



May 2, 2023

The Honorable Amy Klobuchar  
Chair  
Subcommittee on Competition Policy,  
Antitrust, & Consumer Rights  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Mike Lee  
Ranking Member  
Subcommittee on Competition Policy,  
Antitrust, & Consumer Rights  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chair Klobuchar and Ranking Member Lee:

Thank you for the opportunity to submit this correspondence for the record of your upcoming hearing, *“Competition in the Digital Advertising Ecosystem.”* Digital advertising has become a vital tool for businesses to communicate in more targeted, cost-effective, and consumer-oriented manner. It is an ecosystem that is robust and marked by market-based incentives that align well with competition.

Advertisers only pay when viewers click on ads, while websites where ads appear get paid in relationship to the traffic that the site generates, which creates a ruthlessly efficient market that maximizes exposure for advertisers and incentivizes those that operate websites to maximize traffic.

We encourage you to keep in mind two fundamental questions about any prospective legislation in response to the hearing.

*Is there an antitrust problem?*

Antitrust is widely a law of general application. It is also designed to be an ex-post enforcement tool to challenge business conduct where that conduct fails to generate procompetitive benefits when compared to anticompetitive harm. Harm to consumers, not fellow competitors, is the appropriate standard. Otherwise, the law punishes a leading company when it competes and wins on the merits. Finally, we do not have special antitrust laws that uniquely apply only to certain economic actors or to certain industries.

*Do we need regulation?*

In contrast to antitrust, regulation can be used to manage competition in the market. It is ex-ante in nature and designed to prevent certain conduct from being allowed to occur at the outset. It is a distinctly different tool than antitrust. Regulation is often specific to an industry

or sector of the economy, but it also applies to all market participants. Regulation does come at a cost as it forecloses competition, chokes off innovation, and often invites capture by the largest market participants. However, in a democratic society, legislatures evaluate these tradeoffs before they forge ahead with legislation that prescribes an ex-ante approach.

Importantly, the U.S. economy has greatly benefited from the differentiated role of antitrust and regulation. The two should not be conflated as any effort to turn antitrust into regulation results in turning antitrust enforcers into economic central planners.

In the context of digital advertising, if the hearing raises credible antitrust concerns with regard to the conduct of a specific firm, antitrust laws are well-equipped to address those concerns via enforcement actions taken by federal agencies, state attorney generals, or private antitrust lawsuits that can be freely and readily brought by other market actors.

However, if Congress believes that the digital advertising market is in need of a regulatory response, that response should not empower a federal antitrust agency to enforce or administer a regulatory solution, nor should regulatory proposals arbitrarily single out certain market participants. Rather it should apply Congress's regulatory solution broadly to all market actors.

Finally, the Chamber is deeply skeptical that the digital advertising ecosystem is in need of regulation to manage competition across the sector and will oppose legislation that seeks to arbitrarily discriminate against select firms, leads the government to pick winners and losers in the marketplace, or directs antitrust agencies to enforce ex-ante requirements in the marketplace.

Thank you for your time and careful attention to this important matter.

Sincerely,



Neil L. Bradley  
Executive Vice President, Chief Policy Officer,  
and Head of Strategic Advocacy  
U.S. Chamber of Commerce

cc: Members of the Senate Committee on the Judiciary