman Act of 1890 and the Clayton Act of 1914, already give both the Department of Justice and the Federal Trade Commission regulatory authority to punish anticompetitive behaviors such as price fixing, collusion, and mergers, whether or not the particular company is a platform.

There are other reasons to think that the market power of Internet platforms may not represent a threat. The first is that, in most cases few of these markets require a major commitment from either buyers or sellers, and both sides have the option of doing something else with their time and money. This ensures that the value of participating in the market is likely to be at least equal to the costs. Otherwise people will simply stop using the platform.

Second, Internet platforms face competition from numerous sources, including established industries, direct competitors, and related services. For example, travelers do not have to go to New York if the price of lodging is too high. If they do go to New York, they have the option of staying at one of many hotels. If they wish to have a more private experience, a number of services in addition to Airbnb exist to link them to a bed-and-breakfast or other arrangement.⁸

Competition is especially strong for platforms that rely on advertising for a large portion of their revenues. To attract consumers, these sites usually have to offer their basic services for free or at a heavily discounted price, although they may also offer a premium option. Although advertisers must pay, the largest ones are very sophisticated about making sure the value of advertising exceeds its cost. They typically purchase advertising across a wide variety of media. A company such as Google must compete not only with other search engines, but also with other types of Internet platforms and with television and print media. Independent companies such as Visual IQ make their money by helping advertisers find out which outlets provide them with the best

⁶ Gordon Tullock, "The Welfare Costs of Tariffs, Monopolies, and Theft" *Western Economic Journal* 5, no. 3 (1967); 224-32, Anne Krueger, "The Political Economy of the Rent-Seeking Society," *American Economic Review* 64, no. 3, (1974); 291-303.

⁷ Mancur Olson, "The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities (New Haven: Yale University Press, 1982).

⁸ For examples see VRBO, Homarama, and Homeaway. In addition, sites like Hometogo and Tripping help consumers compare offerings between these different sites.

value.⁹ In this regard, accurate market definition is critical. It is largely a mistake to consider the “search market” or the “social network” market as discreet markets. In these cases, most, if not all, of the firms in these markets (e.g., Google, Microsoft, Facebook, etc.) provide these services for free and the real market is the total ad market (digital and non-digital). And here, at least for now, there is little evidence that these companies have market power.

Antitrust regulators often look for evidence of unfair pricing by companies with market power. In some cases, companies may be accused of charging too high a price, thereby restricting production and appropriating a large amount of consumer surplus for themselves. At the other extreme, regulators often view any practice of setting prices below marginal cost as an attempt to gain market share and drive competitors out of business. Ironically, platforms can be accused of doing both even when they are maximizing social welfare and earning low profits.¹⁰

Daniel Spulber and Christopher Yoo point to factors that are likely to continue increasing the competition that platforms face.¹¹ One is the continuation of technological changes in network architecture that reduce startup costs and boost both entry and exit by allowing assets to be used for a variety of purposes. Another is a continued increase in total demand or usage, which reduces the importance of fixed costs as a barrier to entry. Finally, they predict that the demand for continued innovation will erode any temporary market power and force companies to constantly invest in new features. Examples of powerful platforms that lost their dominance due to a lack of innovation include Prodigy, AOL, AltaVista, MySpace, and Friendster. New technologies like blockchain for instance, could conceivably pose competitive threats to at least some of the existing platforms. But even if there is little or no disruption over the next few decades of many of the existing platforms, there is no evidence that this implies a diminishment of consumer welfare.

⁹ David S. Evans, “Attention to Rivalry Among Online Platforms and Its Implications for Antitrust Analysis,” (Research paper 627, University of Chicago Institute for Law and Economics, 2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2195340. Evans finds “there is little evidence that online markets tend to converge to monopoly because of network effects once the analysis focuses on attention as the proper dimension for evaluating competition. Nevertheless, it turns out that competition for attention is highly dynamic with rivals introducing new products and services, some involving drastic innovation, frequently.” 3 (footnote omitted).

¹⁰ David S. Evans and Richard Schmalensee, “The Industrial Organization of Markets with Two-Sided Platforms,” (Working paper 11603, National Bureau of Economic Research, Cambridge, Massachusetts, September 2005), <http://nber.org/papers/w11603.pdf>.

¹¹ Daniel F. Spulber and Christopher S. Yoo, “Antitrust the Internet, and the Economics of Networks,” (Institute for Law and Economics, University of Pennsylvania Law School, 2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2370050.

Regulators also fear companies will collude to raise prices or limit competition. But collusion tends to be much more difficult in the case of multisided platforms. In order to be successful, platforms would have to collude on all sides of the market in order to benefit; otherwise competition on those sides of the market where demand is elastic or users multi-home is likely to erode any excess profits.¹² But platforms often face different competitors on different sides, reducing the shared interests among competitors and increasing the number of parties needed to collude. And as noted above, in some cases, one side of the platform is free (usually the consumer side) and on the other side (usually the sales side) there is already robust competition.

Regulators also need to consider the pro-competitive effect of platforms. By reducing entry barriers and making it easier for small, flexible suppliers to reach customers, platforms increase competition in markets such as books, rides, and home rentals. By reducing the fixed costs needed to participate in the market, platforms reduce prices and increase consumer choice.¹³

Antitrust regulators still need to be watchful, but they cannot merely assume that a platform is behaving in an illegal manner and harming consumers just because it is doing something that they don't like or understand. Instead, they need to make a detailed case-by-case determination about whether total social welfare, including all sides of the market, has been harmed. In the absence of a careful market study, standard antitrust tools may be of limited use. Two of the leading experts on multisided platforms conclude "it is not possible to know whether standard economic models, often relied on for antitrust analysis, apply to multi-sided platforms without explicitly considering the existence of multiple customer groups with interdependent demand."¹⁴

Regulators should also keep their focus on consumer, not producer welfare. Platforms that provide more choice to consumers and offer a lower price usually lead to some disruption on the producer side. For example, a company like Amazon competes with both small sellers and large sellers. But its success or lack thereof comes from its ability to either provide more choice, better consumer experience (e.g., faster delivery), or lower prices. If that hurts existing sellers, that is not an issue for competition policy authorities, unless the company gained that advantage unfairly.

The problems are even greater when considering the practical difficulties of regulation. Although the conclusions of regulatory analysis may depend heavily on the specific markets involved, the data about

¹² David S. Evans and Richard Schmalensee, "The Industrial Organization of Markets with Two-Sided Platforms," 27.

¹³ Liran Einev, Chiara Farranato and Jonathan Levin, "Peer to Peer Markets," (Working paper 21496, National Bureau of Economic Research, Cambridge, Massachusetts, August 2015), 11, <http://www.nber.org/papers/221496>.

¹⁴ David S. Evans and Richard Schmalensee, "The Antitrust Analysis of Multi-Sided Platform Businesses," (Research paper 623, University of Chicago Institute for Law and Economics Olin, January 2013), 2, http://ssrn.com/abstract_id=2185373.

demand elasticities, market definition, degree of competition, and interdependence between different sides that is needed to make these judgments may not be available, especially in new markets characterized by rapid technological change. Because of limitations on regulators' ability to intervene wisely, their involvement may often reduce total welfare

Does or should the presence of “network effects” affect the Commission’s analysis of competition and consumer protection issues in platform markets?

As explained above, the presence of network effects often pushes platforms toward concentration. This is not because firms are more prone to collude or because competition is less intense. It is because social value is increased as the size of the network grows. Regulatory attempts to artificially constrain the size of networks will reduce social welfare even if they increase competition. Moreover, such efforts may prove to be fruitless since the market contains a built-in tendency for concentration. For example, there is a reason there is one major social network (Facebook), one major professional network (LinkedIn), and one major micro-blog network (Twitter). Consumers benefit greatly from the network effects involved. For example, they don't have to post twice to share information with their friends.

In the rare cases where technology is relatively stagnant and where the firm sells, rather than gives away for free its services, regulation as a monopoly may be appropriate. But monopoly regulation tends to reinforce a lack of innovation rather than challenge it. Where innovation remains the norm, as is the case for most Internet platforms, concern about the anticompetitive aspects of network effects is often overdone. Continued innovation tends to ensure that consumer value is increasing even if profit margins are high. Moreover, the staying power of any one network tends to be exaggerated. Constant innovation raises the threat that incumbents will be displaced by the type of disruptive change that is so difficult for incumbents to prevent.

Antitrust regulators should concentrate on finding cases of clear anticompetitive behavior that clearly harms consumers or reduces economic efficiency. They should ensure that markets remain open to challengers with new technology. Beyond this, regulators should exercise great care to ensure that their actions do not unintentionally lower the value that network products provide to society.

Sincerely,

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