

June 23, 2021

Congressman Jerrold Nadler
Chairman
Committee on the Judiciary
2132 Rayburn House Office Bldg.
Washington, DC 20515

Congressman Jim Jordan
Ranking Member
Committee on the Judiciary
2056 Rayburn House Office Bldg.
Washington, DC 20515

Congressman David Cicilline
Chairman
Subcommittee on Antitrust, Commercial
and Administrative Law
2233 Rayburn House Office Bldg.
Washington, DC 20515

Congressman Ken Buck
Ranking Member
Subcommittee on Antitrust, Commercial
and Administrative Law
2455 Rayburn House Office Bldg.
Washington, DC 20515

Dear Chairman Nadler, Ranking Member Jordan, Chairman Cicilline, Ranking Member Buck,
and Members of the House Committee on the Judiciary,

Public Knowledge commends the Committee for holding this markup and urges you to support each of the bipartisan bills before you today. Chairman Cicilline, Ranking Member Buck, and the Subcommittee on Antitrust, Commercial, and Administrative Law have blazed a bipartisan path to create six strong bills to reinvigorate competition in the online economy. The internet is increasingly controlled by Big Tech gatekeepers, and passing this package is the next step in breaking open the gates. The legislative package is proof that a problem affecting almost everyone -- the pernicious power of Big Tech -- can result in bipartisan congressional action. Each of the bills has an important role to play in safeguarding and revitalizing online competition.

H.R. 3843, the Merger Filing Fee Modernization Act

Our antitrust enforcers are outgunned by the seemingly limitless bankrolls of Big Tech. This bill would give the Federal Trade Commission and Department of Justice the resources they need to take big, bold, and decisive action to protect competition and consumers. The changes to merger filing fees will lessen the regulatory burden on small businesses while ensuring corporate behemoths pay their fair share.

H.R. 3460, the State Antitrust Enforcement Venue Act

Big Tech firms shouldn't be able to cherry-pick their judicial venues to ensure a sympathetic judge. Current enforcement actions against the Big Tech platforms are being led both federally and by coalitions of state attorneys general. This bill would ensure state attorney general antitrust actions receive the same venue deference that federal enforcers receive.

H.R. 3849, the ACCESS Act

Public Knowledge has long championed interoperability as pivotal in seeding the ground for more competition against dominant platforms. Right now, dominant platforms can rely on the network effects and high switching costs inherent in their massive size to squash competition against them. However, the ACCESS Act would mandate data portability and interoperability between platforms and force the dominant firms to compete on quality and consumer responsiveness if they want to stay on top. Privacy safeguards are built into the bill so that data is shared only at the behest of the user and unscrupulous competitors are cut off.

H.R. 3826, the Platform Competition and Opportunity Act

Big Tech has lived up to its moniker by gobbling up potential and nascent competitors before they can exert competitive pressure on the platforms. Users might have an actual choice of social networks had Facebook not bought Instagram and WhatsApp. Google might not dominate online advertising without acquiring Doubleclick and AdMob. Unfortunately, enforcers applied insufficient scrutiny to these deals, due in part to the high bar enforcers face in challenging a merger when the future of competition in the market is so uncertain. This bill would flip the burden onto Big Tech firms to prove they're not acquiring a competitor or potential competitor, or further entrenching their market power.

H.R. 3816, the American Choice and Innovation Online Act

Today's Big Tech platforms also offer products and services on their own platforms. Google services show up in Google Search results. Amazon also owns a retailer that sells on the Amazon marketplace. The platform owner has a natural incentive to discriminate in favor of its own products and make sure to bury competitors who might one day pose a competitive threat to the platform itself. This bill would put an end to these practices and ensure that the products or services offered most prominently to consumers are the best for them, not just what's best for Big Tech's bottom lines.

H.R. 3825, the Ending Platform Monopolies Act

As the Big Tech platforms have grown, so, too, have their conflicts of interest. When a single company like Google purports to represent the buyer and the seller in an online ad auction, as well as run the actual auction itself, the temptation to self-deal and take the biggest cut possible becomes overwhelming. This bill would give the FTC and DOJ the power to sue to spin off lines of business where there is a conflict of interest. These antitrust enforcement agencies have the expertise needed to know which cases would have the greatest impact on promoting competition.

These bills are targeted at Big Tech's worst abuses and would be a major victory for consumers, businesses, entrepreneurs, and citizens. Public Knowledge looks forward to continuing to work with the Committee on ways to rein in Big Tech and ensure a free and open internet. We ask every member of the Judiciary Committee to vote in favor of the package and favorably report these bills to the full House.

Sincerely,

/s/ Charlotte Slaiman

Charlotte Slaiman
Competition Policy Director
Public Knowledge

/s/ Alex Petros

Alex Petros
Policy Counsel
Public Knowledge