Statement of the Honorable Jerrold Nadler, Chairman, Committee on the Judiciary, for Hearing on "Online Platforms and Market Power, Part II: Effects on Entrepreneurship and Innovation," before the Subcommittee on Antitrust, Commercial, and Administrative Law

Tuesday, July 16, 2019 at 2:00 p.m.
Room 2141 of the Rayburn House Office Building

Thank you, Mr. Chairman, for holding today's hearing.

The open Internet has delivered enormous benefits to Americans, including a surge of economic opportunity, massive investment, and new pathways for education online. But there is growing evidence that a handful of corporations have come to capture an outsized share of online commerce and communications.

Today, it is effectively impossible to use the Internet without using, in one way or another, the services of the 4 providers appearing before us here today.

From providing the dominant search platform, retail platform, and online messaging platform, to providing the underlying mapping services and cloud computing on which hundreds of thousands of other businesses rely, these dominant platforms now comprise the essential infrastructure for the 21st century.

When journalist Kashmir Hill last year performed an experiment to determine whether she could live without these services, she quickly discovered that entire portions of the Internet stopped working and modern life became effectively impossible to navigate.

By virtue of controlling essential infrastructure, these companies appear to have the ability to control *access to markets*. In some basic ways, the problem is not unlike what we faced 130 years ago, when railroads transformed American life—both enabling farmers and producers to access new markets, but also creating a key chokehold that the railroad monopolies could exploit.

Railroads notoriously abused this gatekeeper power in a variety of ways. They charged tolls, extorting the producers reliant on their rails. They discriminated among farmers, picking winners and losers across the economy. And by expanding into lines of business that competed directly with producers, they could use their dominance in transportation to favor their own services.

These tactics by the railroads spurred fury and despair across the country. Congress initiated investigations to document these problems and enacted legislative solutions to halt and outlaw these anticompetitive practices.

These included the Interstate Commerce Act, which made it illegal for railroads to discriminate and also created the first modern regulatory agency, as well as the Hepburn Act, which prohibited common carrier railroads from transporting any goods in which they held an interest.

Importantly, congressional oversight and legislative reforms during this period did not prevent or encumber the inexorable arrival of new technology or human progress.

Instead, Congress recognized that these powerful new technologies had reshaped the balance of power in our economy—and that it was the role of Congress to ensure the new monopolists could not abuse their power.

Congress and the courts also recognized that certain businesses play such a critical role in shaping the economy that they warrant special scrutiny. In the words of the Supreme Court, certain industries are "affected with the public interest" in ways that demand special rules.

Today, the digital economy presents similar challenges. While the underlying technology is dramatically different, new digital intermediaries have the ability to control access to critical markets. If you are an independent merchant, developer, or content producer, you are increasingly reliant on these powerful intermediaries to access markets and consumers. Across the economy, businesses live in fear of exclusion from these platforms, a fact that many companies have shared with the Committee following the announcement of its investigation into competition in digital markets.

The purpose of today's hearing and of our investigation is to understand how intermediaries are affecting the shape of our economy and our democracy. How can and do these platforms use their market power? What are the effects of this conduct? And how should policymakers respond?

With those questions in mind, I thank both panels of witnesses for appearing before us today, and I look forward to hearing from them.

I yield back the balance of my time.