

Senator Grassley's Questions for Mr. Kint

1. I've heard concerns that the bill could have negative impacts on small adtech companies in this market. Specifically, I've heard concerns that because of the expansive definition of "digital advertising revenue," these companies immediately would be subject to burdensome and costly new regulations that could hamper their incentive to invest and ability to compete in this market.

- Do you share this concern? Should the lower \$5B threshold be increased and some of the regulations revised to ensure that small adtech competitors are not put at a disadvantage? Why or why not?

ANSWER – I do not share this concern that there will be negative impacts on small adtech companies in the market. It is important to note that small adtech companies would not fall under the jurisdiction of the AMERICA Act. The \$5 billion threshold would capture only fairly large adtech companies. Regardless of which companies are impacted, the obligations of the AMERICA Act are common sense rules that any regular American can understand as they reduce conflicts of interest and are currently in place in the stock exchange. These rules simply require transparency and that adtech brokers pursue the best interests of their clients. The rules are only burdensome to the extent that they would curb insider-trading and illicit collusion which should be a noncontroversial goal for any real-time market of this magnitude and importance to the flow of information and entertainment.

2. Small adtech companies are concerned that some of the bill's substantive regulations will require them to incur significant additional annual compliance costs to retain and process the enormous volumes of data and records mandated by the bill. In their view, such new costs would serve as a windfall to large tech companies with enormous cloud storage businesses, which are some of the same dominant companies the bill is attempting to moderate in order to enhance competition. Do you agree with these concerns? Should these substantive requirements be tailored to reduce compliance costs and avoid dampening investment, innovation, growth, and increased competition from these small market participants? Why or why not?

ANSWER – No I do not agree with these concerns. Again, it is important to note that only larger adtech companies (over the \$5 billion annual threshold) would be subject to obligations of the AMERICA Act. Small adtech companies, by any reasonable definition, would not be subject to the obligations of the AMERICA Act.

**Sen. Mike Lee
Questions for the Record
Competition in the Digital Advertising Ecosystem
May 3, 2023**

JASON KINT

1. How would the AMERICA Act benefit advertisers and publishers?

Today, there are no basic rules for the digital advertising marketplace and the result is increased costs for publishers, advertisers, and consumers. As a result, the supply chain is murky and rampant with fraud, insider trading and hidden fees. Large adtech companies often arbitrage bid data and users' data to use on behalf of other clients and for their own profits. Google, the most dominant company in the digital advertising marketplace, enjoys a stranglehold over this entire supply chain since they offer the most popular software for advertisers buying ads, the most popular software for publishers selling ads and the most dominant exchange where bids are placed and winners are chosen. In addition, Google's data mining tentacles extend beyond its adtech businesses into its dominant Chrome browser, dominant Android operating system and other services where it can exploit user data across much of the web and app ecosystem to maximize its own profits and interests. Google's dominance in the market, has garnered attention even at the state level, where a bipartisan group of State Attorneys General have filed a lawsuit to end this monopoly. Furthermore, in January of this year, President Biden's Department of Justice filed a similar lawsuit which was the result of an investigation initiated by the Trump Administration. Perhaps the best illustration of Google's dominant position was the quote included as evidence in the government's lawsuits. One of Google's own executives described its market advantages as, "The analogy would be if Goldman or Citibank owned the New York Stock Exchange."

The AMERICA Act would introduce transparency and reduce conflicts of interest for larger adtech companies so that brokers must serve their clients' interests. In this way, the AMERICA Act provides the most fundamental guardrails for a flourishing competitive marketplace where brokers must compete for business. By lowering costs for publishers and advertisers, the AMERICA Act will also lower costs for consumers and help protect their privacy.

2. Are publishers worried that structural separation to eliminate conflicts of interest would diminish returns from advertising, or do they expect that increased competition would increase advertising quality and thus increase revenue for publishers?

Publishers have seen fewer and fewer returns from the digital advertising marketplace as tech giants and middlemen extract data and squeeze profits from the supply chain. Instead of rigid government regulation, the AMERICA Act would require transparency and prohibit insider-trading to create a marketplace where adtech companies would compete to provide the best tools and most revenue for publishers as well as the best returns for advertisers.

Questions from Senator Tillis

1. Under the AMERICA Act:

- a. How would small businesses that use online advertising be impacted?

Small businesses would benefit from the AMERICA Act in several ways. Today, there are only a handful of big tech companies that largely control the rules and flow of dollars in the digital advertising marketplace. Thus, small businesses have limited options for where and how they choose to advertise their goods and services. In addition, data about their audiences and advertising campaigns is often not shared back with the small business. Instead, the data is hoarded by these adtech companies for their own business interests and that of their other clients. In today's market, small businesses have very little market power to demand better terms or prevent their audience data from being misused or stolen. Under the AMERICA Act, small businesses will have more choices about how and where they can advertise their goods and services. In addition, small businesses will be able to better understand and restrict how the data about their customers is re-used. Finally, the best interest obligations of the AMERICA Act will ensure that small businesses are protected from shady actors.

b. Would small businesses still have the same access to affordable advertising services?

Yes. Today, a handful of big tech giants largely control the digital advertising marketplace. While these services are marketed as “affordable,” the reality is that there is little competition on price, quality, or brand protections. Under the AMERICA Act, adtech brokers would be obligated to serve the best interest of their small business clients which includes getting the best price and/or most value and protecting their audiences and brands. In addition, fostering competition would lead to a variety of options for small businesses to choose from when deciding on how to deploy their next advertising campaigns.

2. How would the AMERICA Act help or hurt smaller ad organizations who operate within the online advertising economy? If so, how?

Today, smaller ad organizations cannot compete with the scale and market power of the big tech companies. In addition, the big tech companies often set the rules and norms for the industry. The AMERICA Act would create a more level playing field where larger adtech companies would be expected to be transparent with their clients and represent their best interests. And it would do this, not by introducing any obligations for small ad organizations (under \$5 billion), but by providing them additional protections and benefits as they do business and attempt to compete with market dominating firms.

3. Other than Google, who are the major players – including emerging players – in the online advertising economy?

One example of the detrimental impact of Google's dominant position in the marketplace has been the lack of any new emerging players in the digital advertising marketplace. The only potential for competition has come from other tech giants such as Amazon and Facebook who have collectively absorbed nearly all of the growth in the advertising industry. In the case of Facebook, it is important to note allegations by the Justice Department that Google and Facebook reached an agreement to section off certain parts of the market and avoid competing effectively squashing other competitors and protecting their respective dominant positions.

4. What can and should be done to increase transparency within the online advertising economy?

The AMERICA Act elegantly allows for clients (advertisers and publishers) to obtain data from adtech companies about how their own advertising is being purchased vs sold, respectively, and how their proprietary data is being used. By allowing greater access to this data for clients, the adtech marketplace will be forced to compete on more fair terms.

QUESTIONS FROM SENATOR BLACKBURN

1. **There has been significant discussion about Google's dominance of the digital adtech market. However, there are other companies, both large and small, that operate in different parts of the ad stack that your members likely often work with.**
 - a. **In your view, what is the universe of companies that would be impacted by the *America Act*?**
 - b. **Where in the ad stack does competition among these companies break down?**

It is important to note that only larger adtech companies would fall under the jurisdiction of the AMERICA Act. Small adtech companies do not have any obligations under the AMERICA Act. The bill requires that companies with more than \$5 billion in transactions must be transparent with their clients and pursue the best interests of their clients. These rules would curb insider-trading and illicit collusion resulting from leveraging opacity and market power. For companies that exceed \$20 billion in transactions, the bill would prohibit them from operating on both the buy and sell side of the market. Very similar rules were established by Congress for the stock market nearly a century ago.

Today, there are no basic rules for the digital advertising marketplace and the result is increased costs for publishers, advertisers, and therefore consumers. As a result, the supply chain is murky and rampant with fraud, insider trading and hidden fees. Large adtech companies often arbitrage bid data and users' data to use on behalf of other clients and for their own profits. Google, the most dominant company in the digital advertising marketplace, enjoys a stranglehold over this entire supply chain since they offer the most popular software for advertisers buying ads, the most popular software for publishers selling ads and the most dominant exchange where bids are placed, and winners are chosen. In addition, Google's data mining tentacles extend beyond its adtech businesses into its dominant Chrome browser, dominant Android operating system and other services where it can exploit user data across much of the web and app ecosystem to maximize its own profits and interests. Google's dominance in the market, has garnered attention even at the state level, where a bipartisan group of State Attorneys General have filed a lawsuit to end this monopoly. In January of this year, President Biden's Department of Justice filed a similar lawsuit which was the result of an investigation initiated by the Trump Administration. Perhaps the best illustration of Google's dominant position was the quote included as evidence in

the government's lawsuits. Google's own executive described its own market advantages as, "The analogy would be if Goldman or Citibank owned the New York Stock Exchange."

The AMERICA Act would introduce transparency and eliminate conflicts of interest for even the middle-sized adtech companies so that all brokers must serve their clients' interests. In this way, the AMERICA Act provides the most fundamental guardrails for a flourishing competitive marketplace where brokers must compete for business. By lowering costs for publishers and advertisers, the AMERICA Act will also lower costs for consumers and help protect their privacy.