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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,

On behalf of more than 500,000 members and supporters nationwide, Public Citizen urges you to support the legislation being considered in the markup being held today. These bills will rein in Big Tech companies, and importantly, are bold enough to meet this moment of corporate concentration that has benefited a few monopolies at the expense of the rest of our economy and democracy.

We applaud Chair Nadler for moving these bills to markup, and Chair Cicilline and Ranking Member Buck for leading a bipartisan investigation and bill drafting process to protect American consumers, workers, and small businesses from the abuses of Big Tech.

The subcommittee, under your leadership, conducted a thorough, bipartisan, and historic investigation that spanned nearly two years, 10 hearings--three this year alone--on the reform solutions included in this legislative package, 240 interviews, 1.3 million documents, and an exhaustive 450-page report. The subcommittee heard testimony from dozens of experts, including Colorado Attorney General Phil Weiser, then-Acting Chairwoman Rebecca Kelly Slaughter of the Federal Trade Commission, and Judge Diane Wood of the U.S. Court of Appeals for the Seventh Circuit, along with numerous other experts, businesses, and the Big Tech companies themselves.

Over the past 15 years, the U.S. has witnessed a surge in growth and accumulation of power by Big Tech companies. Public Citizen has tracked the rise in political influence by Big Tech monopolies,

have documented their harms on consumers, workers, small businesses, and democracy itself here in the United States.¹ We are not alone in recognizing this power; 72% of Americans agree that Big Tech companies have too much power.²

The bills before the Committee today— offer a way to rein in the power of Big Tech companies by breaking up the most dominant Big Tech companies, preventing these Big Tech companies from merging to become dominant again, and breaking down market barriers to encourage new competition from small businesses.

Many of the reforms in these bills will only apply to the biggest tech companies, and only if three criteria are met. First, to be covered by the bills’ requirements, a company must own an online platform with more than 50 million users (a “covered platform”). Second, a company must have a market capitalization of over \$600 billion. Finally, they must be deemed a “critical trading partner.” By targeting only the largest and most dominant Big Tech companies, these bills will address the abuses of the most powerful companies while still allowing small businesses to innovate, grow, and prosper into healthy-sized competitors.

Together these bills provide a comprehensive way to move past Big Tech monopolies, and below we provide a snapshot of the main components of each of the individual bills.

H.R. 3825 – the **Ending Platform Monopolies Act** – is central to the idea of making the tech system competitive. Small businesses cannot compete when dominant Big Tech companies are easily able to squash competing small businesses, either by buying them up or erecting very high barriers to competing. To this end, H.R. 3825 fixes this by allowing for the breakup of the Big Tech companies into smaller, competing companies. Companies like Amazon that control both the marketplace and products on the marketplace could no longer control both; removing the incentive to disadvantage competitors’ products. In addition, this bill prevents Big Tech executives from asserting indirect control over newly split off companies; executive leadership and board members will be limited to affiliating with only one of the newly split off companies.

H.R. 3826 – the **Platform Competition and Opportunity Act** – builds off of the Ending Platform Monopolies Act by preventing Big Tech companies from acquiring companies that would give them an unfair advantage over small businesses. This bill would prevent Big Tech companies from merging with or acquiring competing or potentially competing companies – including for user data. When Facebook bought Instagram and Whatsapp it effectively removed competition from the

¹ See e.g.: Mike Tanglis, *New Economy Titans, Old School Tactics*, PUBLIC CITIZEN (July 31, 2019), <https://www.citizen.org/article/new-economy-titans-old-school-tactics/>; Jane Chung, Mike Tanglis, *Big Tech Bankrolls the Sedition Caucus*, PUBLIC CITIZEN (January 21, 2021), <https://www.citizen.org/article/big-tech-bankrolls-the-sedition-caucus/>; Jane Chung, *Big Tech, Big Cash: Washington’s New Power Players*, PUBLIC CITIZEN (March 24, 2021), <https://www.citizen.org/article/big-tech-lobbying-update/>.

² Monica Anderson, *Most Americans Say Social Media Companies Have Too Much Power, Influence in Politics*, PEW RESEARCH CENTER (July 22, 2020), <https://www.pewresearch.org/fact-tank/2020/07/22/most-americans-say-social-media-companies-have-too-much-power-influence-in-politics/>.

marketplace to the detriment of consumers. Under this reform, companies like Facebook will need to compete for users, not simply buy up competitive threats.

H.R. 3816 – the **American Choice and Innovation Online Act** – prevents the Big Tech companies from acting anti-competitively to disadvantage small or competing businesses. Today, Big Tech companies are able to use the control of dominant platforms to prevent competitors from accessing customers or preferencing their own products on the platform; like when Apple chooses to recommend its own apps and services in the App Store over competitors' apps. Big Tech companies should be prohibited from acting in these anti-competitive ways. H.R. 3816 prohibits this behavior by outlawing this type of anti-competitive or discriminatory behavior against business users. After this bill is enacted, competitors and innovators will be able to provide consumers more choices and better products and services.

H.R. 3849 – the **ACCESS Act** – similarly helps create a competitive environment by ensuring interoperability between Big Tech companies and competing businesses. One of the biggest barriers competitors face is that companies like Facebook have established networks that users are reticent to leave. This bill will help consumers and competitors overcome this by allowing users to easily transfer their data and communicate between platforms. This will give consumers the option to choose the platform or service that provides the greatest value or best features, like privacy and security.

H.R. 3843 – the **Merger Filing Fee Modernization Act** – will ensure adequate funding is available to preserve the ability of the Federal Trade Commission (FTC) to fight for consumers, workers, and small businesses against abusive Big Tech companies that have seemingly unlimited resources to fight against enforcement actions. By updating filing fees to account for inflation, the FTC will have more of the necessary funds to enforce these bills and ensure the tech ecosystem stays competitive.

Dominant and monopolistic Big Tech companies are a huge threat to consumers, workers, small businesses, and democracy. We strongly urge you to move forward this package of bills that will restore competition to the tech ecosystem and stop the abuses and harms perpetrated by Big Tech companies. The country has waited long enough for action to be taken and we applaud the action your committee is taking.

Sincerely,

Alex Harman
Competition Policy Advocate
Public Citizen