



AMERICAN ANTITRUST INSTITUTE

DIGITAL PLATFORMS ROUNDTABLE

APPLYING THE ANTITRUST LAWS TO DIGITAL PLATFORMS

March 22, 2018

National Press Club, Washington, D.C.

On Thursday, March 22, the American Antitrust Institute (AAI) will host an industry roundtable, *Applying the Antitrust Laws to Digital Platforms*. Digital platforms encompass ecosystems for providing multiple and linked services. They allow networks of participants to connect, interact, and create and share the value from a variety of online activities. Platforms can be centered on advertising, e-commerce, digital goods, and more.

Questions about the efficacy of the antitrust laws in overseeing large technology platforms are a prominent theme in public policy discourse. Many advocates contend that the antitrust laws are fully able to handle anticompetitive conduct or mergers that may arise in digital markets. Others question whether the existing laws and the prevailing consumer welfare standard are up to this important task.

AAI's Digital Platforms Roundtable will address the growth of digital platforms and advance the state of thinking about competition in this important domain. The Roundtable will explore the central question: What does an analysis of digital platforms under the antitrust laws look like?

The Roundtable will bring together experts in competition law from government, industry, academia, and the public interest community. They will participate in discussions about the elements of antitrust approaches to mergers and strategic competitive conduct and advance the debate on the applicability of the antitrust laws to digital platforms. The half-day program will include opening remarks, two panels, and a roundtable discussion.

Panel 1: How Do Platforms Compete? Exploring Market Definition and Direct Evidence of Anticompetitive Effects

Market definition and direct evidence of anticompetitive effects are important elements of monopolization cases under Section 2 of the Sherman Act and merger enforcement under Section 7 of the Clayton Act. These concepts hone in on the presence or absence of existing or potential market power. This panel will take up basic issues relating to market definition and competitive effects evidence in the digital platform context.

Among other questions, panelists will address: How do these concepts apply to “exchange” based on consumer attention and information versus price? What is the role of data, network effects, and two-sided markets? Do digital platform players compete in a differentiated

platform context and, if so, what are the implications for assessing market power? Panelists will answer questions relating to when and how the principles underlying market definition apply, as well as the circumstances under which direct evidence of competitive effects can and should be used in the digital platform context.

Examples of market definition issues from previous antitrust merger and conduct investigations will be helpful in framing this discussion, including eBooks, online search, online and mobile advertising, credit card networks, and more.

Panel 2: How Can We Protect and Promote Platform Competition? Competitive Effects and Remedies

This panel will examine the competitive effects of past and potential mergers and strategic conduct involving platforms, both in the U.S. and abroad. The discussion will focus on monopolization, merger enforcement, and Section 5 “unfair methods of competition” authority in the U.S.

Among other questions, panelists will address: How would the merger incipiency standard be applied to digital platforms and what constitutes a showing of actual or potential adverse competitive effects? Does the potential competition doctrine need to be modified? Are buyer cartels relevant in the context of digital platforms? And how does predatory behavior potentially manifest in these markets?

Panelists will compare and contrast the U.S. and European approaches to monopolization and abuse of dominance involving digital platforms. They will also discuss the related issue of antitrust remedies for digital platforms. This includes the role and efficacy of structural and conduct remedies, implications of imposing remedies in highly integrated, complementary digital markets, and other issues that are central to crafting effective relief, if an antitrust violation is proven.