



Before the
U.S. FEDERAL TRADE COMMISSION & U.S. DEPARTMENT OF JUSTICE
Washington, D.C. 20580

Re: Request for Information on Merger Enforcement

Response to the Request for Information on Merger Enforcement by Accountable Tech

I. Introduction.

Accountable Tech respectfully submits the following comment in response to the January 18, 2022, request by the Federal Trade Commission and Antitrust Division of the Department of Justice (“the agencies”) for information on the agencies’ merger enforcement and policy guidance (“the RFI”). Accountable Tech is a nonpartisan, nonprofit organization that advocates for structural reforms to repair our information ecosystem and foster a healthier and more equitable democracy. We applaud the agencies’ efforts to modernize the enforcement of antitrust laws regarding mergers.

Our comment addresses primarily Topic 11 in the RFI: digital markets. We describe below how digital markets present unique anticompetitive challenges due to, among other reasons, dominant firms’ accumulation of massive amounts of consumer data, which they monetize via surveillance advertising. Success in surveillance advertising both relies on and cyclically reinforces marketplace power. Dominant firms extract consumer data, monetize it by selling the opportunity to target consumers with individually tailored advertisements, expand and integrate their stores of consumer data across business lines, increasing their ability to target individual consumers and gain even more advertising revenue.

Relevant to this RFI, dominant digital firms gained access to consumer data through product lines developed internally as well as through mergers with other companies. A House Antitrust Subcommittee studied those mergers in substantial detail, concluding:

The firms investigated by the Subcommittee [Facebook, Google, Amazon, and Apple] owe part of their dominance to mergers and acquisitions. Several of the platforms built entire lines of business through acquisitions, while others used acquisitions at key moments to neutralize competitive threats. Although the dominant platforms collectively engaged in several hundred mergers and acquisitions between 2000-2019, antitrust enforcers did not block a single one of these transactions. The Subcommittee’s investigation revealed that several of

these acquisitions enabled the dominant platforms to block emerging rivals and undermine competition.¹

The feedback loop of increasing amounts of consumer data driving increasing market power, which in turn provides access to more data, incentivizes and facilitates anticompetitive behavior by dominant firms to the detriment of competition, consumers, and the public.

The digital products and services, such as Facebook and Google, which capture this valuable consumer data are provided at a zero-price point, but impose significant costs to consumers, competition, and society writ-large. Consumers pay with their personal data and attention, protections for which have eroded over time. Other businesses – including publishers, advertisers, and would-be rivals – are forced to pay monopoly rents, share sensitive information about their products and audiences, and contend with gatekeepers’ massive data advantages. And the dominant tech firms that operate these platforms, seeking to maximize consumer engagement—and in turn, the ability to microtarget people with more and more invasive advertisements—do so by amplifying toxic content and otherwise manipulating people and public discourse in deeply harmful ways.

As we have set forth in a separate petition, surveillance advertising is an inherently unfair method of competition under Section 5 of the Federal Trade Commission Act, and we encourage the Commission to issue a rule clarifying that this practice is per se illegal.² Regardless of the Commission’s ultimate resolution of our petition, however, we encourage the agencies to take

¹ *Majority Staff Report and Recommendations*, Subcomm. on Antitrust, Com. and Admin. L. of the Comm. on the Judiciary 1, 387 (2020), https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519.

² *Majority Staff Report and Recommendations*, Subcomm. on Antitrust, Com. and Admin. L. of the Comm. on the Judiciary 1, 387 (2020), https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519.

seriously the anticompetitive nature of the massive data acquisition that fuels surveillance advertising as they consider modifications of their merger guidelines,³ enforcement priorities, and other regulatory or policy decisions.

II. Accumulation and monetization of consumer data drives dominance in the digital advertising market. (RFI question 11(c)).

Digital advertising is a massive market, approximating between \$162 to \$183 billion in the United States in 2021.⁴ This accounts for about 60% of total advertising,⁵ with that figure skyrocketing over the past two decades and expected to continue growing for the foreseeable future.⁶ A handful of large firms dominate the market. In 2020, Facebook and Google received more than 75% of the total spending on U.S. online ads.⁷ These two companies have consistently increased their share of the market and captured more than 80% of market growth in each of the last six years.⁸ The only other company that has managed to become a significant player is

³ This comment uses the same definition as set forth in the RFI on merger guidelines, e.g. both the 2010 Horizontal Merger Guidelines and the 2020 Vertical Merger Guidelines (with the understanding that the Commission has already withdrawn the 2020 Vertical Merger Guidelines, and the Department has stated that it shares the Commission's substantive concerns with economic and legal errors in them and seeks to replace them expeditiously with a document better reflecting its current approach).

⁴ Brad Adgate, *Agencies Agree; 2021 Was a Record Year for Ad Spending, with More Growth Expected in 2022*, Forbes (Dec. 8, 2021),

<https://www.forbes.com/sites/bradadgate/2021/12/08/agencies-agree-2021-was-a-record-year-for-ad-spending-with-more-growth-expected-in-2022/?sh=53404c097bc6>.

⁵ *Id.*

⁶ In 2004, for example, out of \$264 billion in total U.S. ad spending, newspapers captured \$48 billion, *Newspapers Fact Sheet*, Pew Rsch. Ctr. (June 29, 2021),

<https://www.pewresearch.org/journalism/fact-sheet/newspapers/>, while only \$9.6 billion was spent online, *eMarketer's Seven Predictions for 2006*, eMarketer (Jan., 11, 2006),

<https://www.emarketer.com/Article/eMarketers-Seven-Predictions-2006/1003773>.

⁷ *Study: Newspaper Circulation Revenue Surpasses Advertising*, Associated Press (June 30, 2021), <https://apnews.com/article/newspapers-business-arts-and-entertainment-ecdff2581db22fa4c627c8bfd8b48eef>.

⁸ *Facebook and Google's Consolidation of U.S. Digital Ad Market*, Accountable Tech (last accessed Sept. 22, 2021), <https://www.accountabletech.org/wp-content/uploads/Facebook-and-Google-Consolidation-of-US-Digital-Ad-Market.pdf>.

Amazon – a potential advertising behemoth that has begun leveraging its own unique access to consumer and business data to challenge the Facebook and Google’s dominance.⁹

Collectively, Facebook, Google, and Amazon now control roughly 90% of the online ad market and collect more than half of all advertising dollars spent domestically. That market is owed largely to the massive data advantages these tech giants have accumulated, which allows them to profile and precisely target users with personalized ads.

III. The extraction and monetization of consumer data in digital advertising creates anticompetitive outcomes. (RFI question 11(f)).

The digital advertising market’s reliance on the extraction, integration, and monetization of consumer data creates various anticompetitive outcomes. As summarized briefly below, and documented at length elsewhere, early competition in zero-price markets is often for the entirety of the market—dominant firms gained early access to massive user bases and self-perpetuating data advantages that make tipping likely, and create high barriers to entry and easy leverage into adjacent markets.¹⁰ Digital advertising companies obtain data from consumers and business users, building a foundation for unfair practices and market dominance, such as data integration across business lines and exclusive dealing to actively suppress competition. Accordingly, the agencies should treat potential data aggregation as a key factor in analyzing mergers. Indeed, the

⁹Mark Sullivan, *If Anyone Can Take on Google And Facebook’s Ad Duopoly, It’s Amazon*, Fast Company (April 30, 2021), <https://www.fastcompany.com/90631969/amazon-ad-business-growth>. Amazon advertises its vast stores of data: “Customers rely on Amazon to browse new products, watch movies, keep up with their shows, listen to podcasts and music, and read their favorite books. These daily interactions translate to billions of first-party metrics that can help advertisers better understand the audiences that are interacting with their brand across the customer journey, both on and off Amazon.” <https://advertising.amazon.com/blog/behavioral-signals-for-ott-advertising>.

¹⁰ *Majority Staff Report and Recommendations*, *supra* note 1, at 42-45.

Administration appears to already be moving in the right direction; we were pleased to see the Justice Department move to block UnitedHealth Group’s acquisition of Change Healthcare based in part on the anticompetitive results of the resulting data acquisition.¹¹ But the current guidelines for identifying anticompetitive mergers are woefully inadequate for the modern economy.¹²

Several reports identify common characteristics of digital markets, including strong network effects (especially with respect to social media and messaging apps), economies of scope and scale, and the key role played by the accumulation of data on consumer behavior.¹³ As a summary of this literature explains:

[M]arkets that share these characteristics tend to *tip*—that is, these factors push these markets to concentrate around a single, ultra-dominant provider. Markets with *tipping effects* normally witness strong competition *for the market* in the beginning—that is, competition to become the leading provider in that market—which then develops into a long period of weak competition where the winner/monopolist extracts rents associated with its market power. These economic rents are protected by high entry barriers connected with the products/services’ network effects (due to the high coordination costs associated with mass consumer migration), important economies of scale and scope (also related to the control of databases), the personalization of the services/products offered, and the growing ecosystem competition. These barriers also hinder the expansion of competing products, even when theoretically superior. As companies obtain data as a derivative of their products/services, the incumbents’ great advantage in the collection of data further protects their privileged market position. Indeed, companies design their complex ecosystems to increase their data collection capabilities and, in doing so, protect their dominant position.¹⁴

¹¹ U.S. Department of Justice, *Justice Department Sues to Block UnitedHealth Group’s Acquisition of Change Healthcare* (Feb. 24, 2022), <https://www.justice.gov/opa/pr/justice-department-sues-block-unitedhealth-group-s-acquisition-change-healthcare>.

¹³ Filippo Lancieri & Patricia Morita Sakowski, *Competition in Digital Markets: A Review of Expert Reports*, 26 *Stanford J. L. Bus. & Fin.* 65, 74 (2021) (emphasis added).

¹⁴ *Id.* at 74-75.

The primary digital advertising firms obtained market dominance in exactly this manner, which we describe in detail in our petition.¹⁵ As a Facebook representative explained in a 2012 document provided to the House Antitrust Subcommittee, “Advertising is a scale thing, it wasn’t until we reached 350 million users did we become interesting to big brands.”¹⁶ And when asked to name Google’s biggest strength in 2009, the company’s former CEO stated, “Scale is the key. We just have so much scale in terms of the data we can bring to bear.”¹⁷

This scale was achieved in significant part due to mergers and acquisitions, that either expanded the range of products and services a company could offer or reinforced dominance in a particular sector:

Facebook used critical acquisitions to increase the adoption of its social graph and expand its reach in markets Facebook’s serial acquisitions reflect the company’s interest in purchasing firms that had the potential to develop into rivals before they could fully mature into strong competitive threats

In several markets, Google established its position through acquisition, buying up successful technologies that other businesses had developed. In a span of 20 years, Google purchased well over 260 companies—a figure that likely understates the full breadth of Google’s acquisitions, given that many of the firm’s purchases have gone unreported.¹⁸

Through these mergers, Facebook and Google expanded access to even more consumer data, enhancing their ability to individually target consumers with advertising. Compounding this problem, these companies’ significant data advantage enables them “to identify and acquire rivals early in their lifecycle. Leading economists and antitrust experts have expressed concern

¹⁵ Accountable Tech, *supra* note 2.

¹⁶ *Majority Staff Report and Recommendations*, *supra* note 1 at 89.

¹⁷ Complaint at 5, *United States et. al v. Google*, No. 20-cv-03010 (D.D.C. October 20, 2020).

¹⁸ *Majority Staff Report and Recommendations*, *supra* note 1 at 149, 174.

that serial acquisitions of nascent competitors by large technology firms have stifled competition and innovation.”¹⁹

Increased scale, in turn, empowers dominant firms to artificially raise switching costs, deterring users from seeking other products or services and decreasing competition.

High switching costs are a central feature of digital search and social media platforms, such as Google and Facebook, where users contribute data to the platform but may not be able to migrate that data to a competing platform. For example, a user may upload a variety of data to Facebook, including photos and personal information, but may not be able to easily download that data and move it to another social media site; instead, the user would have to start from scratch, re-uploading her photos and re-entering her personal information to the new platform. An online seller who has generated hundreds of product reviews and ratings on Amazon may face a similar challenge when considering migrating to a different platform. Other significant factors that contribute to switching costs in digital markets include anticompetitive contracting terms, default settings, product design that favor dominant platforms.²⁰

As they grew, digital firms made the crucial decision to integrate their consumer data across their various platforms. Doing so built increasingly comprehensive user profiles and commercial intelligence hubs, again creating mutually reinforcing advantages. Despite early restrictions, Facebook, Google, and Amazon all ultimately decided to integrate their data across their platforms. We describe the history of these firms’ data integration practices in detail in our petition.²¹ It has been extensively chronicled elsewhere, as well.²²

Google, for example, collects *and integrates* data across major business lines, including its original search engine, mobile operating system (Android), navigation (Maps and Waze), web

¹⁹ *Id.* at 44.

²⁰ *Id.* at 42.

²¹ Accountable Tech, *supra* note 2 at 39-50.

²² *See, e.g., Majority Staff Report and Recommendations, supra* note 1; Dina Srinivasan, *Why Google Dominates Advertising Markets*, 24 *Stanford Tech. L. Rev.* 55 (2020)https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3500919.

browser (Chrome), video streaming (YouTube), app store (Google Play), email (Gmail), productivity tools (Google Workspace), wearables (Fitbit), smart home devices (Nest), file storage (Google Drive), and photo sharing (Google Photos). In 2016, it changed its policies to combine this consumer data with DoubleClick, an advertising tool it acquired in 2007. Google permitted data integration with DoubleClick even though at the time of acquisition, it told Congress that it would not do so.²³ The practical result of the change is that the DoubleClick ads that follow consumers around on the internet may be customized based on consumers' names and all the other information Google possesses about consumers.²⁴ As the House Antitrust Subcommittee Report explained, "Google can mine its ecosystem—including Search, Chrome, Android, and Maps—to combine a unique set of user data points and build troves of online behavioral data that drive its ad business."²⁵ With each integration of data sets, it becomes more implausible for consumers to escape these firms' vast networks of platforms.²⁶ And the barriers to entry for existing and nascent competitors in various business lines become higher.

The greatest threat to the dominance of Facebook, Google, and Amazon comes from the prospect of other firms gaining scale. As has been well documented, both in literature and in antitrust litigation, they seek to deny scale to rivals through a variety of means, including by denying rivals access to underlying user data (such as Facebook's 2013 refusal to authorize

²³ Dina Srinivasan, *id.* at 88-102.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3500919.

²⁴ Julia Angwin, 'Google Has Quietly Dropped Ban on Personally Identifiable Web Tracking', ProPublica (Oct. 21, 2016), <https://www.propublica.org/article/google-has-quietly-dropped-ban-on-personally-identifiable-web-tracking> ("It also means that Google could now, if it wished to, build a complete portrait of a user by name, based on everything they write in email, every website they visit and the searches they conduct.").

²⁵ *Majority Staff Report and Recommendations*, *supra* note 1 at 207.

²⁶ *Id.* at 42 (discussing high consumer switching costs in digital markets).

users' requests to find friends on a competitor app)²⁷ and by self-preferencing their own products (such as Google's practice of systematically ranking its own content above third-party content, even when its own content was inferior or less relevant for users).²⁸ As the House Antitrust Subcommittee Report, which provides detailed evidence of this phenomenon explains:

[E]ach platform [Facebook, Google, Amazon, Apple] uses its gatekeeper position to maintain its market power. By controlling the infrastructure of the digital age, they have surveilled other businesses to identify potential rivals, and have ultimately bought out, copied, or cut off their competitive threats. And, finally, these firms have abused their role as intermediaries to further entrench and expand their dominance. Whether through self-preferencing, predatory pricing, or exclusionary conduct, the dominant platforms have exploited their power in order to become even more dominant.²⁹

IV. Degraded quality of consumer products and the true costs of zero-price products (Topic 11(c)).

As now-dominant digital firms were gaining market share, the fact that their products were provided at a zero-price obscured the trust costs to consumers. And as the RFI implicitly references, traditional antitrust enforcement has not always accounted for the very real costs imposed on consumers in exchange for nominally free products.³⁰ The fact that we pay for these services in the form of personal data and attention, not dollars and cents, is immaterial; the zero price point should not continue to serve as a get-out-of-jail-free card for the world's most powerful corporations as they expand market dominance.³¹ And as discussed above, the exchange of consumer information for a 'free' product enhances future market dominance for the provider of that product. Time and again, we've seen digital advertising giants make bold

²⁷ Accountable Tech, *supra* note 2 at 52.

²⁸ *Majority Staff Report and Recommendations*, *supra* note 1 at 382.

²⁹ *Id.* at 6.

³⁰ *Id.* (describing history of DOJ focus on prices to advertisers, not costs to consumers, in evaluating mergers of commercial broadcast radio stations).

³¹ John M. Newman, *Antitrust in Zero-Price Markets: Foundations*, 164 Univ. Pa. L. Rev. 149, 190 (2015), https://repository.law.miami.edu/fac_articles/744/.

promises on privacy, safety, and user experience only to run roughshod over them once they've entrenched their monopoly power and no longer must compete on merit.³²

Now-dominant firms initially appealed to consumers with “free” high-quality products, idealistic missions, and strong privacy policies to gain market share. In our rulemaking petition, we discuss in detail Facebook and Google’s past practices in this respect.³³ However, after gaining control of relevant markets, each eroded privacy protections.³⁴ Counter to what they promised consumers when they were first growing, these surveillance advertising giants grew lucrative empires by tracking users across their platforms and third-party entities, building comprehensive data profiles to micro-target audiences with hyper-personalized ads.³⁵

Zero-price digital products impose costs beyond the loss of information and attention. We discuss such harms in detail in our petition.³⁶ In brief, advertising displayed in those products is regularly discriminatory, both because of inappropriate targeting by advertisers³⁷ and due to the

³² *Majority Staff Report and Recommendations*, *supra* note 1 at 41 (“Given that many digital products do not charge consumers directly for services, these firms often compete on quality. Along these lines, lack of competition can result in eroded privacy and data protection. Growing evidence indicates that a lack of competition goes hand in hand with just such quality degradation.”)

³³ *Accountable Tech*, *supra* note 2 at 21-25.

³⁴ *Id.* at 25-31.

³⁵ *Majority Staff Report and Recommendations*, *supra* note 1 at 43 (“a dominant platform can use its market power to extract more data from users, undermining their privacy”); Dina Srinivasan, *The Antitrust Case Against Facebook: A Monopolist’s Journey Towards Pervasive Surveillance in Spite of Consumers’ Preference for Privacy*, 16 *Berkeley Bus. L. J.* 39, 70 (2019).

³⁶ *Accountable Tech*, *supra* note 2 at 26-30.

³⁷ Julia Carpenter, *Google’s Algorithm Shows Prestigious Job Ads to Men, But Not to Women. Here’s Why That Should Worry You*, *The Wash. Post* (July 6, 2015), <https://www.washingtonpost.com/news/the-intersect/wp/2015/07/06/googles-algorithm-shows-prestigious-job-ads-to-men-but-not-to-women-heres-why-that-should-worry-you/>; Rory Cellan-Jones, *Facebook Accused of Allowing Sexist Job Advertising*, *BBC News* (Sept. 9, 2021), <https://www.bbc.com/news/technology-58487026>; Karen Hao, *Facebook’s Ad Algorithms Are Still Excluding Women From Seeing Jobs*, *MIT Tech. Rev.* (Apr. 9, 2021), <https://www.technologyreview.com/2021/04/09/1022217/facebook-ad-algorithm-sex-discrimination/>; Jeremy B. Merrill, *Google Has Been Allowing Advertisers to Exclude Nonbinary*

underlying targeting algorithms.³⁸ Firms that extract consumer information in exchange for zero-price products have repeatedly exploited children and teens via targeted advertisements for harmful products, algorithmic direction to harmful content, and violation of children's privacy.³⁹ Relatedly, dominant digital companies boost engagement by providing outrageous content, in turn leading to increasing radicalization of users.⁴⁰ These firms also permit advertisers to target

People from Seeing Job Ads, The Markup (Feb. 11, 2021), <https://themarkup.org/google-the-giant/2021/02/11/google-has-been-allowing-advertisers-to-exclude-nonbinary-people-from-seeing-job-ads>.

³⁸ Alex P. Miller & Kartik Hosanagar, *How Targeted Ads and Dynamic Pricing Can Perpetuate Bias*, Harvard Bus. Rev. (Nov. 8, 2019), <https://hbr.org/2019/11/how-targeted-ads-and-dynamic-pricing-can-perpetuate-bias>; Molly Callahan, *Facebook Changed Its Ad Tools, But the Results Are Still Biased. What's Going On?*, News@Northeastern (Dec. 18, 2019), <https://news.northeastern.edu/2019/12/18/facebooks-ad-delivery-system-still-discriminates-by-race-gender-age-y/>.

³⁹ *Pills, Cocktails, and Anorexia: Facebook Allows Harmful Ads to Target Teens*, Tech Transparency Project (May 4, 2021), <https://www.techtransparencyproject.org/articles/pills-cocktails-and-anorexia-facebook-allows-harmful-ads-target-teens>; *Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children's Privacy Law*, Fed. Trade Comm'n (Sept. 4, 2019), <https://www.ftc.gov/news-events/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations>; Max Fisher & Amanda Taub, *On YouTube's Digital Playground, an Open Gate for Pedophiles*, The New York Times (June 3, 2019), <https://www.nytimes.com/2019/06/03/world/americas/youtube-pedophiles.html>; Georgia Wells et al., *Facebook Knows Instagram is Toxic for Teen Girls, Company Documents Show*, The Wall St. J. (Sept. 14, 2021), <https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739>.

⁴⁰ Sam Dean, *Facebook Decided Which Users Are Interested in Nazis –And Let Advertisers Target Them Directly*, L.A. Times (Feb. 21, 2019), <https://www.latimes.com/business/technology/la-fi-tn-facebook-nazi-metal-ads-20190221-story.html>; Ryan Mac & Craig Silverman, *Facebook Has Been Showing Military Gear Ads Next to Insurrection Posts*, BuzzFeed News (Jan. 13, 2021), <https://www.buzzfeednews.com/article/ryanmac/facebook-profits-military-gear-ads-capitol-riot>. *Facebook Ran Recruitment Ads for Militia Groups*, Tech Transparency Project (Oct. 19, 2020), <https://www.techtransparencyproject.org/articles/facebook-ran-recruitment-ads-militia-groups>; Julia Carrie Wong, *Down the Rabbit Hole: How QAnon Conspiracies Thrive on Facebook*, The Guardian (June 25, 2020), <https://www.theguardian.com/technology/2020/jun/25/qanon-facebook-conspiracy-theories-algorithm>; Alex Heath, *Zuckerberg Tells Facebook Staff He Expects Advertisers to Return 'Soon Enough'*, The Information (July 1, 2020), <https://www.theinformation.com/articles/zuckerberg-tells-facebook-staff-he-expects-advertisers-to-return-soon-enough>.

ads based on misinformation trends, such as based on users' interest in pseudoscience to spread false conspiracy theories about the transmission of COVID-19 and promote anti-vaccine hoaxes, posing a direct harm to public health.⁴¹ While none of these social harms are accounted for in the zero-price of Facebook or YouTube, they must be considered in evaluating the agencies' policies on competition in digital marketplaces.

V. CONCLUSION

The Justice Department and Federal Trade Commission are doing a tremendous public service by acknowledging the current merger guidelines are ill-suited for the challenges of the modern economy. Specifically, when it comes to zero-price markets, the status quo hinders these agencies' ability to fulfill their Congressional mandate to prevent harm to consumers and competition in its incipiency. Indeed, flagship acquisitions by dominant tech firms that are now the subject of antitrust cases around the world – like Facebook's purchase of Instagram and WhatsApp, and Google's acquisition of the adtech giant DoubleClick – sailed through with little contemporaneous scrutiny.

⁴¹ Meira Gebel, *Anti-Vaccination Ads on Facebook Are Targeting Pregnant Women, While a Measles Outbreak Spreads Across the Country*, Business Insider (February 14, 2019), <https://www.businessinsider.com/anti-vaccine-facebook-ads-target-pregnant-women-as-measles-spreads-2019-2>; Paige Leskin, *Facebook Let Advertisers Target Users Interested in 'Pseudoscience', Allowing Them to Capitalize on Conspiracy Theories That Falsely Blame 5G Cell Towers for the Coronavirus*, Bus. Insider (Apr. 23, 2020), <https://www.businessinsider.com/facebook-ads-target-pseudoscience-conspiracy-theories-coronavirus-5g-misinformation-report-2020-4>; Keach Hagey & Horwitz, *Facebook Tried to Make Its Platform a Healthier Place. It Got Angrier Instead*, The Wall St. J. (Sept. 15, 2021), <https://www.wsj.com/articles/facebook-algorithm-change-zuckerberg-11631654215>; Christian Fleetwood, *Over 4,000 Brands Bought Programmatic Ads on COVID-19 Misinformation Websites*, BandT.com (Feb. 19, 2021), <https://www.bandt.com.au/over-4000-brands-bought-programmatic-ads-on-covid-19-misinformation-websites/>; Issie Lapowsky, *Google Says It's Fighting Election Lies, But Its Programmatic Ads Are Funding Them*, Protocol (Jan. 14, 2021), <https://www.protocol.com/google-programmatic-ads-misinformation>; L. Gordon Crovitz, *How Amazon, Geico, and Walmart Fund Propaganda*, The New York Times (Jan. 21, 2020), <https://www.nytimes.com/2020/01/21/opinion/fake-news-russia-ads.html>.

While we support the FTC and DOJ's effort to secure ex-post facto remedies in those cases, and believe the law is firmly on the agencies' side, the cases also underscore the need to overhaul guidelines so future mergers can be properly scrutinized and potentially blocked before they usher in sweeping societal and competitive harms.

If you have any questions or would like to discuss the information in this comment, please contact us at the contact information listed below.

Respectfully submitted,

Nicole Gill, Co-founder and Executive Director
Jesse Lehrich, Co-founder and Senior Advisor

Accountable Tech
1101 Connecticut Ave., NW, Suite 450
Washington, DC 20036
info@accountabletech.org
202-964-0377