Statement for the Record regarding

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Self-Preferencing in Search Results: Good for Consumers

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NetChoice[1] is a trade association of leading e-commerce and online companies promoting the value, convenience, and choice of internet business models. Our mission is to make the internet safe for free enterprise and for free expression. We work to promote the integrity and availability of the global internet and are engaged on issues in the states, in Washington, and in international internet governance organizations.

We previously twice testified before the Attorney General's two informational sessions on antitrust held in Cincinnati and Cleveland where we outlined the robust competition in the markets and the harm to small Ohio businesses if the Attorney General uses antitrust authority to break apart large technology platforms.[2]

Summary

Self-preferencing is a new term meant to cast doubt on an old concept: vertical integration. Under the consumer welfare standard, vertical integration is blocked only if it harms consumers. Because evidence has shown that vertical integration almost always benefits consumers, critics of the tech industry have had to rebrand vertical-integration practices as "self-preferencing." But whatever term is used to describe vertical integration, the State should not mistake big for bad and hamper innovative practices that benefit consumers.

Digital platforms and marketplaces have benefited consumers massively. Based on the consumer welfare standard, this is an open-and-shut case: Businesses like Amazon and Google connect third parties, including their competitors, with billions of potential customers. They also connect them to tens of thousands of products, including those that they themselves make. So not only do consumers have more choices to choose from, they also have access to higher-quality products at lower costs.

These benefits are not unique to the digital sphere, however. For decades, brick-and-mortar stores like Costco and Walmart have used vertical integration to cut costs, reduce prices, and attract customers. At the same time, these stores—like their digital competitors—have had to compete on quality. Self-preferencing is of little use if consumers reject the product.

To be sure, vertical integration can be abused. But that has not occurred with digital platforms or marketplaces. To the contrary, these businesses have increased competition, improved quality, and cut prices. That truth should not be submerged simply because populist antitrust wants to turn the clock back to 1960.

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[1] NetChoice is a trade association of e-Commerce and online businesses, at www.netchoice.org The views expressed here do not necessarily represent the views of every NetChoice member company.

[2] *See*, NetChoice Testimony before The Ohio Senate Judiciary Committee Presentations on Antitrust Issues October 17, 2019 Cleveland, Ohio, https://netchoice.org/wp-content/uploads/2019/10/NetChoice-Testimony-Ohio-Senate-Judiciary-17-Oct-2019.pdf, NetChoice Testimony before The Ohio Senate Judiciary Committee Presentations on Antitrust Issues October 28, 2019 Cincinnati, Ohio, https://netchoice.org/wp-content/uploads/NetChoice-Testimony-Ohio-Senate-Judiciary-28-Oct-2019.pdf.

What is Past is Prologue: Big-is-Bad Gut Instincts

Antitrust laws in the United States are meant to protect the benefits consumers receive from competitive markets.[3] Businesses that have to compete will usually cut prices while increasing the quality of their products or services.[4] And ever since the Sherman Act became law in 1890, "'protecting consumers from monopoly prices' has been 'the central concern of antitrust.'"[5] Antitrust laws also "stimulate businesses to find new, innovative, and more efficient methods of production," which also benefits consumers.[6]

But for much of our history, antitrust relied on "confused doctrines that pursued populist notions" that mistook big for bad.[7] By following these populist appeals, the government's enforcement decisions "led to contradictory results that purported to advance a variety of social and political goals at the expense of American consumers."[8] In the Sherman Act's first decade, for example, the Supreme Court held that the law was meant to protect "small dealers and worthy men."[9] Decades later, the Court reaffirmed that interpretation, holding that antitrust laws are meant to protect "viable, small, locally owned business" even when that protection means "higher costs and prices."[10]

But in the 1970s, economists were successful in anchoring antitrust analysis in consumer welfare.[11] They were so successful, in fact, that the United States became the first country to root antitrust analysis in economics.[12] Under the consumer welfare standard, antitrust uses economic learning and evidence to assess whether a business's actions benefit or harm consumers.[13] Business decisions that benefit consumer welfare are allowed; those that harm consumer welfare are blocked. Economists, antitrust scholars,[14] and U.S. courts[15] agree that the consumer welfare standard has succeeded in protecting consumers. That success came only once the government abandoned its big-

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[3] DEP'T. OF JUSTICE, *Antitrust Enforcement and the Consumer* (last accessed Mar. 6, 2020), https://www.justice.gov/atr/file/800691/download.

[4] *Id.*

[5] *Apple v. Pepper*, 139 S. Ct. 1514, 1525 (2019) (internal citation omitted).

[6] *Id.*

[7] Joshua D. Wright et al., *Requiem for a Paradox: The Dubious Rise & Inevitable Fall of Hipster Antitrust*, 51 ARIZ. ST. L.J. 293, 294, 299 (May 2019), http://arizonastatelawjournal.org/wp-content/uploads/2019/05/Wright-et-al.-Final.pdf.

[8] *Id.* at 294.

[9] United States v. Trans-Mo. Freight Ass'n, 166 U.S. 290, 323 (1897).

[10] Brown Shoe Co. v. United States, 370 U.S. 294, 333, 344 (1962).

[11] *Id.*

[12] Roger D. Blair & D. Daniel Sokol, Welfare Standards in U.S. and E.U. Antitrust Enforcement, 81 Fordham L. Rev. 2497, 2508-09 (2013).

[13] *Id.*

[14] Joshua D. Wright & Douglas H. Ginsburg, *The Goals of Antitrust: Welfare Trumps Choice*, 81 FORDHAM L. REV. 2405, 2406 (2013).

[15] *See, e.g.*, *Pac. Bell Tel. Co. v. Linkline Commc'ns, Inc.*, 555 U.S. 438 (2009).

is-inherently-bad gut instinct and aligned its legal theories of harm with economic theories of anticompetitive harms.[16]

But the consumer-welfare model is under attack. Concern about corporate power, income inequality, wage stagnation, and other social ills has sparked calls to "solve" social problems through populist antitrust.[17] This thinking would have the United States abandon, or at least weaken, the consumer welfare standard.

By abandoning the consumer welfare standard, the United States would be following Europe's lead. European courts have held that the E.U.'s main antitrust law, the Treaty on the Functioning of the European Union (TFEU), "is designed to prevent competition from being distorted to the detriment of the ***public interest***, individual undertakings and consumers" so that "the well-being of the European Union" is protected.[18] The broad concept of "the public interest" refers to yet another broad concept, "fairness." Answering whether something is fair relies on subjective instincts, which is in part why the European Union focuses far less on economic analysis than the United States does.[19]

It is also why the European Union has far more government intervention in the market.[20] Most recently, that intervention has been in policing "self-preferencing" among U.S.-based technology firms like Google, Amazon, and Facebook.[21] According to the European Commission, "dominant tech companies have a special responsibility to avoid favoring their own in-house products and services over competitors."[22] So even though consumers may benefit, and even though E.U. competition law does not address self-preferencing directly, self-preferencing, the argument goes, is "unfair" and therefore illegal.[23]

Similar thinking about self-preferencing may be on the rise in Ohio. If accepted, it will blow apart the U.S.'s consumer-welfare approach to antitrust and turn the clock back to the 1960s, when the courts and federal government put their gut instincts about "fairness" ahead of economic evidence of consumer well-being. That would be unfortunate, to say the least.

"Self-Preferencing": Slogan in Search of Consumer Harm

"Self-preferencing" is the latest buzzword that alleges that large digital marketplaces and platforms favor their own products and services over those of competitors. In other words, self-

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[16] Wright, *supra* note 6, at 305.

[17] *Id.* at 294.

[18] Case C-52/09, 2011 E.C.R. I-00527, ¶¶ 22–23 (emphasis added).

[19] Roger D. Blair & D. Daniel Sokol, *Welfare Standards in U.S. and E.U. Antitrust Enforcement*, 81 FORDHAM L. REV. 2497, 2514 (2013), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4889&context=flr.

[20] *See generally* Francesco Russo et al., EUROPEAN COMMISSION DECISIONS ON COMPETITION 113–97 (2010).

[21] Valentina Pop & Sam Schechner, *Google Appeals Against EU Antitrust*, WALL ST. J. (last updated Feb. 12, 2020), https://www.wsj.com/articles/google-starts-appeal-against-eu-antitrust-decisions-11581516872.

[22] *Id.*

[23] *Id.*

preferencing rebrands standard vertical-integration practices,[24] which are widely accepted as good for consumers, to suggest something unseemly is at work. The term reflects a "general hostility to firm size regardless of its actual impact on competition or consumer welfare."[25]

But that hostility is about more than just firm size; it is primarily about firm type. Today's calls to ban or restrict self-preferencing are targeted almost exclusively at digital platforms like Google and digital marketplaces like Amazon.[26] Indeed, despite brick-and-mortar marketplaces engaging in vertical-integration practices for decades, those practices became a problem only once certain politicians and competitors began turning against the technology industry—***even though consumers' ability to switch digital providers is vastly easier than switching to a different physical store.***

In fact, similar vertical integrations occur throughout the American economy, such as Gillete "preferring" to include its own replacement blades with its razors or Coca-Cola "preferring" its own beverages in its vending machines. Examples of brick-and-mortar businesses "preferencing" their own products are nearly limitless. Consider:

CVS Health
Gold Emblem
Beauty 360

Kirkland Brand products

Sam's Club
Great Value
Equate

Townhouse
Edwards Coffee
Bel Air Frozen Food
Busy Baker Cookies & Crackers

Vertical integration involves the same practices in online marketplaces as it does in brick-and-mortar marketplaces. But critics of American tech want antitrust to be enforced only against tech. So to get around the problem of enforcing antitrust policies equally, critics have invented a new term: self-preferencing. This term allows critics to discriminate against Big Tech discreetly: Brick-and-mortar

[24] Maurits Dolmans & Tobias Pesch, *Should We Disrupt Antitrust Law?*, Cleary Gottlieb Steen & Hamilton LLP 10 (July 15, 2019), https://www.clearygottlieb.com/-/media/files/should-we-disrupt-antitrust-law-pdf.pdf.

[25] Wright, *supra* note 6, at 341.

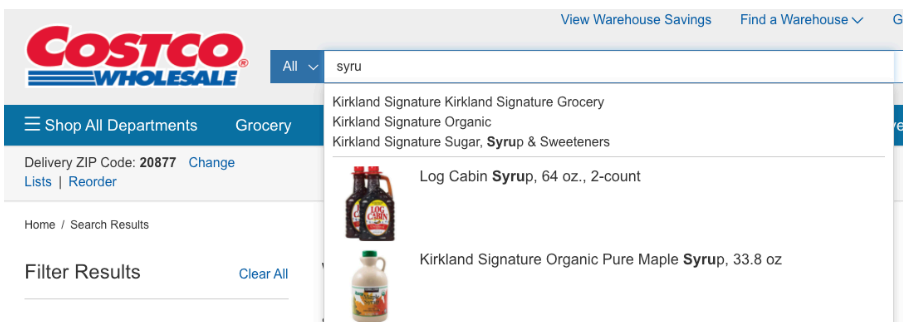
[26] *See, e.g.*, Lina M. Khan, Amazon's Antitrust Paradox, 126 YALE L.J. 710, 792-97 (2017).

marketplaces engage in good "vertical integration"; online marketplaces engage in bad "self-preferencing."

Discrimination Against Digital Platforms & Marketplaces

This dichotomy of vertical integration versus self-preferencing is intellectually dishonest. To understand why, start by considering big-box stores like Costco and Walmart. Costco is the second-largest retailer in the United States, operates 543 stores here, boasts over 98 million cardholders, and had net sales of over $149 billion last year.[27] Even more impressive, Walmart is the largest retailer in the United States, operates 4,769 stores here, and netted over $510 billion last year.[28]

Both Costco and Walmart own and sell their own brands, too. Costco's Kirkland Signature brought in sales of nearly $40 billion—about a third of its business—in 2018.[29] That $40 billion was more than JCPenney's and Macy's sales combined, and more than Kellogg's, Hershey's, and Campbell Soup's sales combined.[30] Kirkland is so popular among consumers that analysts credit the brand for drawing consumers to Costco's stores, and for convincing them to pay Costco's annual $60 or $120 membership fee.[31] Walmart's brand, Sam's Choice, is sold in Walmart's brick-and-mortar stores, online, and in Walmart's subsidiary, Sam's Club. Sam's Club is Costco's main competitor.



Costco preferences its own "Kirkland" brands when searching for syrup

Now consider Amazon—the world's largest online retailer.[32] Like Costco, Amazon launched in its own private brand, AmazonBasics, and uses that brand to entice consumers to become Amazon Prime

[27] Statista, *Number of Costco Warehouses in 2019, by Country* (last accessed Mar. 6, 2020), https://www.statista.com/statistics/284431/number-of-costco-warehouses-2013-by-country/.

[28] Statista, *Total Number of Walmart Stores in the U.S. from 2012 to 2019, by Type* (last accessed Mar. 6, 2020), https://www.statista.com/statistics/269425/total-number-of-walmart-stores-in-the-united-states-by-type/.

[29] Nathaniel Meyersohn, *How Kirkland Signature Powers Costco's Success*, CNN BUSINESS (Jan. 10, 2019), https://www.cnn.com/2019/01/10/business/costco-kirkland-signature-brand/index.html.

[30] *Id.*

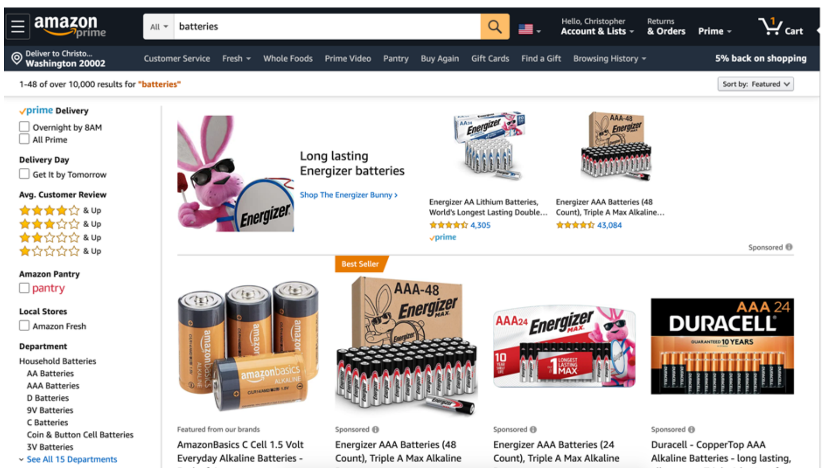
[31] *Id.*

[32] Lauren Debter, *Amazon Surpasses Walmart as the World's Largest Retailer*, FORBES (May 16, 2019), https://www.forbes.com/sites/laurendebter/2019/05/15/worlds-largest-retailers-2019-amazon-walmart-alibaba/#7243ea774171.

members for an annual cost.[33] AmazonBasics got its start selling common household products like batteries.[34] With prices around 30% less than other brands, AmazonBasics was a quick success[35] and led to the company's development of more than 140 private brands.[36] Like Costco, Amazon sells its own products alongside its competitors' products on Amazon's website. Nonetheless, AmazonBasics constitute only 1% of Amazon's sales.[37]

Although Amazon went from owning one private brand in 2009 to over 140 today, outside sellers saw their share of Amazon's sales grow to 58% last year.[38] Despite these increased sales, Amazon's decision to sell its own brands has been cast as anticompetitive. Yet this anticompetitive narrative is contradictory on its face: Amazon's products increase competition by giving consumers more choices.

But, critics claim, Amazon uses its marketplace to favor its own products over those of its competitors.[39] These critics allege that Amazon: (1) uses data collected from its marketplace—consumer search terms, customer reviews; (2) product placement; (3) tags like "best seller" and "Amazon's Choice"; and (4) Amazon's Alexa to favor its own brands.[40] Even if all this is true, critics have



When searching for "batteries" at Amazon, the top result is an advertisement and only the first in the series of 4 is AmazonBasics, which is also the least expensive

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[33] Julie Creswell, *How Amazon Steers Shoppers to Its Own Products*, N.Y. TIMES (June 23, 2018), https://www.nytimes.com/2018/06/23/business/amazon-the-brand-buster.html.

[34] *Id.*

[35] *Id.*

[36] Jack Nicas, Karen Weise, and Mike Isaac, *How Each Big Tech Company May Be Targeted by Regulators*, N.Y. TIMES (Sept. 8, 2019), https://www.nytimes.com/2019/09/08/technology/antitrust-amazon-apple-facebook-google.html.

[37] Jack House, *The Biggest Winner on Amazon Prime Day? Amazon's Own Brands.*, Barron's, (July 12, 2019).

[38] *Id.*

[39] Creswell, *supra* note 32.

[40] *Id.*

not pointed to any actual consumer harm. Indeed, Amazon's marketplace is more competitive than ever before, and consumers have more options than ever.

It's also worth pointing out that, unlike many of their brick-and-mortar competitors, tech companies make it easy for consumers to see a product's seller. Consider this screenshot from Amazon's website: Although Amazon's AmazonBasics brand is featured on the first page of results, it comes marked with "Featured from our brands." And it's featured directly next to Amazon's main product competitors: Energizer and Duracell. Indeed, Amazon even lets its competitors buy prominent ad space right at the top of the search results page. With over 10,000 results for "batteries," Amazon's marketplace is full of options for consumers. And to the extent that it bothers some that Amazon puts its brand on the first page, that is like complaining that Macy's puts its own branded products in highly visible sections of its stores. Yes, the point is to put the option before consumers, but ultimately consumers benefit from that (see next section). And marketplace-branded products serve as a useful **anchoring tool**: they give consumers a sense of low prices, empowering them to make smart decisions about how best to spend their money. In other words, consumers won't be duped into spending more *unless* they want to.

Digital Platforms & Marketplaces Benefit All Consumers

Amazon's vertical-integration practices have, in other words, benefitted Amazon's competitors. Amazon's not alone: Google's, Apple's, Facebook's, and others' vertical integration have benefitted both competitors and consumers. This result is because, as Senator Mike Lee explained, "platforms, by virtue of their own vertical integration, create an economic ecosystem that enables other businesses to avoid having to vertically integrate themselves."[41] The upshot of this ecosystem is that small businesses can use "the various services these platforms provide so that they can focus on their core business."[42]

Another reason: Digital platforms and marketplaces have to compete on quality.[43] Take Google Search, for example. Launched in the internet's early years, Google Search originally returned a list of just 10 links—all to external websites.[44] These days, Google Search returns lists of countless external links and often answers consumers' questions itself.[45]

Critics have not explained why Google's success in answering consumers' questions is a problem, let alone an antitrust problem. Google Search competes against Microsoft's search engine, Bing, against Yahoo!'s search engine, and against newcomer DuckDuckGo's search engine. Google also competes with many vertical search providers, such as Yelp, Expedia, Amazon, and many others. And consumers can now find answers from a growing number of innovations, such as competing digital assistants. So if Google Search's preference for answering questions directly was not useful,

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[41] Competition Policy International, *CPI Talks With Senator Mike Lee* (Mar. 1, 2020), https://www.competitionpolicyinternational.com/cpi-talks-with-senator-mike-lee/.

[42] *Id*.

[43] Dolmans, *supra* note 23.

[44] Nicas, *supra* note 35.

[45] *Id*.

consumers would turn elsewhere. And given the continued user growth for companies like Amazon and Yelp, many users do turn to rivals for their search needs.

That Google Search is most consumers' go-to choice for many online searches reflects the platform's quality and most consumers' preferences. But that success does not mean Google Search is without competition—far from it. Yelp's user numbers have steadily increased despite its complaints to regulators, most recently boasting that it serves almost 100 million local search users.[46] In a July 2019 interview, when asked about his company's complaints about Google, Yelp's Senior Vice President of National Sales stated that:

> On the sales side, I feel we can fight the fair fight and compete on our merits. I'm not an expert in public policy.
>
> **We grew 22% from Q1 2018 to Q1 2019.** As an example, we've identified 250 strategic accounts we're really focused on and have entered in 60 of them. We're seeing growth, and we have years of runway ahead of us in terms of enterprise opportunity. We hold our own performance-wise.[47]

Although analysis of vertical integration analysis focuses on benefits or harms to consumers, not competitors, the lack of harm by Google Search's results to even Yelp is a telling sign of robust digital competition.

Apple, too, has been accused of self-preferencing at competitors' and consumers' expense.[48] But like Amazon's and Google's practices, Apple's vertical integration benefits both groups. First, consider the allegation: Because Apple makes the iPhone, and because the iPhone's App Store is tightly controlled by Apple, and because Apple offers its own apps and services on the App Store, this must mean that Apple kneecaps its competitors.[49] Spotify, a digital music platform, for example, advanced this argument in the European Union, claiming that Apple's 30% commission fee to use the App Store harms competition because Apple Music, a competing music platform, is available on the App Store and Apple does not have to pay a fee to use its own App Store.[50]

Common sense undercuts this argument. First, Apple's development of Apple Music gives consumers another choice for streaming music. Second, Apple owns the App Store, which means Apple pays for the platform's employees and funds its research and development. Third, Apple charges a 30% commission ***only if*** a developer uses the App Store to gain user subscriptions. So if a consumer subscribes to Spotify on Spotify's own website, Spotify pays nothing when that consumer then downloads its app from Apple. With this in mind, Spotify's argument is that it should benefit from

[46] Yelp, *Investor Presentation* (Feb. 2020), https://s24.q4cdn.com/521204325/files/doc_financials/2019/q4/Yelp-Investor-Presentation_February-2020.pdf.

[47] Sarah Sluis, *After Conquering Local Ads, Yelp Eyes National Sales* (July 10, 2019), https://www.adexchanger.com/the-sell-sider/after-conquering-local-ads-yelp-eyes-national-sales/#more-124407.

[48] Nicas, *supra* note 35.

[49] *Id.*

[50] Thomas Ricker, *Apple to be Formally Investigated Over Spotify's Antitrust Complaint, says Report*, The Verge (May 6, 2019), https://www.theverge.com/2019/5/6/18530894/apple-music-monopoly-spotify-app-store-europe.

Apple's development of the App Store, which reaches millions, for free, even when it gains subscribers through the App Store and even though Apple Music is a competitor.

What common sense suggests, empirical evidence confirms: Apple's vertical integration benefits competitors and consumers. Over 84% of those who use the App Store pay nothing and share *none* of the revenue generated by the App Store with Apple.[51] And, like Amazon and Google, the App Store allows developers to reach millions of consumers that they otherwise would not be able to reach without creating their own device, platform, service—or all three. So for a 30% fee, Spotify is able to access the 45% of smartphone users—over 100 million people—in the United States who use an iPhone.[52] Even for those who pay the 30% fee, Apple's App Store still benefits competitors. Apple reinvests the fee into improving its App Store and developing free tools for developers to use.[53]

To date, Apple's App Store has generated over $120 billion for other businesses.[54] Another benefit: Consumers who use Apple's App Store also spend more on average than do consumers who use other app platforms.[55] And for Spotify in particular, Apple received a commission on just 680,000 of Spotify's 100 million subscriptions.[56]

"Self-Preferencing": A Backdoor to a Duty to Deal

Critics of "self-preferencing" want to impose a duty to deal on technology firms—a radical departure from antitrust precedent.[57] Over a century ago, the Supreme Court held that "[i]n the absence of any purpose to create or maintain a monopoly, the [Sherman Act] does not restrict the long recognized right of [a] trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal."[58] Nearly nine decades later, the Court reaffirmed that principle.[59]

But this principle is not absolute. As the Court explained: "Under certain circumstances, a refusal to cooperate with rivals can constitute anticompetitive conduct and violate §2" of the Sherman

[51] Apple, *App Store: Dedicated to the Best Store Experience for Everyone* (last accessed Mar. 6, 2020), https://www.apple.com/ios/app-store/principles-practices/.

[52] Statista, *Share of Smartphone Users that Use an Apple iPhone in the U.S. from 2014 to 2021* (last accessed Mar. 6, 2020), https://www.statista.com/statistics/236550/percentage-of-us-population-that-own-a-iphone-smartphone/.

[53] Apple, *supra* note 50.

[54] *Id.*

[55] Sarah Perez, *App Store Generated 93% More Revenue than Google Play in Q3*, TECHCRUNCH (Oct. 11, 2018), https://techcrunch.com/2018/10/11/app-store-generated-93-more-revenue-than-google-play-in-q3/.

[56] Chris Crooke, *Apple Says Spotify has Exaggerated the Impact of its App Store Fees*, COMPLETE MUSIC UPDATE (June 25, 2019), https://completemusicupdate.com/article/apple-says-spotify-has-exaggerated-the-impact-of-its-app-store-fees/.

[57] Dolmans, *supra* note 23.

[58] *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919).

[59] *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2004) (quoting *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919)).

Act.[60] Even in these "certain circumstances," however, there must be some "anticompetitive conduct" that harms consumers. To date, critics of self-preferencing have not shown that it harms consumers—indeed, as this testimony explains below, self-preferencing benefits both competitors and consumers.

Despite the lack of harm and ample evidence of consumer benefit, critics of self-preferencing still want to impose a duty to deal on tech firms. They want these firms to treat their competitors' businesses the same way they treat their own business. The critics' argument can be summed up as: because tech firms are large and because they are digital, they should not be able to prefer their own products or services, even if doing so benefits competitors, consumers, and the economy more broadly.

Embracing New-And-Innovative Business Practices:

Procompetitive and exclusionary conduct are often brewed in the same barrel: conduct that benefits consumers also tends to exclude competitors. So even with an eye toward consumer welfare, spotting the difference can be difficult. This is especially true in multi-sided markets—like those Amazon, Apple, Facebook, and Google compete in—where a platform's conduct may benefit one group of consumers, while seemingly harming another. "Self-preferencing" is simply and old business tactic that tech platforms have adapted for the digital realm. It's also helped platforms develop innovative products. The problem, then, is that critics don't seem to connect innovation in products with innovation in business practices.

So without such practices, product innovation will slow. Even worse, tech's business strategies, models, and practices benefit both consumers and the economy. And in fact, they are practices that other industries will likely adopt to remain competitive as their markets grow integrated and ever-more digital. Think about the banking industry. Not only is it moving online, it's becoming an entirely digital market for some consumers.

Or take an industry that remains relatively old school: credit cards. Even here, innovative practices that looks anticompetitive are actually good for consumers. For example, Amex requires merchants to abide by its anti-steering requirements, which prohibit merchants from encouraging patrons to use non-Amex credit cards. (Merchants may be tempted to do so because Amex charges them a higher fee than do most other companies.) Although this practice seems anticompetitive, the Supreme Court found that actually it's procompetitive because it supports Amex's rewards program, which is more generous than other companies', including Visa's and Mastercard's.

Rather than condemn the new-and-better, or even the new-and-potentially-better, the government should celebrate the market's innovations.

And if the concern is that American tech platforms are "hurting innovation," as some claim, consider that tech spends more on research and development and has higher capital expenditures than almost every other industry in the country:

[60] *Id.*

Tech companies lead in R&D spending (billions of USD)

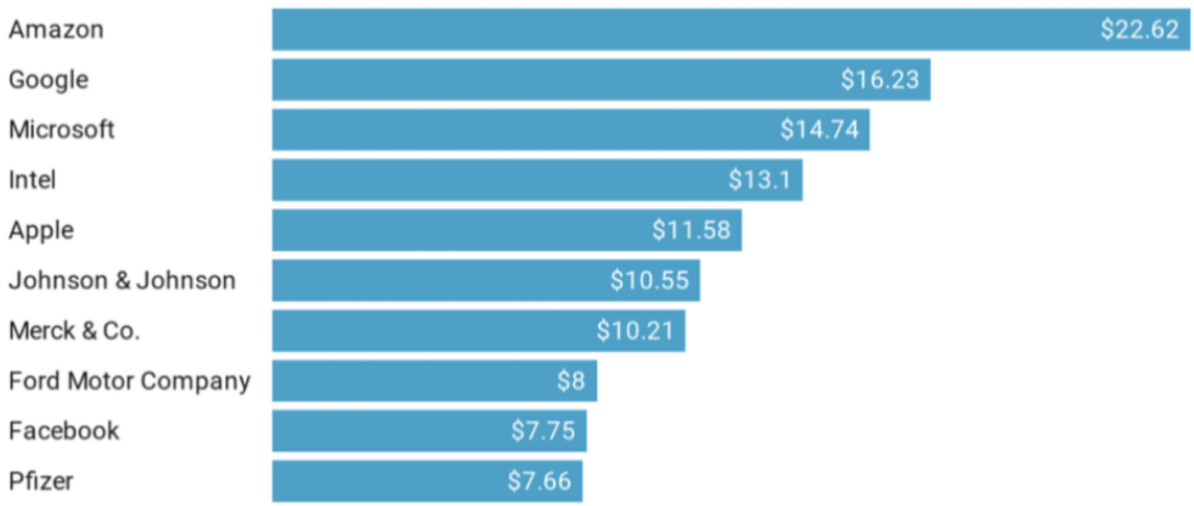

Chart: Alec Stapp (PPI) • Source: ideatovalue.com • Created with Datawrapper

TABLE 5: NON-ENERGY U.S. INVESTMENT HEROES: TOP 25 NONFINANCIAL COMPANIES BY ESTIMATED U.S. CAPITAL EXPENDITURE*

	COMPANY	ESTIMATED 2018 U.S. CAPITAL EXPENDITURES (MILLIONS USD)
1	ALPHABET	20,188
2	AT&T	19,209
3	AMAZON.COM	15,577
4	VERIZON COMMUNICATIONS	14,912
5	MICROSOFT	11469
6	COMCAST	10,890
7	FACEBOOK	10,763
8	CHARTER COMMUNICATIONS	9,125
9	WALMART	7,683
10	INTEL	7,426
11	APPLE	7,129
12	FORD MOTOR	6,513
13	GENERAL MOTORS	5,756
14	FEDEX	5,255
15	DELTA AIR LINES	5,168

Bottom Line

Whether a business operates brick-and-mortar stores, digital marketplaces, or both, vertical integration benefits consumers. But digital platforms like Google Search and Apple's App Store benefit both consumers *and* their competitors. Today, consumers use digital app platforms and marketplaces with increasingly regularity—and those platforms support entrepreneurship like never before. Thanks to these platforms, small businesses can opt to own brick-and-mortar stores, sell online, or do both. This means local businesses can reach beyond their local communities. It also means consumers are not limited to their geographic region.

Digital platforms and marketplaces are also driving investment in the U.S. economy and its workers. The Progressive Policy Institute's U.S. Investment Heroes Report, for example, cites the top three industries for investment as technology-related.[61] What's more: firms like Alphabet (Google), Amazon, Microsoft, and Facebook are among the top ten companies investing in the United States.[62] Their investments totaled more than $60 billion last year alone.[63]

All these benefits—lower prices, higher-quality products and services, greater competition, more entrepreneurship—are made possible by the consumer-welfare model. Tweaking antitrust doctrine to cast self-preferencing as an anticompetitive practice will return the United States to its 1960s' understanding of antitrust. And it'll ensure these benefits are reduced.

[61] Michael Mandel & Elliott Long, *Investment Heroes 2019: Boosting U.S. Growth* (Dec. 2019), https://www.progressivepolicy.org/wp-content/uploads/2019/12/PPI_InvestmentHeroes2019_V4.pdf.

[62] *Id.* at P8.

[63] *Id.*