

August 6, 2020

The Honorable Jerrold Nadler
Chairman, House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable David Cicilline
Chairman, House Judiciary Subcommittee on Antitrust,
Commercial and Administrative Law
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Nadler and Chairman Cicilline,

We commend you and your staff on the success of the antitrust subcommittee's recent hearing on the market power of online platforms, which exceeded even our high expectations. It was a substantive effort that laid out clearly for the American public exactly why these companies are so powerful – and dangerous.

After the hearing, it is simply impossible to deny the hold these four corporations – Apple, Facebook, Google, and Amazon – have over the online and real economy, small businesses, and ultimately American democracy. Your questioning of the CEOs revealed anti-competitive mergers, mistreatment of sellers who use their platforms, and other abusive actions, from preferencing their own content to denying entrepreneurs access to their systems for arbitrary and capricious reasons.

And, as evidenced by the profits the four companies announced the following day, the coronavirus pandemic is making the issues revealed by the subcommittee's questioning even more acute.

You are setting a standard that more committees in Congress need to follow, one that pairs a serious bipartisan investigation with public accountability for America's corporate leaders. We very much look forward to the report the subcommittee is going to produce on the extent of the power online platforms hold and a path forward.

We hope that the subcommittee's report lays out specific remedies for reducing the power of online platforms and a legal framework that would compel regulators to implement them, with a focus on structural solutions that will restore competitiveness and transparency to markets that currently have neither. There are several steps that lawmakers and enforcers should take – including breaking up companies where appropriate – now that significant problems with the business models and acquisition strategies of online platforms, and the abuses that result, are matters of public record.

We were heartened to hear Chairman Nadler state that "Concentration of power in any form – especially concentration of economic or political power – is dangerous to a democratic society." And as Chairman Cicilline said at the hearing's conclusion, "These companies as they exist today have monopoly power. Some need to be

broken up; all must be regulated and held accountable.” We agree that without structural separations and bright line rules, much of the dangerous behavior identified during the investigation will continue.

We believe that ostensible behavioral remedies for the tech companies’ harmful practices would generally be arduous to implement and ineffective at solving the problems the committee identified. They would, at the bare minimum, demand ongoing and detailed monitoring of esoteric aspects of these businesses, deep technical expertise by regulators, law enforcement, and courts, and consistent political will by relevant authorities. For instance, ordering Amazon to stop favoring sellers that pay for Amazon’s fulfillment business would take significant resources to monitor, and even then might not be effective at ensuring such pay-to-play behavior is stripped entirely from its opaque algorithms. Only by forcing Amazon to spin off its storage and shipping business – as well as other lines of business that allow Amazon to subsidize its dominance – can the American public be sure that the company’s abuse of their dominance in relevant markets has ended. Moreover, preventing potential use by Amazon of sensitive data about third-party sellers to the detriment of those sellers and to Amazon's benefit likely requires banning Amazon – and similarly situated firms that achieve certain bright-line thresholds of market dominance – from both selling in and owning given marketplaces.

While structural separation should be the primary tool used to prevent further wrongdoing on the part of the tech platforms, these remedies should, when necessary, be complemented with robust regulation that roots out conflicts of interest, prevents small businesses from being abused, and creates and then preserves fair competition so that entrepreneurs and innovators can succeed, free from the fear that big tech platforms create.

This investigation can be the beginning of a new era in Congress, one in which private power is made answerable to the public through its elected representatives. Congress has the responsibility to change the law where required, and to hold enforcers who are not adhering to the law accountable. We hope your report calls for that and more.

Signed,

Align NY
American Economic Liberties Project
Athena
Awood Center
Backbone Campaign
Demand Progress Education Fund
Demos
Fight for the Future
Freedom From Facebook and Google
Institute for Local Self-Reliance
Jobs With Justice
LAANE
Make the Road New Jersey
Make the Road New York

National Employment Law Project
New York Communities for Change
Open Markets Institute
Public Citizen
Revolving Door Project
S.T.O.P. - The Surveillance Technology Oversight Project
United for Respect
Warehouse Worker Resource Center

cc: Congressman Armstrong
Congresswoman Demings
Congressman Gaetz
Congresswoman Jayapal
Congressman Johnson
Congresswoman McBath
Congressman Raskin
Congresswoman Scanlon
Congressman Sensenbrenner