FTC and Justice Department Listening Forum on Firsthand Effects of Mergers and Acquisitions- Technology - May 12, 2022

Jonathan Kanter:

Good afternoon, and welcome to the US Department of Justice and Federal Trade Commission's fourth public Listening Forum on Firsthand Effects of Mergers and Acquisitions. Today, we are delighted to hear from members of the public, specifically about the effects of mergers on technology. I would like to thank the FTC for their support throughout this important process and project, and for helping to host today's event. I also especially want to thank all the businesses, consumers, organizations that throughout this process have come forward to share their important views, including those who are with us today.

Jonathan Kanter:

These sessions have provided us direct access to a diverse group of stakeholders, including invited speakers, and a wide array of members of the public who have chosen to sign up and share their views. It's incredibly important that we reach outside the beltway and broaden our understanding of how mergers impact the overall economy. Members of the public, including those of you who took the time to be with us here today, are true experts in terms of the on-the-ground experience with the impact that flows from mergers. That's a critical complement to the academic, legal, and economic perspectives that we hear from on a nearly daily basis. These sessions are about soliciting input alongside our public comment process. And so, I'm excited about the level of public engagement that we've experienced so far.

Jonathan Kanter:

The comment period for our merger guidelines review closed on April 21st, and I'm just floored that we received over 5,000 comments. This is just stage one. The agencies, the DOJ and the FTC, plan to release a draft of the revised guidelines for public comment and undertake further dialogue and debate on that as well. Along the way, we'll continue to engage with stakeholders across the economy. It's a tremendous amount of work, but it's incredibly important. We revised the guidelines to better fit a modern economy.

Jonathan Kanter:

As we engage in these endeavors, we are grateful to those of you we heard from during today's listening forum, and we'll continue to work with the FTC to ensure that consumers and technology workers receive the full benefits of competition in these important markets, and that the broader public has the opportunity to realize the importance of these markets to our democratic values.

Jonathan Kanter:

Today's listening session is an important subject. There is perhaps no more consequential topic in antitrust enforcement today than digital markets. Digital markets are becoming commonplace through every aspect of our economy. The digital revolution has created new business paradigms, new markets, but it's also created a new generation of digital giants and gatekeepers with powers not seen since the robber barons in coal and steel a century ago.

Jonathan Kanter:

Competition policy must adapt to these new realities or we risk being left behind. Effective enforcement is especially important because of how central digital markets have become our democracy into our society. Americans increasingly socialize, shop, do business, engage in political participation, often on the same handful of giant digital platforms. If we don't protect choice in diversity in digital markets, Americans will lose their ability to exercise meaningful decision making power of where they get their information, who takes and use this their personal data, or which algorithm will decide what news is promoted across our culture. This threatens our democracy and puts at risk our economic progress and prosperity.

Jonathan Kanter:

Enforcement is also crucial because of the strong network effects, positive feedback effects that often characterize digital markets. If given room to grow, the unique economics of the internet and digital autonomy mean that new and innovative company can rapidly disrupt existing markets, challenging incumbents, and enhancing consumer choice. But if we allow dominant firms to buy up or block these nascent competitors before they get to scale, we will lose out twice. First by losing potential innovations, and second by losing out potential source of new competition in markets that are either dominated by a handful of giants, or will lose out on the development of new markets and new paradigms that we can't imagine sitting here today.

Jonathan Kanter:

Ensuring these markets remain competitive is a priority for public antitrust enforcement, that's why this afternoon's listening forum is just so important. We hear you loud and clear. There's work to be done to create digital markets that are competitive, promote innovation, offer choice, and create opportunity and freedom for the benefit of all Americans. So, thank you for sharing your stories with us today.

Jonathan Kanter:

For today's listening forum, we have a robust group of speakers from across the industry. They're joining us virtually. My colleague, Chair Khan, will save our comments for the end, so that we can preserve more time to hear from our speakers. We have some folks who prepared remarks with us today, and after a brief discussion, we'll open things up for public comments before Chair Khan closes. Let's go ahead and hear from our first speaker. I'll turn things over now to Erin Wade.

Erin Wade:

There's an old joke in the restaurant industry, and it goes like this, "I'm losing money on every table, but I'll make it up on volume." It pokes fun at one of the pitfalls of running restaurants. Restaurants have to be busy to make money, but if we're losing money on every table, pretty soon, we won't be able to pay our bills, and we'll go out of business. But the punchline also neatly describes the business promise of delivery mega platforms like Uber Eats and DoorDash. They say to restaurants, you'll lose money on every order, but you'll make it up on volume.

Erin Wade:

But they aren't joking. Delivery platforms are draining restaurants of profits, which used to filter back to local workers and communities. They're using the scale of their merge networks to force us, independently-owned businesses, to face an untenable choice, sign on, and die slowly, or shun the platform and get buried now. They're forcing small businesses into a kind of tenancy, and they're doing it in a predatory way that has gone unchecked. Delivery platforms aren't behaving like services, because that isn't what they are. They are digital networks. When they merge and gobble up local or more customer-oriented delivery services as they are, their power doesn't just double or triple. It increases as an exponential factor of the users added. It seems like they want to insert themselves in as many food service transactions as they can, to become to restaurants what Amazon is to retail.

Erin Wade:

This will gut what has been a diverse and profitable industry of small capitalists and replace them with corporate chains, ghost kitchens, and robotics. If a restaurant signs up for a delivery app, they're charged four or five, even 10 times their profit margin per order. What was the already too high, 15% per order in 2015 became 30% when Uber Eats got in the game. They swear the sales they generate will make it to the bottom line at a lower marginal cost. But in fact, the opposite is true. Unless you're set up to sell takeout, it is more expensive. So, delivery apps end up trapping restaurants in a payday loan scenario. We can't afford to lose the short term infusion of cash, even though the high cost of it is unsustainable.

Erin Wade:

How have these platforms managed to sell such a hoax? Well, they underprice delivery to the consumer, which has inflated a bubble of unsustainable demand for takeout and delivery, and they use network effects and unchecked consolidation of those networks to bully restaurants into cooperating. If a restaurant like mine tries not to sign up or chooses not to sign up, they pirate our menus and logos and sell our food without asking, almost like ticket scalping. They buy AdWords and keywords and present themselves as the internet version of us. Platforms spend billions on digital marketing, gaming SEO, and using their traffic to bury small companies' own website rank on search engines. We can't fight back because we have to make money or we go out of business. These companies don't seem to have to make a profit.

Erin Wade:

Then, they bundle orders so badly it damages customer relations. This cow successful restaurants who care about customers into signing up, but that means that they're contributing their customers to the network and having them sold back to them at a higher marginal cost. For new restaurants, especially, it's becoming impossible to opt out of working with these big guys. Over the past decade, customers have become increasingly walled off in hyper individualized data streams and preference bubbles. Startups sign up with predatory platforms because the platforms are like these vast food courts where all the customers are.

Erin Wade:

This dynamic has changed how restaurants compete with one another and with the chain restaurants. One way independent restaurants like mine used to compete was by flourishing in niches. And while chains had advantages in purchasing and marketing, we had special powers too. We were more creative, more passionate. We were more nimble at reacting to the trends we noticed or the good ideas we had. And often, we were just playing better because quality and food doesn't scale that well.

Erin Wade:

This is how I got in the business in 2008. I had a good idea, a restaurant that sells salads that was underserved. I focused on sustainability and quality. But because bigness is so self-reinforcing on today's internet, scale drives traffic which drives internet ranking, large corporate chains are less [inaudible 00:09:49] by apps than we are. Their size allows them to negotiate lower rates and cherry marketing deals with the platforms. They have IT departments that can rival digital pyrotechnics, and legal departments that can send cease and desist letters. The effect of all this has been to make big bigger, and small smaller. It has neutralized small food companies greatest assets, our creativity, responsiveness, and excellence.

Erin Wade:

It has also made niches in cuisine or geography or style of service irrelevant. A powerful company with greater access to data can poach those niche concepts or popular menu items from the data stream and run them as a chief ghost kitchen. Now, platforms and their algorithms know more about our own sales than we do. The bigger they get, the more dangerous this becomes. Arguably, they benefit more from our good ideas. The platforms which have merged or acquired ghost kitchens can open ghost concepts based on micro trends that their algorithms recognized instantaneously, combing vast troves of restaurant data. They also retain customers by harvesting a creepy amount of pixelated detail about customer behavior and ordering habits, and then, selling access to this now necessary information.

Erin Wade:

We used to retain customers by being delicious. I'll just finish by saying I've heard both Amazon and Grubhub criticize claim they help small businesses. Regulate the platform they say, and you'll hurt the many small businesses on the platform. As a small business owner, this really gets my dander up, because I think they are destroying what it means to be a small business owner. The reason we went to the trouble to begin with, which was to be our own bosses, to own the fruits of our own ideas. Rather than offering ownership of our ideas, brand, customer base, they present an arrangement that's more like tenant farming. The price for a patch on their platform is just high enough that the businesses there will never be able to grow and invest in themselves.

Erin Wade:

I welcome the chance to speak with you today. Restaurants matter. We create jobs. We create opportunity. We are central to the American economy, and I would argue to American democracy. The delivery platforms and the way their mergers threaten a thriving market and its competition deserve your scrutiny. Thank you.

Cheri Kiesecker:

Good afternoon. I'm here to talk about students and protecting them. So, student data significantly adds to the value of an ed tech company, but parents and students are rarely notified of a merger and are not told that they can remove their student data from the sale. Also, students really don't have a choice whether to use ed tech in school, so when you're thinking of mergers, please consider the massive amount of sensitive and predictive student data that these companies acquire.

Cheri Kiesecker:

One recent ed tech acquisition has impacted millions of students, including my own kids. Naviance was acquired by PowerSchool in March of '21, and parents and students weren't notified of the acquisition. For background, Naviance and PowerSchool are owned by a private equity firm called Vista Equity Partners, which has acquired many ed tech companies in recent years. Naviance itself is a platform used by about 10 million middle school and high school kids. Schools purchase Naviance, create accounts for students, and then require them to use Naviance and its many third party apps.

Cheri Kiesecker:

In years prior, I had asked Naviance about the data they collect, how they use and share it, because as a career in college factor, they have multiple personality assessments and surveys that kids have to take. And Naviance has sensitive information, like religious preference, disability, social security numbers, citizenship. They have scholarship and college information, including [inaudible 00:13:33] income, parents' income. Students are told that they must sync their Naviance account with their common app account when applying to colleges. Naviance also has PII test scores of every SAT, PSAT, and ACT dedicated [inaudible 00:13:46].

Cheri Kiesecker:

PowerSchool itself owns multiple ed tech companies, including a student information system, which they say is the most comprehensive system of record for student data. Their data library has over 7,000 possible data fields that schools can choose from. These fields are very specific and detailed, such as substance abuse or student pregnancy. So, after the Naviance acquisition by PowerSchool, many parents contacted their schools requesting to see their children's data held by these companies. And to my knowledge, these parents never received their children's records, even after filing for [inaudible 00:14:25].

Cheri Kiesecker:

In our case, for my kids, it took 90 days and a demand letter from my school attorney to get Naviance and PowerSchool to send any data. And when they sent a spreadsheet, it was only partially fulfilling our request. But we question the accuracy and source of some of these fields on the spreadsheets. For example, fields like a disciplinary change, my student has a violation, has a crime, has [inaudible 00:14:48], has multiple intelligence scores. These fields were apparently shared with colleges that my kids applied to. We don't know what colleges see, how often this kind of thing occurs, or what impact this has.

Cheri Kiesecker:

PowerSchool and Naviance have both signed the SIIA privacy pledge to not sell or use students' information for behavioral and targeted ads, and to give schools and parents access to correct and see their student information. However, the markup investigated and published a three-part series on Vista Equity and the company they own, showing that Naviance is selling advertiser's access to millions of students based on income and race. PowerSchool and Vista Equity companies seem to use student data to flag students of risks and feel predictive analytic products that raise discrimination concerns.

Cheri Kiesecker:

So, I believe that because PowerSchool and Vista Equity have acquired so many companies, like EAB, Intersect, Starfish, Naviance, [inaudible 00:15:50], Kickboard, Ellucian, Wizer, [inaudible 00:15:54], Schoology, you get the idea. They seem to be amassing a huge predictive and powerful empire of student data that parents cannot see, and frankly, can be potentially harmful. As PowerSchool says in their April 21 SEC filing, their embedded platform "contributes to a myriad of positions that impact the lives of students, including crucial funding decisions."

Cheri Kiesecker:

In closing, two points on mergers. Please consider the data because this imbalance of data is powerful and students are being preyed upon. Please require ed tech companies to notify parents and students prior to an acquisition or merger, giving them the opportunity to remove their student data from the sale before they amass more data. And understanding you need more funding, but please enforce the SIIA pledge, and use your [inaudible 00:16:46] powers to investigate ed tech companies and their use of student data. Because with ed tech embedded and integrated in our schools, it's frankly impossible for us to opt out, and students shouldn't have to surrender their civil rights [inaudible 00:16:58]. Thank you so much for the time.

Jonathan Kanter:

Thank you, Cheri. I really appreciate that. Next up, we have Rand Fishkin.

Rand Fishkin:

Howdy friends. I think someone else is controlling my video. So, when they turn me on, you'll be able to see me. All right. There we go. Howdy. My apologies. Unlike my colleagues there, I did not come with pre-prepared remarks, but I was asked to speak on a couple of issues related to my background in research.

Rand Fishkin:

I started a company called Moz, which was in the SEO software space, and another one, SparkToro, which is in audience research, deeply involved with both Google and Facebook, from the entrepreneurial perspective. I'm also an investor myself after some lucky financial moves. What I would like to share, I think, is quite brief. I'm going to share, first off, I think [inaudible 00:18:00], you and I communicated previously when I published some research about Google's zero click search problem, which is essentially that much of the traffic, much of the search traffic that went to Google now no longer flows to the rest of the open web. In fact, that number is in the excess of two thirds. And Google has obviously a monopoly in the search space, near monopoly, over 90% of searchers worldwide and here in the US use Google almost exclusively.

Rand Fishkin:

This means that many, many businesses, like those that Erin obviously represents and mentioned, and Cheri as well, lose out. I also have severe concerns that Google, in particular, uses their monopoly power in search to benefit their own properties that they own, control, and have acquired. YouTube and Google Maps are two of the most salient in this case. YouTube is a great example because it was acquired, I think, it was 2008. However, for a long time, Google made it possible for anyone with video content on their website to appear in Google's results with a video snippet and earn search traffic from that. Until one day in July of 2014, when Google made a singular change to their ranking system and

95%, more than 95% of all videos that showed up in Google after that day against July 14th were YouTube videos only.

Rand Fishkin:

Google essentially used their monopoly power in search to make sure that their YouTube acquisition became the dominant power in video. They have done much the same thing with Google Maps, essentially preventing and pushing out hundreds of companies, including clients of my previous business and current one, folks that I've advised, folks that I've invested in, from appearing in any local search results and forcing the Google Maps listing to be the results.

Rand Fishkin:

I think this also touches on what Erin said about restaurants, which I think is tragic and frustrating. So, it's my hope that both the FTC and the DOJ will consider reigning in and applying some of the, I think, very, very wise antitrust laws and regulations that the US has and has applied to other kinds of businesses in the digital world as well. I'm also happy to be a reference and follow up on any of this stuff too. Thanks so much.

Jonathan Kanter:

Well, thank you, Rand. Really appreciate that. Next up, we have Bradley Tusk.

Bradley Tusk:

All right. You can see me? You can hear me? Awesome. All right. Well, first, thanks for being here. Thanks for letting me do this. I want to start off by just saying, despite popular opinion, there is no one definition for tech. In my experience, people equate Amazon with a pre-seed startup, and just kind of lump them all into one category. But that's crazy. It's like saying that Disney and your local putt-putt are the same. In my view, when you classify all tech companies as the same, it's harmful for both the innovation and the thoughtful regulation. Every time one tech giant merges with another, every time the market consolidates, it does so at the risk of stagnating innovation.

Bradley Tusk:

I'm an early stage tech investor. We invested seed in Series A of the roughly 60 companies in our portfolio, not a single one could be classified as a potential competitor to Amazon or Facebook or Google or Microsoft or Apple. You know why? Because they can't compete, and that means we can't invest. So the bigger and more powerful giant companies are, the harder it is for venture capitals like me to support new companies and new ideas. Ultimately, that leads to stagnation. Sure, all the giant tech companies have lots of engineers and giant R&D budgets. Yes, they're investing in virtual reality and the metaverse, Web3 and delivery drones, AI and all kinds of other stuff.

Bradley Tusk:

But history has shown, time and time again, that the companies that seem inviolate to us, the companies we can't even fathom falling behind, ultimately always do. General Electric, Kodak, Xerox, IBM, Toshiba, Hitachi, it's a long list. So, if the big tech companies ultimately stagnate, because they're now giant bureaucracies, and if new tech companies can't get funded because the big tech companies are too powerful, then we're not creating new technology and we're not giving American businesses and workers the chance to get ahead. It gives us the worst of both worlds.

Bradley Tusk:

Whether it's being way too easy on mergers, or failing to pass new antitrust legislation, or the failure to end or amend Section 230, or the complete failure to create any version of GDPR in this country, I would argue that Washington has failed this time and time again. They've put consumers at risk, small businesses at risk, children at risk, and ultimately, the economy itself. And keep in mind, I'm saying this not as a policy advocate, not as an ideolog who hates tech. I'm a venture capitalist who believe deeply in the power of technology, and I think that the way that big tech companies were allowed to flourish and get away with everything they do

Bradley Tusk:

... is really harmful. I'm glad that you're holding these hearings. It's a sign that at least somebody gets it. And keep in mind every problem we see with big tech today, and every problem we see online is going to get 10 times more challenging once the metaverse arrives. If there's a time to act, it has to be right now. To me, the three things that you guys should consider is one, a lot more scrutiny on big tech mergers and takeovers, whether it's Microsoft Activision, Elon Musk purchase of Twitter or anything else. Two, look more favorably upon mergers among smaller tech companies that can create viable competitors to any of the FANG lines of business, and three use your administrative power to pass regulations on tech. If Congress can't get its act together, the FTC should aggressively use everything in it's power to do the job themselves. That's it. Thank you.

Speaker 1:

Thank you. Bradley. Appreciate that. Next we have Saagar Enjeti.

Saagar Enjeti:

Hi there. Thank you all, both so much for your time. We really appreciate it. My goal today is really to warn against the collusion between monopolies, which are fundamentally detrimental to the American people, which are detrimental to our politics, and to a free and an open internet. I'm the host of Breaking Points with Krystal and Saagar. It's a top 10 political podcast in the United States and one of the most popular political talk shows in America on YouTube. We have a central animating goal, which is freeing American politics, politicians and citizens from the ideological shackles of an existing corporate media ecosystem. And that goal actually fits directly with the original promise of the internet upon its conceptions. The direct connections that were enabled by the internet between citizens allowed for the first time, the circumvention of established modes of communication. The freedom of consumers for the first time in modern American history was to have a choice beyond these existing corporate behemoths to consume the news the way that they actually wanted it.

Saagar Enjeti:

It was a noble goal. But that goal, however, in the last two decades has sadly traded one form of established channel for another. Today, millions of Americans consume their news and entertainment on a small handful of technology platforms, which are increasingly consolidated amongst each other. These technology platforms seek good relations with corporate media organizations for a variety of reasons, PR purposes, credentialisms, ideological alignment. That confluence of interest on behalf of the tech companies allows instead of the replacement of existing corporate media ecosystem, but a further hardening of established modes of communication force fed to consumers online through no actual choice of their own. Verticals, such as the Google news program or the Facebook fact checking program, Twitter's content labeling demonstrate that the direct picking and choosing of so-called good information by tech companies which are increasing monopolies benefit existing media organizations, which overwhelmingly share an ideological bent.

Saagar Enjeti:

And now the promise of shows like mine and a number of other budding programs is to allow Americans an option of a different mode of consuming the news. Instead, shows like mine are much more at the whims of content policies, which are decided in California for what is best for advertising and time on platform instead of how to deliver better information to the American people. In fact, recent decisions by the tech companies regarding the spreading of so-called misinformation has resulted in the direct censorship of alternative voices on critical policy issues like the origins of coronavirus, the 2020 presidential election and the war in Ukraine from being able to reach Americans as is their right to get information. These content policies and their inflexibility online, the inhumanity of having no one to contest to a decision to leaves news companies like mine at the whims of faceless robots when major decisions are made on demonetization of our content to the suppression of certain topic areas. And this fundamentally discourages new and budding enterprises like mine from covering the most controversial topics of the day.

Saagar Enjeti:

In reality, a proper news ecosystem should encourage it. Technology monopolies today have a fundamental interest in the same way that corporate media organizations do, which is keeping their advertisers happy. Now this goal causes tech companies to prioritize time on platform, retention rates and overall attention metrics above everything else. The problem remains as always. The best way to deliver nuance and information is fundamentally at odds with this increasing dynamic held by a select few. So just as corporate media organization's job is to fill time in between commercial breaks, most tech monopolies today have one job. That is to keep their people locked into their ecosystem as much as possible to serve as many ads as possible and gather as much data on them. This results in the promotion of content, especially on newer tech platforms, which is short form. It encourages baiting users with inflammatory headlines and other grabs, other attention metrics, which instead of focusing on ones which actually encourage real engagement with ideas and with nuance.

Saagar Enjeti:

The two phenomena that I'm describing here is the hardened modes of established communication and the inability to participate in a truly free open internet is harmful both to my business, but to my mission of changing the ideological bounds of conversation in the United States. Tens of millions of Americans continue to get more and more of their news online and it is vital with the United States government ensure a truly fair playing field, full free of corrupt influence in one of the most vital institutions in American life. I thank you all very much for your time. Thanks.

Speaker 1:

Thank you very much for that. We appreciate it. Our next speaker is Gayle Shanks.

Gayle Shanks:

Hi, I'm the founder of Changing Hands Bookstore, two independent bookstores in Arizona that sell used books, new books and gifts. We're in our 48th year, we employ 65 workers. We've won numerous awards and have an exceedingly loyal following and a metropolitan area of five and a half million people. Our stores have always run in the black, but often hovered very close to red ink. And it is that piece of barely surviving that I wanted to talk to you about today.

Gayle Shanks:

Bookstores in this country are so much more than they're retailers of books. They're community gathering places. They encourage readers to think critically about their world, teach young children about reading and storytelling, introduce readers to writers and are repositories of the art of literature. They are places of discovery for new authors and new titles and have passionate booksellers, not algorithms who can recommend books to their readers.

Gayle Shanks:

Unfortunately, these discoveries are too often purchased on Amazon, which often prices books for less than what I buy them for. A democracy requires an educated citizen rate. Bookstores and libraries are essential to preserving both intellectual life and democracy, but bookstores are threatened by the monopolistic practices of Amazon and to a lesser extent by mergers of large publishing houses. For decades, we have been trying to level the playing field, not asking publishers for anything more than allowing us to compete fairly and competitively with the same terms that other businesses selling books receive. Amazon's size gives it terrifying leverage over the publishing industry. It has bullied publishers in the past for better discounts, early releases of titles before brick and mortar stores get them, lower prices on eBooks and audiobooks. And if the publisher stood up to them or pushed back, they removed the buy buttons, telling the consumer the books were out of stock or unavailable.

Gayle Shanks:

Large publishing houses are attempting to merge with one another to capture more market share. But I fear that the fewer the number of publishers, the fewer options authors have to sell their work and the harder it will be for indie bookstores to survive. That's because our great value to the publishers is discovering new authors and bringing them to our readers and influencers. Publishers are taking fewer and fewer risks on debut authors as it is, and when the bottom line is the main concern for a giant corporation that owns a publishing house, the pressure to produce best sellers only by authors with established track records will increase making it harder for new voices to be heard.

Gayle Shanks:

There is a growing consensus among the public and lawmakers that concentrated economic power is a serious threat to the nation's wellbeing and that our antitrust laws must be strongly enforced. The proposed merger of the two largest publishing houses, Simon and Schuster and Penguin Random House will be a test of whether the antitrust agencies have received that message and will reject this proposition.

Gayle Shanks:

And if the government constrains publishers without constraining Amazon, then the accumulation of unrestrained power in one single company will continue to accelerate, leading to the demise of independent businesses like Changing Hands, businesses that provide jobs with dignity for millions of workers, businesses that support local charities and service organizations, businesses that arrange with teachers for author visits in their classroom to spread the joy of reading to the next generation, that enhance literacy and the wellbeing and the right thinking of our citizens in this country. I thank you so much for listening and allowing us to participate in this amazing forum. Thank you.

Speaker 1:

And thank you Gayle. We appreciate your participation. Our next speaker is Jasmine Johnson.

Jasmine Johnson:

Good afternoon to everybody. I'm so honored to be here speaking. I hope to relate the effect that these mergers and big tech companies have had on small businesses. Something that I didn't even think about when I became an entrepreneur. I knew that inventing a product and selling a child safety product, wouldn't be easy so I didn't expect a silver spoon, but I certainly didn't expect for large tech companies or platforms with their unlimited resources to make it hard for me to compete. I didn't expect that.

Jasmine Johnson:

The bottom line is as they get bigger and bigger and merge and merge unregulated, they basically become more careless and more callous about the small business owners, which make the plan feel unequal. For example, they have no incentive to give us perks or make any special efforts to make the platform fair for us. Because they're so big they have no incentive do things like lower fees or make their fees on a sliding scale based on sales, or make the first year of small business owners credit, free advertising credits. Things like this, all these different incentive or a sliding scale on storage fees. No incentive to do that.

Jasmine Johnson:

We should not be paying the same fees as a million dollar company or a big company on these platforms are paying, coming in as a small business. And they have the resources to do such things, but because they care less, because they're so big, they don't do that. Not only have they decided not to care, they take advantage on top of that and they take a casino's mindset. They know that we're so desperate to pay to play that we would spend our money and we lose most of it on trying to get big on these platforms. So now we become like gamblers to a casino, their casinos. This is my personal experience. Using Amazon, have not made any money. I haven't broke even, despite having thousands in sales. This is disappointing because I had so much high hopes. I was so excited to be on Amazon, but I soon learned all these things was against me and put me at a disadvantage, mostly because they were so not transparent.

Jasmine Johnson:

Storage fees was not transparent. Around Christmas time my storage fees grew a hundred percent. Did not know that. Even recently now my storage fee last month was, let's say $50. It grew. This month's bill was $20 more. I have no idea why. No transparency. As a small business, why don't I just leave? I'm not in position to. This is organized so to disassociate myself from this platform until I secure retail space or other selling channels, I'm kind of stuck. Because I'm so desperate right now to get off the [inaudible 00:36:49] I'm thinking about accepting an invitation that they just sent to me to use their Larkspur program which is a [inaudible 00:36:56] and this is a program that you actually get help from Amazon to actually grow your business.

Jasmine Johnson:

But I'm considering. It should be an easy thing, but I'm considering because they want an additional 5% on top of all my other fees to participate in a program. Sound like Shark Tank, right? A billion dollar company becoming Shark Tank. They should be thinking about the small guy, but again, they don't do that. So in conclusion, these mergers and consolidations and they're being unregulated again, just making them bigger and bigger and they care less and less about us small guys. Thank you so much. I hope that this is the beginning of a change. Thank you.

Speaker 1:

Thank you, Jasmine. We appreciate your participation here today. Greg Caron is up next.

Greg Caron:

Hi, can you hear me? All right. Thank you. I am a call center agent at T-Mobile located in Colorado Springs. I've worked for the company for 19 years. I work as a part of a team that provides tech support for new products, including T-Mobile's new home internet service. I've been an active member of T-Mobile's Workers United for several years and raised concerns about the merger leading up to the T-Mobile Sprint merger.

Greg Caron:

The merger has been a mixed bag for workers. While I'm glad to see T-Mobile announce a $20 starting an hour wage, the company has not invested to retain tenured workers like me and T-Mobile has not fulfilled its promises to be a job creator. They are doing the opposite by sending more work to overseas call centers. I make $26.49 an hour, nearly 20 years of working at the company, which is roughly $55,000 a year. $26.49 an hour sounds great, but I live in Colorado Springs, which is considered a higher cost of living area. The average price of a home in Colorado Springs for March 2022 is about $435,000, while the average rent for a one bedroom apartment is $1,496.

Greg Caron:

When the company increased the starting rate last summer, they told long term employees would be eligible for up to a 10% raise come February 2020. But when that time came, I did not get a raise and neither did others. Despite feeling unappreciated. I do feel like I'm stuck at T-Mobile because if I quit, I would have to start over somewhere else after I've invested 19 years at the company. When the T-Mobile sprint merger closed in April 2020, we had already moved to work from home due to COVID. It was harder to see if there were job cuts since we weren't working in the call center at the time, but we knew the company was starting to let go of some managers claiming it was because people were not paying bills due to COVID.

Greg Caron:

The layoffs started approximately June 2020, which was a very difficult time for these employees as we were in a middle of an economic downturn and in the middle of a public health crisis. It was sad to see coworkers lose their job while at the same time, John Ledger, our former CEO got a $137 million golden parachute and other executives got similar payouts. Those hundreds of millions of dollars could have saved so many jobs. And how many employees' jobs would that have paid for for another year.

Greg Caron:

Even though T-Mobile continues to be a profitable company, they are sharing less of those profits with the workers since the mergers. I've heard from call center agents in other departments, like our team of experts departments saying that they've seen their bonuses go down since the merger, reducing their take home pay. Earlier this year, the company suspended overtime for call center agents and even started offering less than 40 hours a week for schedules, even though our call center is still extremely busy.

Greg Caron:

Clearly the company is using its power over our schedules to squeeze out more profits for Wall Street and it's near majority owner, Deutsche Telekom. I've also seen evidence T-Mobile has stopped investing in US jobs. When I call another department these days, it's more likely than not that I will get a agent offshore in the Philippines or elsewhere. I also see fewer job openings than I've used to, and I've been told that the company has frozen hiring at US call centers.

Greg Caron:

And what about the company's commitment to open five call centers in rural America, an announcement made just before John ledger spoke to Congress about the deal in 2019. That promise seems to have been forgotten when Ledger parachuted out of the company. The company is now only opening three call centers. Meanwhile, from its annual reports, we know the company has cut more than 5,000 jobs since the merger. What the workers in the industry need is for companies to be accountable for their promises. Right now, if a company or executive makes a promise about job, consumer benefits, et cetera, to get a merger to be approved, and then they don't follow through on what they promised there aren't any real consequences. Companies must put their promises in writing and the promises must be enforceable. If we don't enforce the promises they make to get their merger approved, mergers will only continue to benefit executives and shareholders and hurt employees and consumers. Thank you.

Speaker 1:

Thank you, Greg. Now I'm going to turn over to [inaudible 00:42:46]

Lina Khan:

Thanks so much, Jonathan, and thanks so much to all of our speakers for sharing your views and perspectives on this critical topic, and thanks as well to the DOJ and FTC teams for putting together today's events and the prior listening forums. They've all just been really terrific.

Lina Khan:

I think, as we've heard today, several digital platforms today now increasingly control key arteries of commerce and communications in our country and have increasingly become critical for navigating every day life. These platforms can connect huge segments of customers and businesses, but I think as we've heard a lack of competition in these markets, coupled with a lack of robust checks on how these firms can use their dominance can enable potentially anti-competitive practices, undermining entrepreneurship and innovation while depriving users of choice.

Lina Khan:

We've also seen how dominant platforms and apps can increasingly serve as key gatekeepers in gateways for finding products, for finding restaurants, home services, healthcare, and a whole host of other services, which means that the choice that this relatively small number of platforms and apps are making can effectively determine whether a business sinks or survives in the digital economy. I think the continuing digitization of the economy as AEG Cantor mentioned right at the beginning means that the top, the issues that we're already seeing only risk becoming more acute, and so I think this is a particularly relevant and instructive set of topics.

Lina Khan:

Just a few reactions based on some of the comments that we heard today. I think we oftentimes hear about the many ways that these platforms and intermediaries can really open up access to markets for businesses, expanding the set of customers that firms can access. But I think from what we heard today, really underscores how the imbalance and power between platforms and the businesses that depend on them can also enable potentially harmful business practices. We heard from Ms. Johnson, Ms Shanks and Ms. Wade, that these major platforms have become essential pathways to connect with customers, but that this role has also given these firms significant if not complete control over the terms of access to those pathways and that imbalance of power can enable the platform to dictate the terms of commerce and eat up a lion's share of the profits from the small businesses sales.

Lina Khan:

I think it was really striking to hear one of our participants describe this relationship as akin to tenant farming. While I think another mentioned that he feels that the success of his business is really dependent on the whims of one of these platforms, rather than a reflection of how popular the show is with consumers. And so I think all of this really underscores how important it is that us as antitrust agencies and enforcers do what we can on the front end to preserve and encourage competition and maintain the conditions for competition in these markets, including through checking and enforcing the law against illegal mergers. I think we also heard from Mr. Fishkin, when you see some of these massive firms acquiring new technologies that can threaten their core business,

Lina Khan:

That ultimately at the end of the day can leave consumers with less choice and can really dampen and discourage entrepreneurship in those areas. I think for the FTC one, particularly interesting set of comments underscored how we see certain consumer protection issues also be raised through some of these mergers. So as Miss Kaysaker discussed, mergers can also involve the transfer of sensitive user data where consumers who submitted their information to one firm can suddenly, after a merger, find that their sensitive data has been handed over to an entirely different company, that is free to change privacy protections and renege on some of the privacy commitments. And we've seen how customers who may be locked into those services really need protection against these types of changes that they otherwise might have little power to prevent, to ensure that their data remains secure. And I think consistent with what we've heard in some of the prior listening sessions today, it's really emphasized that it's critical to keep the labor market aspects of mergers in mind, something that previously had sometimes fallen under the radar. As we heard from Mr. Karan, growing concentration among firms can also give employers increasing power over their workers' wages in terms of employment, and so we really need to be vigilant about that dimension.

Lina Khan:

I think finally, given some of the dynamic and novel issues in these digital markets, we, as the antitrust enforcers, really need to make sure that our tools are up to the challenge. I think in recent history we've seen how dominant technology firms have acquired a whole set of small companies. A recent FTC report last year, documented how some of these transactions have historically fallen under the radar in ways that require the agencies to be a bit more vigilant at some of these smaller transactions. And I think we also need to be alert to instances in which emerging competitors are acquired before they can fully emerge to be a threat.

Lina Khan:

I think we've seen throughout history, how, especially in these high tech markets, businesses that are in slightly adjacent markets are providing slightly distinct services, can oftentimes be the ones that are best positioned to provide an important source of competition and dislodge the incumbent. Which means that antitrust enforcers need to be especially attuned to this dynamic and really learn some of the lessons from the past decade, around not having overly optimistic views of how likely entry might be, as well as understanding the important role of data and consolidated control of data in inhibiting entry. So I think, keeping our tools sensitive and attuned to the very real world experiences that all of our participants have shared today, is going to be essential for us to preserving markets where business can compete on the merits and allow entrepreneurship and innovation to flourish and users to benefit. So thanks so much again to all of the participants today, we really benefited from everything that you shared with us.

Jonathan Kanter:

Thank you, Chair Khan for those observations. I'll share a few of my own and then we'll open it up for our public speakers. Each time we've conducted one of these sessions, I've just been extraordinarily impressed and overwhelmed by the sophistication, the attentiveness of our speakers. It reminds me that the people who often have the greatest input and the most important input are the folks who are most directly affected by concentration. And in preparing these sessions and hearing from our speakers today, it's reaffirmed that view, which is that we must make sure that we are giving ourselves an opportunity to hear from those who are most directly affected. And I'll give some examples of things that jumped out thematically.

Jonathan Kanter:

Erin talked about platforms that induce participation by promising benefits to those who participate, but those promises often go unfulfilled and then participants in the platform find themselves locked in. The ability of platforms to absorb losses, either through money losing strategies, cross subsidization or long term shareholder maximization. And there's an interesting, fascinating remark from Erin about market characteristics that make big, bigger, and small, smaller. And so, again, competition isn't about picking winners and losers, it's about rivalry. But if markets are going to work for everybody and in all places throughout the country, we need the opportunity, not just for the big companies to succeed, but for companies of all sizes to have access to markets so that they can compete with the benefits of their quality, their service, their innovations, and their offerings to community.

Jonathan Kanter:

Sherry provided a remarkable reminder that when we're talking for example about products that impact students, we need to hear from parents about the impact. And she discussed how the accumulation of data from students is an extraordinary concern. And this data becomes, and scale of data, becomes a driving force behind consolidation. It risks even greater exposure for students as markets concentrate through mergers. Ram Fishkin talked about his technology background and the significant risk of intermediaries capturing internet traffic, and concerns about self-preferencing.

Jonathan Kanter:

Bradley, talked about how tech is ubiquitous, but not all tech companies are the same. And that the connection between concentration among technology companies and VC and investments in entrepreneurs, and how the bigger companies become and the harder they become to unseat, the less investment we're going to see in competing technologies. And it wasn't from somebody who, as Bradley said, is concerned about technology as a category, it's from someone who wants to see more investment and wants to see investment grow, but that problems, if they go unaddressed, will compound.

Jonathan Kanter:

Sutter, talked about the importance of diversity of viewpoints in the distribution of news and ideas, and how concentration in technology markets can harden in certain types of positions in corporate media. And, that as content policies often implemented by code and robots will risk limiting the flow of information in a democratic society, and without necessarily the same regard for the importance of news. And that lock-in, data collection and ads, as motivating factors, lead to click bait; attention metrics that often do not align with the flow of accurate, valuable information and informed citizenry.

Jonathan Kanter:

Gail talked eloquently about challenges of local bookstores and independent bookstores who are just more than retailers of books. They're pillars of a community that provide opportunity for growth beyond the walls of their own stores, and how book stores are important to an educated citizenry and critical to our local communities and our nation's wellbeing. Jasmine talked about the unequal playing field for small business and platforms that cater to the largest companies, but not to small businesses, and the lack of options and choice for small businesses to find platforms that provide better services and better costs. And how the more dependent these small businesses become on platforms, the more opportunity the platforms have to extract fees, and that she likened, in a very colorful way, platforms to casinos asking small businesses to gamble when the odds are stacked against them.

Jonathan Kanter:

And finally, Greg talked about the impact of consolidation on the real world ability of workers to realize wages that keep up with higher costs of living, and lack of investment and domestic job opportunities, creating an abduction of output in new labor opportunities. And, related to that, the lack of follow through and promises to maintain local jobs and to invest in local communities, which impacts the competitiveness of local markets. So with that, we're going to move to the public portion of our session, but I just wanted to also thank the speakers for their courage and eloquence in coming forward and sharing their views. And so with that, I'm going to turn the mike over to Peter Kaplan. Who's going to facilitate our public speakers portion at the meeting. Peter, feel free to take it away.

Peter Kaplan:

Okay. Thank you assistant Attorney General Kanter. Before we begin, I want to remind our next speakers that the FTC is recording this event, which may be maintained, used, and disclosed to the extent authorized or required by applicable law, regulation or order. And it may be made available in whole or in part in the public record in accordance with the commission's rules. Each speaker will be given two minutes to address Chair Khan and Assistant Attorney General Kanter.

Peter Kaplan:

And with that, our first speaker is Louis Ray. Louis? Louis, I think you're muted. Okay. It looks like Louis is having some technical problems. So let's move on to our next speaker. Our next speaker is Sean Randolph. Sean?

Sean Randolph:

Thank you very much. I run a public policy research institute here in the San Francisco Bay Area that also covers Silicon Valley. And maybe equally to the point, I support an organization called BASIC, the Bay Area Science Innovation Consortium, made up of the research universities here and a lot of the laboratories that produce life science, as well as tech basic research. And I think what I'm going to say is going to go probably against the grain of what's been said so far, at least some of the introductory remarks. So acknowledging that there are real issues around competition to be discussed around big tech, we have a lot of concern with the idea that's been put out in a number of places and in the Congress of course, that restrictions should be placed on the ability of the larger tech platforms to acquire smaller ones through antitrust. The concern is the impact of that on venture investment and on the startups that this is actually designed to benefit and ultimately on innovation.

Sean Randolph:

So I work with a lot of venture firms in Silicon Valley and this is what I'm hearing from them, that foreclosing the opportunity of a startup to be acquired will reduce opportunity and increase the risk for venture investors, whose goal is ultimately always going to be an exit. And we all know that large companies are important acquirers. So if they're not able to acquire a startup company, that can affect the access of early stage companies to capital and affect their ability to scale with the support of venture capital. So whether it's through acquisition or by going public, exits reward innovators, they reward founders and they re-inject capital back into the startup system for reinvestment in new company creation. And I think it's really important to recognize that a lot of these emerging technology companies want to be acquired. It is actually a core part of their strategy and the goal to be acquired. And again, while acknowledging their issues around competitiveness, and of course acquisitions can affect competitiveness, in the vast majority of cases it's not about that, it allows a larger company to acquire talent. It enables innovative technologies and services to be scaled to consumer markets faster than a very small company could do by itself. And I think it's really important to recognize that 60% of small company tech exits are through acquisitions, only 5% are through IPOs.

Peter Kaplan:

Thanks, Sean.

Sean Randolph:

So what I would just say is, please be very nuanced and very thoughtful. We think that this approach, if not done very carefully, would have costs that outweigh the benefits.

Peter Kaplan:

Thank you, Sean. Thanks a lot. Our next speaker is Munira Lokhandwala. Munira?

Munira Lokhandwala:

Hi, my name is Munira Lokhandwala and I'm Director of Tech and Training at LittleSis, also known as Public Accountability Initiative. I'm also a researcher for Crescendo, a project which focuses on corporate complicity and anti-Muslim bigotry. I'm going to talk about Alphabet's, today, Alphabet's acquisition of YouTube in 2016 for just 1.6 billion. The video platform has generated hundreds of billions in profits for Alphabet, raking in almost 29 billion in 2021 ad revenue alone, and YouTube will continue growing. In recent years their ad revenue has increased by around 25% to 30% each year. Alphabet's acquisition of YouTube supercharged the platform's growth, and subsequently amplified the hateful anti-Muslim content on their sites to reach billions of users around the world daily. How does YouTube keep users clicking so that advertisers keep buying their ads? They permit and promote content that preys on people's worst unfounded fears, including hateful and false disinformation about Muslims and people of color. And because Alphabet has been able to grow a YouTube's platform to roughly two billion users, such hateful content is able to reach people in over a hundred countries around the world daily.

Munira Lokhandwala:

There are unfortunately many examples of how disinformation on YouTube leads to real world violence toward Muslims. March 15th, 2022, marks two years since a white supremacist killed more than 50 worshipers at two Mosque's in Christchurch, New Zealand. Multiple reports have found that the shooter was inspired by watching right wing videos on YouTube. The government of New Zealand itself concluded that YouTube was a significant source of disinformation and incitement for the attack, through their own reporting. How many more of these attacks will occur as a result of Alphabet's refusal to take seriously the impact of hateful content on YouTube's platform? We urge the FTC to use their regulatory powers to intervene on mergers and acquisitions that drastically scale up harmful and bigoted business practices. And we also urge the FTC to examine if options for unwinding mergers that have already happened. Thank you.

Peter Kaplan:

Thank you, Munira. Thank you very much. Our next speaker is Myaisha Hayes. Myaisha?

Myaisha Hayes:

Hi, my name is Myaisha Hayes and I'm the Campaign Strategies Director at MediaJustice, which is a national organization fighting for the communication and digital rights of communities of color. As a national organization, we're also the host of the MediaJustice Network, which includes almost a hundred grassroots organizations fighting on the front lines of social change. Our network represents communities that are uniquely impacted by the proliferation of high tech policing tools. Therefore we're really deeply concerned about Amazon's acquisition of surveillance tech like Ring and recognition that really cement the company's dominant market position, at the expense of further criminalizing communities of color.

Myaisha Hayes:

I'd like to start off saying that when Jeff Bezos was interviewed about Amazon's acquisition of Ring, he admitted that this buyout was motivated by his own desire to own and gather as much data as possible. I wanted to share this because it highlights how Amazon's entire business model really relies on extracting and collecting as much data as possible. Ring was just another avenue to make this happen. And I'm here today to really show and talk about how the people most impacted by this business model are communities of color. Amazon Ring essentially gives police departments across the country, unprecedented access to the data and video footage reported by its cameras.

Myaisha Hayes:

Amazon dominates this home surveillance market and has used its corporate power to rapidly secure these partnerships at an alarming rate. When Amazon bought Ring in 2018, they had approximately 400 police partnerships. As of 2021, they actually have over 2000. That's over 500% growth in three years. I believe this growth is particularly concerning because it is outpacing the organizing work led by communities of color, fighting back against the police use of dangerous and invasive surveillance technology. There are countless examples of organizers and activists, women campaigns to ban facial recognition, automated license plate reader, shot spotter. And yet Amazon has essentially figured out a way to provide a workaround for the police to access a privately run surveillance network, without having to abide by any of the laws or public scrutiny that would normally apply and protect our basic rights. And with the integration of Alexa into Ring, this merger allow Amazon to essentially turn their consumer base into a citizen's police force.

Myaisha Hayes:

And lastly, and related to my last point, these surveillance partnerships only fuel the problems that we are having with policing, it doesn't make our community safe. While Amazon issued a statement, supposedly announcing its solidarity in an aftermath of the global uprisings, they continue to rapidly secure these partnerships with police departments that also have a history of violence and excessive force. Amazon Ring just makes it easier for the police to essentially stalk, harass and criminalize communities of color. And we know this for a fact last year-

Peter Kaplan:

Thanks Myaisha. Thank you very much. Our next speaker is Chris Nielsen. Chris?

Chris Nielsen:

Yeah. Thank you so much. I'm the Assistant Director of Education for National Nurses United, the nation's largest nurses union. Consolidation in the technology sector is compounding the negative impacts of rampant mergers and acquisitions in healthcare, which one of our members spoke to you about last month. For example, two of the largest health systems, HCA and Ascension, have deals with Google to share the data on millions of patients without their consent. The data which is used to develop algorithms and help identify ways to boost revenues is supposed to be anonymous, but it could easily be de anonymized and used by Google for advertising or other purposes.

Chris Nielsen:

Or consider electronic health records, just three firms, Epic, Cerner and Meditech, control over 70% of that market. EHRs don't just store patient information, they also incorporate decision support algorithms that can interfere with the clinical judgment of practitioners, and subordinate patients' needs to the financial interest of profit driven health systems. Many of these algorithms have also been shown to exhibit racial bias, but lack of competition has shielded health IT firms from accountability.

Chris Nielsen:

And finally, as gig platforms like Uber and DoorDash seek to codify their practice of mis-classifying workers as independent contractors through proposals like California's Prop 22, large health systems and venture capital backed staffing apps like CareRev and others, are trying to expand the gig work model into healthcare. And this could have devastating impacts on healthcare worker wages, on union density and on bargaining power over quality of patient care. And if employers are allowed to gain an unfair advantage over competitors by mis-classifying workers, this could supercharge the existing monopoly epidemic in healthcare. So NNU urges FTC and DOJ to characterize as anti-competitive, the mis-classification of healthcare workers as independent contractors, and to update guidelines to consider how transactions in healthcare and in the technology sector can harm patients, healthcare workers, and our communities. Thank you for the time.

Peter Kaplan:

Thank you, Chris. Thanks. Our next speaker is Dylan Gyauch-Lewis, Dylan?

Dylan Gyauch-Lewis:

Hi. Can you hear me okay?

Peter Kaplan:

Yep.

Dylan Gyauch-Lewis:

Okay, great. I want to briefly talk about two things. First is the insidiousness unique to big tech monopolies. And second is some of the work that I've done at the Revolving Door Project about the capacity that antitrust regulators have to contend, with the enormous resources at the disposal of those monopolies. So starting with the insidiousness, there are myriad ways that tech companies are able to hold entire other markets captive. For instance, Amazon with bookstores, DoorDash with restaurants. Amazon is also delivering groceries now, which is only making it harder and harder for small local grocery stores

Dylan Gyauch-Lewis:

... to continue to compete. And the key problem with all of this is that the more industries become beholden to tech companies, the less that we, as consumers are able to exercise any meaningful choice in what we purchase.

Dylan Gyauch-Lewis:

It becomes tangibly harder to support local businesses when their prices are undercut constantly, and it becomes difficult to even keep track of what businesses we're supporting when we shop. All of which strands us with limited choices, even amongst the illusion of many options.

Dylan Gyauch-Lewis:

And this gets to the second problem of Big Tech expansion that I want to briefly touch on, which is how insidious it is. Again, look at Amazon. Many Americans, including myself, don't want to support them as a business because of the way they treat workers, and how they crush small businesses, and their union busting. But it's impossible to know what other companies rely on Amazon web services, or other backend support from tech companies.

Dylan Gyauch-Lewis:

The second thing that I wanted to highlight is the capacity issue of antitrust enforcers, which has not kept pace with inflation, with GDP, or with the rate of mergers. I think that all of this is incredibly important to highlight that the longer we wait to address Big Tech, the harder it will be as the resource disparity becomes greater and greater. I want to urge quick and immediate action. Thank you so much, for your time.

Peter Kaplan:

Thank you, Dylan. Our next speaker is Krisztian Katona. Krisztian?

Krisztian Katona:

Thank you. And thank you to the FTC and DOJ, and Chair Khan, and AAG Kanter, for organizing this listening forum, and also for the opportunity to participate. I'm Krisztian Katona, Vice President of Global Competition and Regulatory Policy at the Computer and Communications Industry Association, or CCIA, in Washington, DC.

Krisztian Katona:

CCIA is an international, not-for-profit technology trade association, which has advocated for competition in the technology industry for 50 years now.

Krisztian Katona:

Focusing on merger controlling antitrust, first, it is very important for the agencies to periodically review and reexamine the merger review rules to make sure that they reflect current practices, market realities, and economic learning.

Krisztian Katona:

However, as CCIA also noted in our written comments to the FTC and DOJ request for information on merger enforcement, we strongly believe that the current merger guidelines provide clear and practical guidance on when a transaction is likely to raise competition concerns.

Krisztian Katona:

We indeed, technology industry, find that the current merger guidelines are flexible and adaptable to today [inaudible 01:11:39] perhaps benefit from a [inaudible 01:11:47] for a rewrite. [inaudible 01:11:52] joined commentary on the horizontal [inaudible 01:11:58].

Krisztian Katona:

As part of this exercise, the agencies are closely reviewing the application of the [inaudible 01:12:04] CCIA believes that the difference is strength, clarity, adaptability, and flexibility, and within the fact that they apply across industries.

Krisztian Katona:

Therefore, we would caution against creating a different set of guidelines or rules for specific sectors. In our view, the additional industry specific rules would lead to disparate treatment of firms, considerable confusion for business, and the courts. And very importantly, would lead to negative effects in innovation entrepreneurship, and as we also heard from one of the previous speakers, venture investment. Thank you.

Peter Kaplan:

Thank you, Krisztian. Our next speaker is Nathan [Olenfos 01:12:50]. Nathan?

Sean Randolph:

Thanks, Peter. And thanks to your colleagues in the Office of Public Affairs, for organizing this. That was probably a lot of work. I'm Nathan Olenfos, I'm a policy manager at [EnGen 01:13:03]. EnGen's a PC based on profit, that works with a network of thousands of startups, all throughout the country to promote [inaudible 01:13:10] policy.

Sean Randolph:

Since many of these entrepreneurs are busy running their companies, and don't really have time to queue for an hour to speak for just a few minutes, I hope you'll welcome my brief remarks on the important role of M&A in the startup ecosystem, in their set.

Sean Randolph:

Some merger enforcement that mitigates legal anti-competitive behavior is very important for startup success, but those potential harms must be balanced with the clear benefits of startup acquisition. Being acquired, as a few of the speakers have noted, is the most common form of successful startup exit. The founder and [inaudible 01:13:47] when they create and consider the goals for their company.

Sean Randolph:

Acquisitions provide incentives to innovate, create a return on investment, and promote investment in new startups, and capital returns always, almost always remain. In startup ecosystem, they allow entrepreneurs to also fail softly. A lot of startups fail, and instead of selling worthless acquisitions, can provide a soft landing pad for them to start their next venture.

Sean Randolph:

Acquisitions are also especially important to the growth of the startup ecosystem in places outside of major technology hubs, for large exits. Via going public or IPO, is even more out of reach for startups. They can be [inaudible 01:14:31] tougher, or making it less likely to be acquired, may help us avoid a few of the problematic transactions that folks have spoken about today, or potentially problematic transactions.

Sean Randolph:

So that will come at the expense of a vibrant ecosystem that produces tomorrow's competitors, that I know we all want. The limited nature of this forum makes it difficult to relay these, and myriads other anecdotes from startups, founders, firsthand positive experiences with acquisitions at a deeper level, that the relationships and realities [inaudible 01:15:06] by the data. We've shared these with your agencies in incumbent periods, and in the past, and look forward to engaging with your agencies in substantive ways in the future. Thanks.

Peter Kaplan:

Thank you, Nathan. Our next speaker is Jeff Farrah. Jeff?

Jeff Farrah:

Thank you, Peter. And thank you very much, for the opportunity to share the perspective of the venture capital industry on the role that M&A plays in American entrepreneurship. I'm the General Counsel at the National Venture Capital Association.

Jeff Farrah:

Venture capital is the fuel for high growth startups that have transformed the world. For VC-backed companies, there are effectively three outcomes. They can become a standalone company, often via an IPO. They can go through a merger acquisition. Or they can go bankrupt.

Jeff Farrah:

Company failure is the most common outcome, but the success stories are often hyper growth companies with a big impact. Many entrepreneurs begin the company building process with the hope of creating a standalone public company. However, in most cases, an IPO is not possible. And the preferred exit opportunity becomes an acquisition by another company, with 58% of startups expecting to be acquired.

Jeff Farrah:

Ultimately, approximately 10 times as many startups are acquired as complete an IPO. The data demonstrates that this acquisition activity is no more common today, than it has been in the past two decades. And we strongly encourage policy makers not to be driven by anecdotal evidence.

Jeff Farrah:

These acquisitions contribute to the health of the startup ecosystem, as entrepreneurs who realize liquidity through the sale of their company regularly go on to fund new innovative companies, and often invest in other startups as angel investors or BCS.

Jeff Farrah:

Furthermore, acquisitions help power the returns of venture funds, thereby allowing BCS to raise new funds and invest in the next generation of entrepreneurs. This is commonly referred to as the recycling effect, and it is one of the key drivers of the dynamism in our economy.

Jeff Farrah:

As Patricia Nakache of Trinity Ventures said, before the Senate Judiciary committee, if we make acquisitions harder to do, it will "have the devastating effect of making it less attractive to launch new enterprises" and for people like myself to fund and partner with those companies. The end result will be a harm to the American innovation ecosystem.

Jeff Farrah:

For all of those reasons, the venture industry encourages that FTC and justice department, to be cautious when considering policy changes that make M&A activity more challenging. Thank you very much, for considering our views.

Peter Kaplan:

Thank you, Jeff. Our next speaker is Charlotte Slaiman. Charlotte?

Charlotte Slaiman:

Thank you so much. I'm Charlotte Slaiman, competition policy director at Public Knowledge, a nonprofit working in the public interest. We applaud the commission and division for having this session devoted to the real world effects of mergers in technology markets.

Charlotte Slaiman:

I am so tempted to respond to some previous comments, but I'm going to stick with my prepared remarks for today. So I hope that we can continue this conversation another time, because there's been a lot of interesting points from other folks that I'd love to respond to.

Charlotte Slaiman:

It is essential that enforcers take account of the special characteristics of digital platform markets when reviewing mergers in this sector. These markets tend towards tipping, and as a result, nascent and potential competition is especially important.

Charlotte Slaiman:

In digital platform markets, it can be even more important to protect competition by blocking mergers, since a nascent or a potential competitor bought out is unlikely to be replaced by another. One example I want to highlight today is platform annexation. Multi-homing, being a customer of more than one competitor in a market, is particularly important to competition in platform markets.

Charlotte Slaiman:

Platform annexation describes a situation where a dominant platform acquires a multi-homing tool, often another platform. These transactions may be small, and not fit into a standard model, but their potential competitive impact is significant. The new guidelines should take account of both of these concerns to help courts get these cases right. Thank you.

Peter Kaplan:

Thank you, Charlotte. Our next speaker is Jelani Drew Davi. Jelani?

Jelani Davi:

Thanks, Peter. And thanks to everyone involved in making this happen. My name is Jelani. I am with Kairos Action. We're a racial justice organization where we fight for a world where technology can work for us all.

Jelani Davi:

I am here to talk about, maybe one of our least favorite subjects is Meta, formerly Facebook. And just bring home the point about Meta, and the way that information rolls on those platforms, and how it harms users. So Meta, since it was formed in 2004, has made over 75 acquisitions. Or made acquisitions in 75 sectors outside of its original sector.

Jelani Davi:

It owns the majority of the ways that we communicate, socialize, and even advertising spaces that people engage with. And it only got so big because leadership went on an acquisition spree, and without any sort of challenge. The bigness of Meta, only guarantees that when it does fail, it fails greater. And as a racial justice organization, we're really focused on how that failure harms Black and Brown people the most.

Jelani Davi:

One example we saw of this was post-January 6th, 2021, where Meta's platforms were cited the most, in the analysis of after the attack on the capital, of that being the place where a lot of white supremacists organizations that were there had organized. This wasn't the first time that Meta failed us, and it won't be the last, unless there's regulation.

Jelani Davi:

The way that racist hate speech and disinformation spreads on Meta's platforms is in part due to their massive, massive scale of their reach. The centralization of their products makes it effectively impossible for people to participate in society without using their platforms. Speaking from a personal experience, I don't even think I would know what my mom was doing if I wasn't on Facebook. And that's a little bit concerning to me.

Jelani Davi:

Currently, consumers have no choice and deserve better from these tools that are serving as critical public infrastructure, but are governed privately, and too often evading regulation. So I'm here to just urge the FTC to use regulatory powers, intervene on mergers and acquisitions that give one company so much power to do harm to its users, consumers, constituents, and ultimately, just people like we are here. Thank you.

Peter Kaplan:

Thank you, Jelani. Our next speaker is Bryce Arnold. I'm sorry. No, forgive me. Our next speaker is Alex Goodwin. Sorry about that. Alex?

Alex Goodwin:

Thanks, Peter. Good afternoon, all. Good afternoon, Chair Khan and Assistant Attorney General Kanter. Thank you, for this opportunity to participate in public comment. My name is Alex Goodwin, and I am an organizer in Chicago, where my work focuses on the relationship between Wall Street and policing, and surveillance.

Alex Goodwin:

Today, I'm going to talk about the audio surveillance company, ShotSpotter. ShotSpotter microphones are deployed in Black, Brown, and poor neighborhoods in 120 cities around the country, and collect sounds to alert police to possible crimes. ShotSpotter boast a 97% accuracy rate, but research is found that the accuracy rate is flawed because ShotSpotter technology cannot tell the difference between gunshots and other loud sounds such as fireworks.

Alex Goodwin:

This puts marginalized communities at risk for violent and harmful interactions with police, who believe they're entering a hostile situation. When in fact, only one in 10 ShotSpotter alerts turns up evidence of a gun being present. ShotSpotter alerts have led to police killings of young people, people being falsely accused and charged with crimes, inflated statistics about gun crimes, and contributes to illegal [inaudible 01:23:17] risk.

Alex Goodwin:

ShotSpotter has dodged accountability because of its size and is now expanding into predictive policing and data analytics, using the same flawed data. It has acquired three companies to support its expansion. Despite the bad data it collects, ShotSpotter is overwhelmingly the dominant player in audio surveillance, and is leveraging that to expand into other areas of policing and shaping police behavior around its product.

Alex Goodwin:

ShotSpotter's expansion relies on contracts with cities and federal agencies. It is eligible for grant dollars and has held contracts with the DOJ and DHS. In addition to this, ShotSpotter has encouraged local law enforcement to use American Rescue Plan dollars, to acquire it.

Alex Goodwin:

Because it's not Big Tech, ShotSpotter has been able to fly under the radar, and grow its influence and profits and surveillance, under the guise for supporting public safety. I encourage the FTC to monitor and regulate ShotSpotter as it continues to amass power over police technology and influencing policing more broadly, despite the harm that it creates. Thank you, for your time. And I can provide [inaudible 01:24:20] testimony with more information, if that would help.

Peter Kaplan:

Thank you, Alex. Our next speaker now, is Bryce Arnold. Bryce? Sorry about the hold up.

Bryce Arnold:

No problem. Thank you. My name is Bryce Arnold, and I have worked at Activision Blizzard for two years. My skills and experience as a researcher in the design department for Activision, are quite specialized in the video game industry. Understanding design trends, what keeps audiences entertained, and the languages, are highly sought after.

Bryce Arnold:

You could have a candidate, a job candidate with five years of experience or five years of research experience at Google, and a job candidate with five years of experience at a small game company, and the candidate with gaming experience would be preferred.

Bryce Arnold:

Given the ongoing consolidation in the video game industry, there are fewer potential employers for my specialized skills. Video game workers already face many problems in our jobs, that are made worse by employers having even more power. We're consistently paid less, despite having the same job title and level of experience as workers in other tech industries. My coworkers and I have been organizing to make Activision Blizzard a better workplace.

Bryce Arnold:

Hundreds of us walked out last year to do protests, sexual harassment and gender discrimination. Now we're working to form a union, to have competitive benefits, and competitive pay benefits and equity, at least on par with other technology companies. And with Microsoft and pending takeover of Activision Blizzard, workers face a lot of uncertainty.

Bryce Arnold:

We believe that the impacts on workers need to be taken into account. And if the deal is bad for workers, it should be either blocked or made to include enforceable commitments to respect workers' rights. Ultimately, workers need a seat at the table. We appreciate the FTC and the DOJ are looking more seriously to add labor market outcomes from mergers. Thank you.

Peter Kaplan:

Thank you, Bryce. Our next speaker is Roxana Marachi. Roxana? Roxana?

Roxana Marachi:

Thank you.

Peter Kaplan:

Good.

Roxana Marachi:

Hi, thank you. I'm going to put my video off because I have a choppy connection, but I'd like to still speak.

Peter Kaplan:

Okay.

Roxana Marachi:

Thank you. And thank you, for the opportunity to speak. My name is Dr. Roxana Marachi. I'm a Professor of Education at San José State University, where I research student data privacy, and the need for stronger systemic privacy protections. I'm also the past Education Chair of the California Hawaii State NAACP, having served in that role from 2019 to 2021.

Roxana Marachi:

I'm speaking today as a private citizen, employed by a public institution that requires the use of technologies that have either undergone, or soon will be part of massive mergers and acquisitions involving the sale, and/or transfer of sensitive personal data.

Roxana Marachi:

Before I start with my prepared comments, I'd like to echo the serious concerns raised by a [Sherry Kysticka 01:27:08] who spoke in the main session, and Alex Goodwin, and [Mayesha Hayes 01:27:12] who just spoke in public comment now.

Roxana Marachi:

Amazon web services host the data of hundreds of ed tech companies, through the "EdStart program" where they apparently provide either free or low cost server access to entrepreneurs launching ed tech programs.

Roxana Marachi:

It appears, given this vast access, Amazon web services would also have the capacity to be able to combine data in harmful ways that Mayesha outlined in her testimony, and that I will also describe. In 2020, Instructure, the company that runs the Canvas learning management system was acquired for nearly $2 billion by Thoma Bravo, a private equity firm focused on software and technology enabled services sectors.

Roxana Marachi:

I've co-authored an article published in the special issue of teaching in higher education on the datafication of higher education, with critical perspectives on the use of the platform, with data vulnerabilities that include frictionless data transitions, the Bridge K–12 higher education, and workforce data. The integration of third party applications and interoperability, or data sharing across platforms, privacy and security vulnerabilities, and predictive analytics, and data balance.

Roxana Marachi:

We conclude that institutions of higher education are currently ill-equipped to protect students and faculty required to use the Canvas Instructure LMS, from data harvesting or exploitation. At the time of the acquisition, more than 30 million people were cited as having used the platform. This was during the beginning of the pandemic. It's likely that there's far more users now.

Roxana Marachi:

A video entitled The Future of Canvas: Artificial Intelligence and Behavioral Economics, suggests that they're heavily involved in the use of predictive analytics, and also apparently engaging in "nudge experiments" with students. To my knowledge and speaking from experience as among the many users, none of us were directly informed by Instructure about the purchase of the company by Thoma Bravo, despite claims that both communication and privacy are important.

Roxana Marachi:

Another massive merger in education that appears to be underway, but has apparently not yet happened, it involves Interfolio. A Washington DC and Cambridge, UK-based faculty Dossier, a documenting platform. The partners with thousands of colleges and universities in the US, according to recent announcements, Interfolio will soon be acquired by Elsevier, a Netherlands-based academic publishing company reported in 2015 to have been raking in nearly $25 billion a year.

Roxana Marachi:

According to a 2019 announcement, Interfolio entered a formal partnership with Researchfish, a UK-based company that evidently unites the community of 700,000 Interfolio Dossier users, and 100,000 Researchfish users. It's unclear what kinds of data are being shared across these platforms, or the extent to which faculty are being informed about the ways their data are able to be used by either or both platforms.

Roxana Marachi:

I happen to [inaudible 01:29:43]-

Peter Kaplan:

Thank you, Roxana.

Roxana Marachi:

Okay.

Peter Kaplan:

Thank you very much. That concludes our comments from the members of the public today. I'll now turn it up back over to Chair Khan.

Lina Khan:

Thanks so much, Peter. And thanks to each of our public speakers, for your remarks. I'm just floored by the breadth of issues that folks touched on, ranging from issues related to student privacy, and venture capital, to video gaming, and healthcare workers. This breadth of perspectives is really what we are looking for as part of these processes. And so, very grateful to everybody who took the time to come speak with us.

Lina Khan:

This is also the last of the joint FTC/DOJ listening forums that we've been doing as part of our process to revise the merger guidelines. So really, I just want to give a big thanks to everybody who's taken the time to come speak with us, whether as part of our formal process at the beginning, or during this open-comment period. We really, really respect the courage, and admire that you've taken the time to come speak with us. We're really listening carefully to everything that everybody is sharing with us.

Lina Khan:

This project, to revise the merger guidelines, is really a signature one for both of our agencies, and is of paramount importance. So we really appreciate all of the input that we've received, and we'll be we looking at it and learning from it closely as we go forward here.

Lina Khan:

So really, I also want to give a big thanks to the DOJ and FTC teams again, for putting these together. They've been both remarkably well put together and smoothly orchestrated. So thank you so much, to everybody involved. And that's it for today. So thanks again, for everybody who tuned in, and I hope everybody has a good rest of their afternoon.