

**Submission for: U.S. FTC Fall 2018 Hearings on “Competition & Consumer Protection in the 21st Century”
Part 3 of 4 submissions for Topic #1: “The state of antitrust and consumer protection law and
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A White Paper for the FTC Hearings, Part 3 of 4 on Topic 1

Fresh Thinking on the Unfair & Deceptive Competition Problem of Google, Amazon & Facebook’s Evident Monopsonizations of Consumer & Supplier Access to Accurate and Honest Information

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DISCLOSURES: *The views here are the author’s, no one asked for or reviewed this prior to submission to the FTC. Scott Cleland served as Deputy U.S. Coordinator for International Communications & Information Policy in the George H. W. Bush Administration. He is President of Precursor LLC, an internetization consultancy for Fortune 500 companies, some of which are Google competitors, and Chairman of NetCompetition, a pro-competition e-forum supported by broadband interests. Cleland has testified before the Senate and House antitrust subcommittees on Google. Eight different Congressional subcommittees have sought Cleland’s expert testimony and when he worked as an investment analyst, Institutional Investor twice ranked him the #1 independent analyst in his field.*

NOTE: This analysis is in part a response to DOJ Antitrust Chief Makan Delrahim’s public call in April for “fresh thinking” on antitrust approaches to digital platforms. He [said](#): “...we should encourage fresh thinking on how our legal tools apply to new digital platforms. We need more thinking—diverse thinking—about these questions. And, we need a civil discourse on this topic.” “I believe that, as enforcers, we should be open and receptive to empirical evidence that companies in digital markets may be engaging in predatory pricing or other exclusionary conduct to drive out competition and cause long-run harm to consumers.”

ABSTRACT: Better protecting the *process* of *fair competition* needs to be a higher priority of the FTC. The purpose of this analysis is to show how the FTC’s evident lax antitrust enforcement of Internet platforms over the last five years is largely a result of the FTC “*missing the [competitive process] forest for the [individual competitor] trees.*”

The evidence shows that three Internet intermediary bottlenecks --Google, Amazon, and Facebook (GAF) --extraordinarily and similarly challenge the FTC’s [vision statement](#): “A vibrant economy characterized by vigorous competition and consumer access to accurate information;” and unique [mission statement](#): “...to protect consumers by preventing anticompetitive, deceptive, and unfair business practices...”.

In apparently myopically focusing on whether a *specific* company is an illegal monopoly that has harmed consumer welfare, it is evident the FTC has neglected a central part of its statutory mission of protecting the nation’s *overall* process of competition for a wide swath of America’s consumer demand and business supply to consumers.

First, American consumers must depend on unaccountable, *monopsony*-bottleneck, Internet intermediary platforms -- Google, Amazon, and Facebook (GAF) which each have aggregated ~90% of online access to consumer demand -- for their continuous “*access to accurate [discovery] information*” for much of America’s consumer economy involving: information access online, click-to-door ecommerce, and social sharing of content.

This de facto monopsony market structure evidently is an overall unfair and deceptive competition process because those economic function bottlenecks evidently neither fairly represent the conflicts of interest of their multi-sided business models to consumers, nor do they have significant competition, independent accountability, or governmental vigilance to ensure that these Internet monopsony bottlenecks are honest brokers of information and fair intermediaries of economy-wide interactions, like other similar economy-wide intermediaries are required to be by the government, i.e. financial, commodity, asset exchanges and brokerages, which have market incentives, absent government deterrent accountability, to front run, self-deal, or abuse sensitive fiduciary information, by virtue of their unaccountable bottleneck monopsony power and position.

Apparently, lax FTC enforcement of Internet platforms has helped enable a gaping hole in consumer protection from “*unfair methods of competition and unfair or deceptive acts or practices*” in American “*consumer access to accurate information.*”

Second, is the mirror image of the consumer problem above. American suppliers and potential competitors to Google, Amazon, and Facebook (GAF) must depend on unaccountable and conflicted, monopsony bottleneck Internet platforms for fair and honest brokering of their economy-wide, business interactions with their customers, and for providing fair, honest, and continuous “*access to accurate [discovery] information*” about their disintermediated customer relationships to ensure that the unaccountable and conflicted, monopsony bottleneck platforms do not abuse their monopsony power and position to unfairly or deceptively front-run, self-deal, or abuse sensitive business/fiduciary information.

The GAF *intermediary* platforms have become the de facto online, consumer market-makers *in between* most American consumer demand for most American consumer business supply with the evident bottleneck monopsony power to:

- *Interrupt* competitive market forces and economic value creation;
- *Intercept* inside information, trade secrets, competitive intelligence, and personal data;
- *Interject* discrimination, front-running, and self-dealing; and
- *Interfere* with the direct supplier-customer relationship, selling, marketing, and branding, because mass disintermediation of consumers and suppliers means that suppliers effectively must negotiate price, terms, and conditions with the platform and not the ultimate customer.

Apparently, lax FTC enforcement of Internet platforms also has helped enable a gaping hole in preventing economy-wide “*unfair methods of competition and unfair or deceptive acts or practices*” by assuming that consumer welfare is determined only by the *end*/result of lower consumer prices, and not also by the *means* of competition (or unfair competition) that provides (or prevents) competitive business models FOR the market (e.g. advertising vs. subscription) and competitive choices IN the market to meet American consumers’ dynamic various needs, wants, and means.

In sum, any fair and honest *intermediation* of economy-wide online *systems* of consumer demand and business consumer supply will naturally trend, via human nature, towards economy-wide unfair and deceptive *disintermediation* of consumer demand and business consumer supply, if there is no feared

enforcement deterrent from the FTC, DOJ, or State AG cops policing the markets to keep them fair and honest.

If the FTC's planned hearings on the state of antitrust and consumer protection since 1995 determine that existing FTC authority is insufficient to address the above evident "unfair and deceptive acts or practices," the FTC should request new authority from Congress to address them urgently.

I. An Evidence-Based Approach to Why Google, Amazon, and Facebook, Are Extraordinary.

From 2013-2017, the annual revenues of Google, Amazon, and Facebook (GAF) grew 183% versus the annual revenue growth of the collective Fortune 500 firms minus the GAF revenues grew 4.4%, 42 times faster over five years. (GAF 2012 revenues = \$116.4b and 2017 \$329.4b, and Fortune 500 – GAF revenues 2012 \$11.94t and 2017 \$12.47t per company reports and [Fortune 500](#) figures.)

GAF revenue growth continues to defy the logic and the [law](#) of big numbers. Investopedia [explains](#): "*In business, the law of large numbers relates to growth rates, stated as a percentage. The law of large numbers indicates that, as a business expands, the percentage rate of growth becomes increasingly difficult to maintain.*"

GAF revenue growth has not been slowing; it continues to defy the law of large numbers. Amazon's annual revenue growth last quarter was a torrid **43%** (~37% sans WholeFoods) off a large ~\$124b base. See it's extraordinary revenue growth chart [here](#). Google's annual revenue growth was a very fast **26%** off a ~\$95b base. See it's extraordinary ad revenue growth chart [here](#). Facebook's annual revenue growth was a torrid **49%** off a ~\$31b base. See it's extraordinary ad revenue growth chart [here](#).

These extraordinary large-scale, consistent long-term, revenue growth results cannot be found in threes in free market competition over time. Competitive markets don't produce extraordinary sustained mature revenue growth like these over such an extended period, because they would be competed away.

These extraordinary revenue growth dynamics in different markets – online Information access monetization; click-to-door ecommerce platform services; and social sharing monetization -- are telling evidence of simultaneous individual monopsonization dynamics with their own market power, unbeatable network effects, and extraordinary barriers to entry. And these three de facto monopsonies do not directly compete in each of their core businesses.

II. An Evidence-Based Approach to Detecting Unfair Competition FOR These Markets

What externality could cause such an extraordinary effect for one company let alone three companies in different markets simultaneously at only one time in modern American history?

In other words what is unique to these companies over this specific time in modern history?

The only externality powerful enough to generate the extraordinary economy-wide, market outcomes above, and that happened coincident with these extraordinary market dynamics, is U.S. Internet industrial policy.

That unique, common, targeted, coincident externality must be U.S. Internet industrial policy and law in the 1996 Telecom Act and its Section 230 that effectively [exempted](#) only Internet companies from: all U.S.

communications law, regulation, and public responsibilities; most non-communications Federal and State regulation; and civil liability for whatever happens via their Internet platforms and business models.

The Precursor LLC study [here](#) was submitted to the DOJ Antitrust Division's Roundtable on Immunities and introduced a causation model that explains the anticompetitive arbitrage effects of asymmetric accountability. It explains the cause and effect of how sweeping U.S. Government exemptions and immunities overwhelmingly favor zero-sum regulatory arbitrage over free market competition; and how accountability arbitrage harms consumer welfare, free market forces, the process of competition, and economic growth. Please see the [causation model](#) on page six and don't miss the [GAF bottleneck chart](#) on page 11 that explains how "accountability arbitrage fosters a winner-take-all bottleneck distribution economy" like we see with GAF today.

In a first-ever attempt to quantify the cumulative anticompetitive effects of the accountability arbitrage [inherent](#) in 1996 U.S. Internet policy, Precursor LLC introduced an initial [cost-estimation model](#) of the huge hidden cumulative public costs (>\$1.5T) of U.S. Internet industrial policy from 1996-2017 for the GAF. Sweeping U.S. government exemptions and immunities from normal business risks and costs overwhelmingly favor zero-sum, parasitic policy arbitrage and corporate welfare, which perversely fosters unproductive "leechonomics." U.S. Internet policy most incents GAF platform business that maximizes arbitrage spreads, i.e. taking maximal societal risk that un-immunized competitors can't take, where the benefits can be capitalized by the GAF platforms, and the costs socialized to the public (>\$1.5T), because the government has only exempted and immunized Internet platforms from normal accountability and responsibility for consumer welfare.

Now it is clearer that the newly installed FTC Chairman and commissioners face an **extraordinary baseline problem of unfair competition FOR these markets**, in the evident extraordinary market power that Google, Amazon, and Facebook (GAF) present. Thus, the new Simons-FTC will have to determine if the 1914 FTC Act needs any modern Internet authority from Congress to best fulfill the FTC's [stated](#) strategic goals to "protect consumers" and "maintain competition."

III. An Evidence-Based Approach to Detecting Unfair Competition IN These Markets

Here is some more "fresh thinking" about antitrust and digital platforms, in the spirit of the remarks of Assistant Attorney General Makan Delrahim for Antitrust [delivered](#) at the University of Chicago's Antitrust and Competition Conference last month: "...we should encourage fresh thinking on how our legal tools apply to new digital platforms. We need more thinking—diverse thinking—about these questions. And, we need a civil discourse on this topic." "I believe that, as enforcers, we should be open and receptive to empirical evidence that companies in digital markets may be engaging in predatory pricing or other exclusionary conduct to drive out competition and cause long-run harm to consumers."

First, a thought experiment here could help the reader better understand the unfair competition nature of the markets the GAF dominate.

Would competition in the below scenario be considered fair or unfair?

Assume three sports leagues. The government grants only one team in each sports league these special benefits. 1) They don't have to follow the rules of the game that all other teams must follow. 2) The city and state laws that apply to all opponents in their respective arenas do not apply to them. 3) They are immune from liability for harming opponent players and fans. 4) When they play against their opponents, they get

to referee the game, and can change the rules of the game anytime they want, with no appeal by the other teams. Which team wins each league's championship every single year?

Sadly, the unfair competition game described above is very similar to the unfair competition game that non-GAF competitors must play and lose today. That's because U.S. Internet [policy](#) Exempts only Internet firms from: all [FCC](#), laws, regs, costs, and duties; most Federal and State regulation; and most civil liability for harms on their platform or from their biz model.

Consider how the Internet Association's 2016 policy [platform](#) touts that Section 230 provides Internet platforms (GAF): "*essential liability protections that have allowed Internet platforms to scale and diversify*" via a "*shield... from liability*" that affords no "*requirements to police their users actions.*"

Importantly, antitrust laws are explicitly unaffected by U.S. Internet policy in section [230](#). "[Section 601\(b\)\(1\)](#) "*... nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.*"

So how does the unfair competition dynamic identified above challenge the FTC's unique mission "...to protect consumers by preventing anticompetitive, deceptive, and unfair business practices...?"

In collectively looking at Google, Amazon, and Facebook, as separate and distinct unfair competition problems and potential antitrust cases, we collectively have created the classic problem of not being able to "see the forest for the trees."

An apparent flaw in our collective antitrust thinking and analysis of Internet platforms to date has been our group-think, obsession to fit Internet platforms, Google, Amazon, and Facebook, into a traditional pre-Internet monopolization case lens, and precedent template. As a result, we apparently have collectively ignored the empirical evidence of how Internet technology, policy, law, and platforms *can* present new and different *patterns of unfair competition behavior and threats* to the protection of consumers and the maintenance of competition.

If we look at "the forest" of GAF rather than just one of the platforms, one can see some telling relevant characteristics to unfair competition that are common to these GAF Internet platforms.

The most defining unfair competition and consumer welfare relevant dynamic that the GAF have in common is that they each have successfully aggregated roughly 90% of aggregate consumer demand for their respective market and core competency i.e. monopsony market power.

Alphabet-Google has aggregated >90% of online consumer demand for mobile information access via near universal mobile search advertising syndication contracts with publishers, manufacturers and carriers. Thus, any supplier/advertiser that seeks to sell to that unique >90% monopsony demand of consumers seeking to access to the world's information must blindly trust that Google will give the "*consumer access to accurate information*" and treat them fairly by not engaging in any "*anticompetitive, deceptive, and unfair business practices*" when it evidently is not in the economic interests of Google's enduring, non-transparent, unaccountable monopsony bottleneck to always be an honest broker of that fiduciary-like intermediation and not front-run, self-deal or spy on their supplier customers/competitors, based on Google's extraordinary asymmetric information advantage.

Amazon has aggregated >90% of online consumer demand in buying power for click-to-door ecommerce platform services via its estimated 60m American household Prime contracts with consumers which practically comprise >90% of America's consumer *buying/spending* power. Thus, any supplier and

competitor to Amazon that seeks to sell through that unique >90% online consumer monopsony called Amazon Marketplace, must blindly trust that Amazon will give the “*consumer access to accurate information*” (prices and choices) and treat them fairly by not engaging in any “*anticompetitive, deceptive, and unfair business practices*” when it evidently is not in the economic interests of Amazon’s enduring, non-transparent, unaccountable monopsony bottleneck to always be an honest broker of that fiduciary-like intermediation, and not front-run, self-deal or spy on their supplier customer/competitor, based on Amazon’s extraordinary asymmetric information advantage.

Facebook has aggregated >90% of online consumer demand for mobile social networking and sharing via its well-known Metcalfe’s law network effect of being the only social network where most of one’s friends are on and available to share with. Thus, any advertiser that seeks to monetize this unique >90% monopsony consumer demand for social sharing must blindly trust that Facebook will give the “*consumer access to accurate information*” (not fake news, fake ads, or fake accounts) and treat them fairly by not engaging in any “*anticompetitive, deceptive, and unfair business practices*” when it evidently is not in the economic interests of Facebook’s enduring, non-transparent, unaccountable social monopsony bottleneck to always be an honest broker of that fiduciary-like intermediation and not front-run, self-deal or spy on their publisher/advertiser based on Facebook’s extraordinary asymmetric information advantage.

In sum, this is extraordinary market circumstance.

~70% of U.S. GDP is consumer spending and a lion’s share of that consumer spending is either intermediated or disintermediated by three enduring, non-transparent, unaccountable monopsony bottlenecks for some of America’s most important and powerful basic functions of the economy: information access, ecommerce, and social sharing.

Will the FTC and DOJ focus on this extraordinary problem with extraordinary resolve to protect the process of competition and long-term American consumer welfare?

Forewarned is forearmed.