



October 17, 2019

The Honorable David N. Cicilline  
Chairman  
Subcommittee on Antitrust,  
Commercial and Administrative Law  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable F. James Sensenbrenner  
Ranking Member  
Subcommittee on Antitrust,  
Commercial and Administrative Law  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

RE: Online Platforms and Market Power, Part 3: The Role of Data and Privacy in Competition

Dear Chairman Cicilline and Ranking Member Sensenbrenner:

Consumer Reports welcomes the Subcommittee's hearing to examine the role of data and privacy in competition. With the ever-growing power of giant online platforms over commerce and communications, it is critically important to comprehend the threats posed to competition, consumers, the marketplace, and our society, so that these threats can be effectively addressed.

In terms of data and privacy as they relate to competition, there are at least three distinct but related threats:

(1) A dominant platform can use the data it amasses regarding private commercial interactions that pass through its platform to target discriminatory favoritism among sellers or advertisers who use the platform for reaching consumers, or to tailor new product and service offerings of its own to preempt promising business opportunities identified in the data, even to target a seller's customers.

(2) The data amassed by a dominant platform can solidify its dominance, by creating formidable barriers to entry by would-be competitors who do not have access to similar data.

(3) Freed from having to worry about competition that gives consumers the choice to go elsewhere, a dominant platform can disregard the interests of consumers in protecting their privacy, and design their platform to maximize its ability to monitor, monetize, and manipulate our personal interactions as consumers and as citizens.

Properly applied, our current antitrust laws can and should play a key role in addressing these threats. It is not clear, however, that the courts and the antitrust enforcement agencies are able and willing to apply them to achieve this result.

We are encouraged that, spurred on by this Subcommittee's inquiry, and by increasing interest in other quarters, the Justice Department and the Federal Trade Commission have indicated they intend to undertake investigations in this area. A growing number of state attorneys general have also indicated they are undertaking investigations of their own.

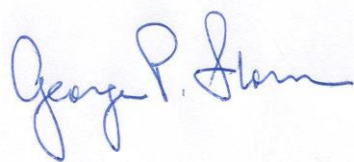
We hope these announced efforts will be carried forward, and that they will prove effective. Ultimately, these investigations can also shed light on whether we need to strengthen the antitrust statutes or develop new laws to address the special competition challenges presented by this technology.

Antitrust will never be a complete solution; we also need strong privacy laws and other consumer protections. But strong antitrust laws and their vigorous enforcement – backed by sufficient resources – will be key to any solution.

The internet has revolutionized commerce and communication, in extraordinarily beneficial ways. But these benefits are undercut when a handful of tech giants amass overwhelming market power that threatens to restrict and diminish our choices, and the pathways for all who seek to reach us – including manufacturers, service providers, content creators, and other voices.

We appreciate your Subcommittee's examination of these matters and your continuing efforts to ensure that the online marketplace works for consumers, and for all who depend on it.

Sincerely,



George Slover  
Senior Policy Counsel  
Consumer Reports



Justin Brookman  
Director, Privacy and  
Technology Policy  
Consumer Reports



Jonathan Schwantes  
Senior Policy Counsel  
Consumer Reports

cc: Members, Subcommittee on Antitrust, Commercial and Administrative Law