

**PREPARED TESTIMONY AND STATEMENT FOR THE  
RECORD**

**OF**

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**HEARING ON**

**“BIG FIXES FOR BIG TECH”**

**BEFORE THE**

**U.S. SENATE COMMITTEE ON THE JUDICIARY**

**SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY, AND CONSUMER RIGHTS**

## Introduction

Chair Lee, Ranking Member Booker, and Members of the Committee, thank you for inviting me to testify. My name is Rory Van Loo and I am a Law Professor at Boston University. I've spent the past decade researching big tech and looking for win-win legal reforms that would benefit consumers, businesses, and the economy.

We especially need such laws right now because of the precarious state of the economy and the growing evidence that many of the prices we're paying are above what would be expected in more competitive markets.<sup>1</sup> Big tech influences the prices we pay in subtle ways. For example, research indicates that online retailers, like Amazon, can significantly raise prices by burying the best deals deep in the search results.<sup>2</sup> And if Google uses monopoly power to raise advertising costs for retail stores or small businesses that are operating at a razor thin profit margin, those businesses may have no choice but to pass it on to customers. These are the kinds of invisible taxes we can pay when competition falls short.

The good news is that this committee has the power to unlock tremendous economic gains by making markets more transparent and competitive.<sup>3</sup> I'm going to discuss three key architectural design principles in your bipartisan AMERICA Act that that can be applied more broadly as a legislative blueprint for the digital economy.

## Legislating for Big Tech

### Breakups

The first principle is seeking out strong solutions to address abuse of monopoly power. There is too much reluctance to break up monopolists. Part of the problem is that many have exaggerated the risks, relying on bad data. Government officials and academics have often said that breaking up a company is too messy, if not impossible. Like unscrambling eggs. But businesses break themselves up voluntarily all the time—including large ones, like Hewlett-Packard and eBay-PayPal. Government breakups of Standard Oil and AT&T show that big breakups can be followed by strong growth and innovation. The limited data available also suggests breaking up companies can

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<sup>1</sup> This is true both at the macro level and the micro level. Jan De Loecker, Jan Eeckhout & Gabriel Unger, *The Rise of Market Power and the Macroeconomic Implications*, 135 Q.J. ECON. 561, 562 (2020). The precise magnitude is debated, with a subsequent study using a different methodology finding a lower, albeit still substantial, increase in markups over the same period. Hendrik Döpper, Alexander MacKay, Nathan H. Miller & Joel Stiebale, *Rising Markups and the Role of Consumer Preferences* (Nat'l Bureau of Econ. Rsch., Working Paper No. 32739, 2024), <https://www.nber.org/papers/w32739>. For a review of the studies suggesting that people pay more due to market failures related to behavioral economics, antitrust, and occupational licensing, see Rory Van Loo, *Broadening Consumer Law: Competition, Protection, and Distribution*, 95 Notre Dame Law Review 211 (2019); Rory Van Loo, *Inflation, Market Failures, and Algorithms*, 96 S. Cal. L. Rev. 825 (2023).

<sup>2</sup> Rory Van Loo & Nikita Aggarwal, *Amazon's Pricing Paradox*, 37 Harvard Journal of Law & Technology 1 (2024).

<sup>3</sup> Rory Van Loo, *Broadening Consumer Law: Competition, Protection, and Distribution*, 95 Notre Dame Law Review 211 (2019).

significantly improve competition. It is not always the answer. But for decades, we've left monopolists intact, which encourages CEOs to build monopolies. That needs to stop.<sup>4</sup>

The AMERICA Act sensibly does not let exaggerated concerns about breakups stop it from outlining a bold vision for competitive digital advertising. It would require Google and other big tech companies to sell parts of their advertising businesses. A willingness to pursue strong remedies, applied carefully, needs to be on the table in other efforts to dislodge abuse of big tech monopoly power.

## Duties

Stopping abusive monopolists is important but not enough for full competition. If customers still can't tell which business is offering the highest return on advertising or the lowest price for an item, then businesses won't have the right market pressures to innovate and charge competitive prices. Big tech platforms are currently free to put their own interests first without customers knowing.

The AMERICA Act addresses this problem by requiring digital advertising brokerages to put their customers' best interests first. One could imagine similar requirements of other big tech companies. These legal requirements would move big tech toward the kinds of heightened duties required of doctors, stockbrokers, and other market actors.<sup>5</sup>

## Access

Third, access to information and marketplaces is essential for full competition. Yet too often big tech companies block key access, even to basic information.<sup>6</sup> The AMERICA Act responds by mandating fair access to both digital advertising exchanges and information. Access mandates have lowered consumer prices elsewhere and have the potential to set up third-party digital tools to help shoppers find the best deals online.<sup>7</sup> In social media, access mandates would allow entrepreneurs to offer tools to shield people, especially kids, from toxic social media content.<sup>8</sup> The combination of mandating duties and access reflects the model used for the New York Stock Exchange and recognizes some of the similarities between securities markets and digital markets.<sup>10</sup>

## Conclusion

In conclusion, I encourage you to pass the AMERICA ACT and then apply a similar blueprint to other spheres of big tech. There's a tremendous opportunity to lower prices significantly, make our

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<sup>4</sup> Rory Van Loo, In Defense of Breakups: Administering a "Radical" Remedy, 105 Cornell L. Rev. 1955 (2020). Interoperability remedies also have potential in some digital contexts. Herbert Hovenkamp, Antitrust Interoperability Remedies, 123 Columbia La Review Forum 1 (2023).

<sup>5</sup> Jack M. Balkin & Jonathan Zittrain, A Grand Bargain to Make Tech Companies Trustworthy, The Atlantic (Oct. 3, 2016), <https://www.theatlantic.com/technology/archive/2016/10/information-fiduciary/502346>; Rory Van Loo, Consumer Agents, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5199350](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5199350).

<sup>6</sup> Rory Van Loo, Privacy Pretexts, 108 Cornell Law Review 1 (2022).

<sup>7</sup> Rory Van Loo, Digital Market Perfection, 117 Michigan Law Review 815 (2019); Rory Van Loo, Making Innovation More Competitive: The Case of Fintech, 65 UCLA Law Review 232 (2018).

<sup>8</sup> Rory Van Loo, Consumer Agents, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5199350](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5199350)

<sup>9</sup> And there's good evidence, from other countries that have passed access mandates, that this can lower consumer prices.

<sup>10</sup> On how digital markets exhibit some characteristics of the New York Stock Exchange, see Rory Van Loo, Rise of the Digital Regulator, 66 Duke Law Journal 1267 (2017).

markets more competitive, and unleash a wave of innovation. And by keeping our domestic businesses on their toes rather than insulated, these laws would set the United States up to maintain its position as the world's leader in tech platform entrepreneurship. In short, taking strong action to update our laws for big tech can bring large benefits to consumers, jobs, investors, and the American economy.