July 29, 2020

The Honorable David N. Cicilline  
Chairman, House Committee on the Judiciary  
Subcommittee on Antitrust, Commercial and Administrative Law

The Honorable F. James Sensenbrenner  
Ranking Member, House Committee on the Judiciary  
Subcommittee on Antitrust, Commercial and Administrative Law

Dear Chairman Cicilline and Ranking Member Sensenbrenner,

We, the undersigned, write to you regarding your July 29 hearing, “Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google.” We also understand that the House Judiciary Committee has launched its own investigation into these companies and are also reviewing whether changes are necessary to existing antitrust laws. This comes as both sides of the aisle are pushing for the weaponization of antitrust, either as a tool to punish corporate actors with whom they disagree or out of a presupposition that big is bad.

We would like to emphasize the need to distinguish between the proper and improper uses of antitrust in approaching discussions of market power, and are concerned that today’s hearing could lead to the use of antitrust to address concerns surrounding online content moderation, data privacy, equality, or other socio-political issues that are unrelated to the competitive process.

It is important to consider what is at stake. Using antitrust to achieve policy or political goals would upend more than a century of legal and economic learning and progress. The need to bring coherency to antitrust law through a neutral underlying principle that cannot be weaponized is what led to the adoption of the modern consumer welfare standard.1 It is broad enough to incorporate a wide variety of evidence and shifting economic circumstances but also clear and objective enough to prevent being subjected to the beliefs of courts and enforcers. Abandoning the consumer welfare standard by giving enforcers a roving mandate would shift antitrust law back to the approach of the 1960s when, in Justice Potter Stewart’s words, “[t]he sole consistency that I can find is that, in litigation under [the antitrust laws], the Government always wins.”2

It is also important to put today’s hearing into perspective. The current antitrust debate is relevant to far more than just “Big Tech.” The economic consequences of many of the recent proposals would make the American economy and consumers substantially worse off across a wide array of industries. Proposals include aggressive merger prohibitions, inverting the burden of proof, allowing collusion and antitrust exemptions for politically favored firms, and politicizing antitrust enforcement decision-making more generally. Arbitrary or overly-broad antitrust enforcement would hamper our economic recovery and risks job losses—something we can ill-afford as the nation recovers from the COVID-19 economic slow-down.

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In sum, weaponizing antitrust for broader socioeconomic purposes would fundamentally alter the primary goal of antitrust, undermine the rule of law, and negatively impact consumers. We ask that this letter be entered in the hearing record. We thank you for your oversight of this important issue.

Sincerely,

Ashley Baker  
Director of Public Policy  
The Committee for Justice

Robert H. Bork, Jr.  
President  
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Ralph Benko  
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NOTE: Organizations listed for identification purposes only.