April 29, 2020

The Honorable William P. Barr
Attorney General of the United States
The United States Department of Justice
950 Pennsylvania Ave, N.W.
Washington, D.C., 20530

Dear Attorney General Barr,

We are very concerned about the potential harms to competition that may arise from the acquisition of Fitbit by Google parent company Alphabet. We urge you to ensure this potential acquisition receives serious scrutiny. Others have also raised concerns about this merger.[1] In particular we write to urge you to use your full understanding of digital platform economics and the unique business dynamics associated with digital platform markets.

There are enormous impediments to direct horizontal competition against a digital platform that has already achieved dominance. Network effects, economies of scope and scale inherent in data-driven markets, and the tendency of many internet consumers to single home mean that for digital platforms, the big get bigger, and the small have a hard time catching up.[2] Since head-to-head horizontal competition is very rare against dominant digital platforms, it is especially important to protect nascent and potential competition. When head-to-head horizontal competition is scarce, nascent and potential competition may be the only source of real competitive pressure on these companies. It is critical to consider what assets could very effectively offer an avenue for expansion, creating a source of competition "for" the market, if allowed to remain independent and team up with dominant platform adversaries.

Competition can arise in platform markets in a variety of ways. Antitrust enforcers must be vigilant in looking for these when assessing an acquisition by a dominant platform. Particularly relevant here is the possibility for disintermediation: a product that often relies on a platform instead builds direct relationships with consumers without the intermediary of the platform. For

[1] *See, e.g.*, Letter from Open Markets Institute et al., to Joseph Simons, Chairman, FTC et al. (Nov. 19, 2019), *available at* https://openmarketsinstitute.org/wp-content/uploads/2019/11/Opposition-Letter-GoogleFitbit-Merger-1.pdf.

[2] *See* Charlotte Slaiman, *Why Dominant Digital Platforms Need More Competition*, CENTRE FOR INTERNATIONAL GOVERNANCE INNOVATION (April 13, 2020), https://www.cigionline.org/articles/why-dominant-digital-platforms-need-more-competition; George J. Stigler Center for the Study of the Economy and the State, Committee for the Study of Digital Platforms Market Structure and Antitrust Subcommittee Report (Jul. 1, 2019), https://www.publicknowledge.org/documents/stigler-committee-on-digital-platforms-final-report/.

example, many health tracking apps use a smartphone operating system to function. However, Fitbit does not rely on this. In addition to offering apps on Android and iOS, Fitbit also sells its own hardware and connects with users directly. The viability of this business model and particular firms employing it such as Fitbit may exert competitive pressure on Google. While it may not be as significant as the competitive pressure a direct horizontal competitor would exert, due to the difficulty of horizontal competition, it may be important to protect this form of competition.

Another potential method of competition against a dominant digital platform is beginning in one vertical and expanding, either through acquisition, expansion, or contract. Fitbit has ongoing access to a great deal of detailed location data and health-related data of its users. Although Google claims it does not plan *to* use this data for its advertising business, the data could be very valuable to a potential competitor's advertising business. By keeping the ongoing data streams that Fitbit has access to out of the hands of a competitor or potential competitor, Google may prevent competition it could otherwise face. Of course, Google could also change its "plans," something that has occurred with data obtained in previous transactions,[3] raising additional concerns about the potential for Google to expand power over data that may offer lucrative advertising potential.

Given Google's existing dominance in the gathering and monetizing of consumer data, we believe its proposed acquisition of Fitbit deserves careful scrutiny and should be rejected if the Justice Department finds that it may substantially harm competition. The inherent difficulties of growing competition to Google's platform-base suite of data gathering services makes it critical that the Antitrust Division thoroughly assess the potential ways in which an independent Fitbit could potentially grow to compete against Google, and give this appropriate weight during the merger review process.

Sincerely,

/s/ Charlotte Slaiman
Charlotte Slaiman
Competition Policy Director
Public Knowledge

/s/ Mark Cooper
Mark Cooper
Director of Research
Consumer Federation of America

[3] *See e.g.*, 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.