If implemented appropriately, certain proposed draft Merger Guidelines could help achieve the following policy changes:

**Ensure enforcement of antitrust law and reform or modernize antitrust laws where necessary.**

- Enforce existing antitrust laws through scrutiny of Big Tech mergers—past, present, and future—and anti-competitive behavior using the Department of Justice and/or the Federal Trade Commission (FTC).¹
  - Launch and prompt aggressive antitrust investigations (for example, through committee oversight and relevant federal agencies) to ensure that Big Tech companies are not utilizing legitimate oligopoly power in one market to gain an unfair advantage in another market. At a broader level, these investigations should also verify that Big Tech companies are not engaging in other illegal antitrust actions.²
    - For Big Tech platforms that leverage their market dominance to shape the public square, prohibit these platforms from preferencing their own products or combining the “buy-side” of the market with the “sell-side” (for example, Google’s ad practices or even cross-market permutations of this behavior such as Google creating an anti-competitive tie with its operating system, app store, and search app).³ Companies to which this scrutiny broadly applies include Alphabet, Amazon, Apple, Meta, and Microsoft.
    - Like per se violations under the Sherman Act, prohibit collusion by firms across the entire digital stack, including social media platforms, which would deny consumers access to a specific type of Internet service or Internet access. If collusion exists, this should be subject to penalties under both federal and state law. For example, Amazon Web Services, Apple, and Google’s combined takedown of Parler across the cloud services and app markets within approximately 48 hours in January 2021 would be prohibited by this recommendation.⁴
      - Ensure that antitrust enforcement agencies have the necessary resources to investigate Big Tech mergers properly and effectively.⁵
- Launch aggressive antitrust investigations to determine whether Big Tech companies are colluding on content moderation and viewpoint discrimination against legitimate speech.⁶
- Develop arguments that the limitation of access to legitimate political speech and the exploitation of user data constitute harm to consumers.⁷
Clarify that the consumer welfare standard, which should be codified into law, applies to zero price markets that consist of “free” services in terms of fees for the use of social media platforms, search functions, etc. Clarify for all stakeholders (legislatures, the courts, etc.) that antitrust law must be applied to Big Tech firms, which often leverage and hide behind their zero price practices as a justification for behavior that would otherwise be constrained by the proper application of existing antitrust rules.

- If the enforcement of existing antitrust law does not sufficiently address Big Tech’s abuse of market dominance, business practices, and harm to consumers, then Congress should reform or modernize antitrust laws to contend with this abuse more effectively.

**Scrutinize Big Tech companies’ ad tech model.**

- Prompt the FTC to investigate unfair and exploitive data collection, storing, and sharing; excessive online surveillance; and anti-competitive digital advertising practices such as those mentioned above.
- Severely curtail current microtargeting practices that exploit user privacy. For instance, companies can collect generic consumer information under a certain threshold of identifiable information, but biometric data should be classified as “sensitive data” and be given additional privacy protections and strictures including strict time limits on data retention, third-party data sharing, and the prohibition of indefinite data storage. Privacy-preserving technologies should be encouraged at all times.

Respectfully Submitted,

_/s/ Kara Frederick & Jake Denton_

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ii Ibid.

iv Kara Frederick, “Combating Big Tech’s Totalitarianism: A Road Map,” Heritage Foundation Backgrounder No. 3678.
v Ibid.
vi Ibid.
vii Ibid.
viii Ibid.
ix Ibid.
x Ibid.