

Written Testimony of

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before the

**Subcommittee on Competition Policy, Antitrust, and Consumer Rights**  
**U.S. Senate Committee on the Judiciary**

on

“The Impact of Consolidation and Monopoly Power on American Innovation”

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Thank you, Chairwoman Klobuchar, Ranking Member Lee, Chairman Durbin, Ranking Member Grassley, and other members of the Subcommittee for the opportunity to testify before you on the impact of consolidation and competition on innovation.

I am Alex Harman, Competition Policy Advocate for Public Citizen’s Congress Watch division. Public Citizen is a national nonprofit organization with more than 500,000 members and supporters across the country. For the past 50 years, we have successfully represented the public interest through litigation, research, public education, and legislative, administrative, and grassroots advocacy on a broad range of issues, including competition and consolidation of corporate power.

### **Less Competition Stifles Innovation**

Thank you for your leadership in continuing to examine one of the most critical issues of our time: the harms to consumers and our economy that result from the failure of our antitrust laws and policies to meet the challenges of the day. For decades, we have seen the rise of market power in digital markets and an alarming increase in consolidation throughout the economy, which have stifled innovation. I appreciate the thoughtful work of the Subcommittee to address this serious problem through today’s hearing and previous ones like it. As a former counsel on this Committee for Senator Hirono, I am also deeply appreciative of the opportunity to appear before you today on this side of the dais.

In my testimony, I would like to dispel the myth that large, consolidated industries—particularly the Big Tech companies of Silicon Valley and Seattle—foster innovation and American competitiveness. Or even more absurd: that addressing the problem of runaway consolidation and anticompetitive behavior would stifle innovation. Both empirical evidence and common sense show us that the opposite is true. When companies face less competition, either because of consolidation, or from forces that make competitive threats less likely, they invest less in research and development (R&D). They in turn are less likely to produce new innovations that benefit consumers and the economy. And, all too often, companies across the economic spectrum that depend on these gatekeeping firms to reach the marketplace slash jobs and cut back on developing new products and services simply because they must pay steep rents as a cost of doing business. As one founder put it: “It feels like we are treading water with cement blocks around our feet.”<sup>1</sup>

This point bears repeating: less competition leads to reduced innovation. Less innovation hurts consumers and ultimately the whole economy. We need only look to AT&T as an example. In 1956, the Department of Justice required AT&T to share its electric transistor technology resulting in the explosion of semiconductor powered computing.<sup>2</sup> The dramatic drop in long-distance prices in the 1990s came as a result of the work the Federal Communications Commission did to create competition in the long-distance market, as well as the effects of the

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<sup>1</sup> Brian Warner, *CelebrityNetWorth’s Statement Submitted to the House Subcommittee on Antitrust*, MEDIUM (July 21, 2019), <https://medium.com/@brianwarner/celebritynetworths-statement-submitted-to-the-house-subcommittee-on-antitrust-788fff88723f>.

<sup>2</sup> Watzinger, Martin, Thomas A. Fackler, Markus Nagler, and Monika Schnitzer, *How Antitrust Enforcement Can Spur Innovation: Bell Labs and the 1956 Consent Decree*, AMERICAN ECONOMIC JOURNAL: ECONOMIC POLICY, 12 (4): 328-59 (Nov. 2020), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/pol.20190086>.

AT&T breakup itself.<sup>3</sup> As the biggest tech monopoly of the last century, AT&T controlled and delayed innovation for decades, and only through government intervention were competition and innovation able to flourish. Today, this stifling of innovation by Big Tech means we are not seeing new and better products and services, instead we are getting nothing more than marginal, incremental feature enhancements,<sup>4</sup> such as phone cameras with more megapixels, apps with somewhat greater functionality, and a slightly more predictive search result.<sup>5</sup>

## Increased Consolidation Curtails American Innovation

Although I will focus my testimony on the dominance and abuse of the unregulated tech monopolies—Amazon, Apple, Google, Facebook, and Microsoft—the very real concerns about the effects of monopoly power on innovation are not limited to digital platforms.<sup>6</sup> Studies of the agriculture and pharmaceutical industries have shown that consolidation reduces R&D spending there as well.<sup>7</sup> As the Chairwoman has said, there has been “consolidation in everything from cat food to caskets and online travel and cable, you name it.”<sup>8</sup>

There is no doubt that the tech giants have innovated and provided society with a range of products and services that have revolutionized the way we communicate, work, shop, and learn. For years, the mantra of these companies was to disrupt stagnant industries to solve problems that incumbents failed to address.

- Amazon disrupted traditional retail, first by going online, and then by focusing on fast, free delivery.
- Apple brought together a range of features into a communications device that many of us cannot imagine living without.
- Facebook found ways for us to connect with our classmates, friends, and family – displacing services that had come before.

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<sup>3</sup> Tim Wu, *A Brief History of American Telecommunications Regulation*, OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY, VOL. 5, P. 95, 2009 (2007), [https://scholarship.law.columbia.edu/faculty\\_scholarship/1461](https://scholarship.law.columbia.edu/faculty_scholarship/1461).

<sup>4</sup> Tim Wu, *It's Time to Reboot the Startup Economy*, ONEZERO (July 16, 2019), <https://onezero.medium.com/its-time-to-reboot-the-startup-economy-822d65f9a19>.

<sup>5</sup> Brian X. Chen, *Apple iPhone 13 Review: The Most Incremental Upgrade Ever*, THE NEW YORK TIMES (Sept. 21, 2021), <https://www.nytimes.com/2021/09/21/technology/personaltech/apple-iphone13-review.html>.

<sup>6</sup> Michael Kades, *A Canary in the Coal Mine for the Failure of U.S. Competition Law: Competition Problems in Prescription Drug Market*, TESTIMONY BEFORE THE SENATE SUBCOMMITTEE ON COMPETITION POLICY, ANTITRUST, AND CONSUMER RIGHTS (July 13, 2021), <https://www.judiciary.senate.gov/imo/media/doc/Kades%20Written%20Testimony--Final%20July%2012%202021.pdf>.

<sup>7</sup> See, e.g., Joanna Shepherd, *Consolidation and Innovation in the Pharmaceutical Industry: The Role of Mergers and Acquisitions in the Current Innovation Ecosystem*, JOURNAL OF HEALTH CARE LAW AND POLICY (2018), <https://digitalcommons.law.umaryland.edu/jhclp/vol21/iss1/2>; American Antitrust Institute, Food and Water Watch, and National Farmers Union, *Proposed Merger of Monsanto and Bayer*, LETTER TO THE U.S. DEPARTMENT OF JUSTICE ANTITRUST DIVISION (July 26, 2017), [https://www.antitrustinstitute.org/wp-content/uploads/2018/08/White-Paper\\_Monsanto-Bayer\\_7.26.17\\_0.pdf](https://www.antitrustinstitute.org/wp-content/uploads/2018/08/White-Paper_Monsanto-Bayer_7.26.17_0.pdf); Caius Z. Willingham and Andy Green, *A Fair Deal for Farmers*, CENTER FOR AMERICAN PROGRESS (May 7, 2019), <https://www.americanprogress.org/article/fair-deal-farmers>.

<sup>8</sup> Ashley Gold, *Amy Klobuchar Steps into the Antitrust Spotlight*, AXIOS (Mar. 11, 2012), <https://www.yahoo.com/lifestyle/amy-klobuchar-steps-antitrust-spotlight-110042031.html>.

- Google perfected online search and rose to the top of what was, then, a crowded field, on the strength of a better product.
- Microsoft changed the way we used computers by developing a universal interface that worked the same way regardless of which company manufactured the hardware.

But that was 15, 20, 25, and over 30 years ago.

Since then, these once-scrappy disrupters have grown to be some of the largest and most valuable companies on the planet and have refocused their businesses on maintaining their dominant positions instead of continuing to innovate. All of this has been in the service of ensuring that these companies cannot be displaced or disrupted by the next generation of innovators.

Today, other tech companies and startups are often unable to get funding if they are in the so-called “kill-zone” surrounding Big Tech.<sup>9</sup> If a startup is attempting to operate in an area that is seen as too close or a competitive threat to the biggest tech companies, investors will assume that failure is guaranteed—either because of anticompetitive structures within the industry or the likelihood that the Big Tech companies will either buyout or crush such threats. As one venture capital investor told the House Antitrust Subcommittee during its investigation last Congress, “I think of Amazon as the sun. It is useful but also dangerous. If you’re far enough away you can bask. If you get too close you’ll get incinerated. So, you have to be far enough from Amazon and be doing something that they wouldn’t do.”<sup>10</sup>

A recent report by the Federal Trade Commission confirmed what we largely already knew: these firms have engaged in a spending spree to maintain their position, acquiring more than 600 companies in the last decade.<sup>11</sup> The exact motivations of these tech giants is unknown. However, many of the acquisitions were likely motivated by the desire to prevent competing technology that might displace them. Or they may have been a way of acquiring specific desirable technologies.

But “innovation by acquisition” has the insidious effect of deemphasizing internal R&D and locking up technology inside the walled gardens these gatekeepers control. For example, if a startup develops a new video technology, rather than license it to video platforms both large and small, a Big Tech company can simply acquire the technology, and exclude other businesses or users from benefiting from the innovation. This is an assault on innovation and a loss for society.

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<sup>9</sup> Asher Schechter, *Google and Facebook’s “Kill Zone”: “We’ve Taken the Focus Off of Rewarding Genius and Innovation to Rewarding Capital and Scale”*, PROMARKET (May 25, 2018), <https://promarket.org/2018/05/25/google-facebooks-kill-zone-weve-taken-focus-off-rewarding-genius-innovation-rewarding-capital-scale>.

<sup>10</sup> *Investigation of Competition in Digital Markets*, SUBCOMMITTEE ON ANTITRUST, COMMERCIAL AND ADMINISTRATIVE LAW, OF THE COMMITTEE ON THE JUDICIARY IN THE U.S. HOUSE OF REPRESENTATIVES (Oct. 2020) P. 49, [https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf?utm\\_campaign=4493-519](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519).

<sup>11</sup> *Non-HSR Reported Acquisitions by Select Technology Platforms, 2010-2019: An FTC Study*, FEDERAL TRADE COMMISSION (Sept. 15, 2021), <https://www.ftc.gov/reports/non-hsr-reported-acquisitions-select-technology-platforms-2010-2019-ftc-study>.

This practice continues even now. In the last two years Meta, while facing an antitrust enforcement action brought by the FTC stemming from the acquisitions of Instagram and WhatsApp, has acquired five different companies with virtual reality technologies in an attempt to cement its dominance for years to come.<sup>12</sup> Similarly, Amazon, Google, and Microsoft have acquired firms in cloud computing, a highly concentrated market with immense entry barriers.<sup>13</sup>

In addition to engaging in hundreds of acquisitions, large tech companies have made it incredibly difficult to directly compete in their various lines of business. Smaller companies have struggled to gain access to markets where tech giants compete directly with their own devices and services.<sup>14</sup> This has put these smaller companies at a distinct disadvantage, but because of the dominance of the platforms they are locked into often unfair and contentious business arrangements.<sup>15</sup>

### **Legislative Fixes to Help Curb Corporate Consolidation and Increase Innovation**

We need real solutions to these problems. Across the political spectrum, Americans overwhelmingly agree that these companies need to be reined in. The bipartisan legislation introduced earlier this year in the U.S. House of Representatives, as well as other bills introduced by members of this Subcommittee, would help to address the problems discussed above.

For example, the bipartisan legislation introduced by Chairwoman Klobuchar and Ranking Member Grassley, the American Innovation and Choice Online Act, would establish fair rules for competition online. The Platform Competition and Opportunity Act, introduced by Chairwoman Klobuchar and Senator Cotton, would prohibit certain anticompetitive mergers by the Big Tech companies. The Open App Markets Act, introduced by Senators Blumenthal and Blackburn, would ensure more opportunity for competition in the mobile app markets. Public Citizen supports all of this legislation.

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<sup>12</sup> See Casey Newton, *Is Facebook Cornering the VR Market?*, THE VERGE (June 16, 2021), <https://www.theverge.com/2021/6/16/22537795/is-facebook-cornering-the-vr-market>; Brian Heater, *Meta (Facebook) is Buying Within, Creators of the 'Supernatural' VR Fitness App*, TECHCRUNCH (Oct. 29, 2021), <https://techcrunch.com/2021/10/29/meta-facebook-is-buying-within-creators-of-the-supernatural-vr-fitness-app>.

<sup>13</sup> See Mark Bergen and Alex Barinka, *Google's Cloud Boss Eyeing 'Major Acquisition' to Get Ahead*, BLOOMBERG (Mar. 16, 2018), <https://www.bloomberg.com/news/articles/2018-03-16/google-s-cloud-boss-eyeing-major-acquisition-to-get-ahead>; Taylor Soper, *Microsoft Makes Another Cloud Acquisition, Swoops Up File Migration Startup Mover*, GEEKWIRE (Oct. 21, 2019), <https://www.geekwire.com/2019/microsoft-makes-another-cloud-acquisition-swoops-file-migration-startup-mover>; Alison Durkee, *Amazon's Biggest Acquisitions Have Allowed It To Become A Marketplace For Nearly Everything*, FORBES (May 24, 2021), <https://www.forbes.com/sites/alisondurkee/2021/05/24/amazon-biggest-acquisitions-have-allowed-it-to-become-a-marketplace-for-nearly-everything-mgm-deal>.

<sup>14</sup> See, e.g., Dana Mattioli, Patience Haggin and Shane Shifflett, *Amazon Restricts How Rival Device Makers Buy Ads on Its Site*, THE WALL STREET JOURNAL (Sept. 22, 2020), <https://www.wsj.com/articles/amazon-restricts-advertising-competitor-device-makers-roku-arlo-11600786638>; Chris Welch, *Google Goes Nuclear Against Roku by Adding YouTube TV to the Main YouTube App*, THE VERGE (May 7, 2021), <https://www.theverge.com/2021/5/7/22425035/google-youtube-tv-roku-app-feud>.

<sup>15</sup> Jack Nicas and Daisuke Wakabayashi, *Sonos, Squeezed by the Tech Giants, Sues Google*, THE NEW YORK TIMES (Jan. 7, 2020), <https://www.nytimes.com/2020/01/07/technology/sonos-sues-google.html>.

I also would like to see more antitrust enforcement from the FTC and DOJ to address some of the blatant abuses of power by the Big Tech companies. In addition, we support FTC rulemaking to clarify anticompetitive behaviors that are illegal.

For too long, large, consolidated industries, including and especially Big Tech, have gotten away with protecting their monopolies through predatory acquisitions and building impossibly high barriers to entry. It is imperative that we continue to educate policymakers and the public on how these behaviors hurt, rather than help innovation.

Addressing these competition concerns would help to unleash innovation among startups, would-be competitors, and within the large companies themselves. The promise of new, faster, and better products and services has hit a wall of Big Tech monopolies and their monopolistic market distortions. It is time to meet this challenge and correct the failure of our antitrust laws.

Thank you again for the opportunity to testify on this important topic, and I look forward to any questions you might have.