



Establishing a White House Taskforce to Promote Digital Market Competition

An Executive Memo

Gene Kimmelman & Erik Nikolaus Martin

Memorandum -- Establishing a White House Task Force to Regulate Digital Platforms and Promote Competition

DRAFT MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Establishing a White House Task Force to Regulate Digital Platforms and Promote Competition

In the last two decades, the digital marketplace has transformed the majority of the economy and the daily lives of billions of people worldwide. This transformation has delivered great gains to consumers and unlocked whole new technological opportunities for society to thrive. However, amidst these gains, palpable consumer harms and anti-competitive behaviors have also become clearer, and the bottom-up innovative dynamism that ushered forth the digital marketplace is increasingly under threat.

The current lack of legally mandated and enforceable duties to protect consumers and ensure competition in the new digital environment, as well as the practical limitations of antitrust jurisprudence, has left consumers, society, and the economy at enormous risk. In a time of national duress, the growth of a solid middle-class economy is threatened by the dominance of a handful of digital giants. Yet, we are still reliant on statutes and regulatory models adopted in the industrial era that are insufficient to deal with the realities of the internet era. In turn, the dominant digital companies have made their own rules and imposed them on consumers and the market.

Without serious government oversight, digital platform companies have been able to accrue massive power and unchecked influence, leveraging their market dominance for their financial interests, which often conflicts with consumer interests. Anti-competitive behaviors, such as buying up competitors and creating proprietary marketplaces to limit competition, often restrict innovation and limit consumer options. These behaviors also create feedback loops to secure greater wealth and power, which have ultimately helped companies ward off unwelcome government remedies.

The resulting harms to the consumer in this environment have become evident, including the invasive exploitation of personal privacy and data, the enablement of predatory demographic targeting practices, and the manipulation of consumer attention, sentiments, and behavior. In addition, a lack of transparency or accountability fuels the perpetuation of systemic racial bias via technology systems used for e-commerce, communication, criminal justice, real-estate, education, and healthcare, to name just a few sectors. Beyond direct consumer harms, societal harms also emerge from a more comprehensive outlook, including problems of content moderation and amplification of hate speech and disinformation across networks designed to maximize user engagement and captivity while disregarding local context and any standard of ethics.

Furthermore, these companies fail to understand and address the impact of their global reach, casting unknown ripple effects through societies at every level: documented human rights abuses, sharp declines in reliable local news reporting, and election interference. While these broader societal harms are not necessarily the direct results of anti-competitive behaviors, their emergence and unprecedented scale is greatly enabled in an environment where consumers lack meaningful choices and private companies hold all the cards in their own favor.

It is crucial to begin using new policy tools to meet the significant and evolving challenges and opportunities of today's digital marketplace. Just as industrial-era capitalism operated—and thrived—under public interest obligations, so should internet-era capitalism be grounded in public interest expectations. These expectations—and the new rules to implement them—should reinstate the responsibilities firmly established in common law: the duty of care and the duty to deal. With these core principles as a starting point, many vital concepts and tools can emerge to support a pro-competitive environment that properly serves consumer interests: for example, the interoperability of services; data portability for consumers; nondiscrimination by service providers; increased technical and organizational transparency and collaboration with outside expert; enhanced data protections and accountability for violations; expanded merger review capacity and jurisdiction in the technology sector; and, where appropriate, the assertion

of new public interest obligations for companies that may be considered to operate as part of public space.

Therefore, I direct the White House National Economic Council to lead an interagency effort to address the need for comprehensive online platform regulation and competition issues. To these ends, it is hereby ordered as follows:

Section 1. Establishment of the White House Task Force to Regulate Online Platforms and Promote Competition. There is established a White House Task Force to Regulate Online Platforms and Promote Competition (Task Force). The Task Force shall be chaired by designees of the White House National Economic Council (NEC).

(a) Membership of the Task Force. In addition to the NEC Chairs, the Task Force shall be composed of:

(i) a representative from each of the following agencies, and the Co-Chairs, all of which have significant ownership of, or responsibility for managing, competition and antitrust issues, consumer protections, technology and innovation policy (Task Force Agencies):

- (1) the Department of Justice;
- (2) the Federal Trade Commission;
- (3) the Federal Communications Commission;
- (4) the Office of Science and Technology Policy;
- (5) the Department of Commerce;

(ii) a representative from each of the following agencies or offices, to provide advice and assistance:

- (1) the National Security Council;
- (2) the Domestic Policy Council;

(iii) representatives from such other agencies or offices that Co-Chairs may invite to participate.

(b) To perform the Task Force functions of the member, a member of the Task Force may designate senior officials from the member's agency or office and are full-time officers or employees of the Federal Government.

Sec. 2. Mission and Function of the Task Force.

(a) The Task Force shall work with agencies to develop a set of recommendations to address existing gaps in competition policy and online platform oversight.

(b) In accordance with applicable law and in addition to regular meetings, the Task Force shall consult with external stakeholders, including consumer advocacy groups, academic experts, communities of color and marginalized communities, industry leaders, and former officials.

Sec. 3. Action Plan.

(a) Within 6 months of the date of this memorandum, the Task Force shall develop and submit proposals and recommendations to the President for

(i) strengthening the role of existing agencies to address the competition and digital platform oversight and accountability, including putting forward a set of regulatory affordances Congress should grant and a legislative agenda strategy;

(ii) exploring the idea of a new federal agency to address the unique challenges of competition and digital platform regulation, including recommendations on how such an agency should be structured and likewise empowered to govern with adequately flexible jurisdiction and authority necessary to keep pace in a dynamic tech landscape, and what language should or should not be recommended to congress;

(iii) key considerations towards whether and how anti-competitive behaviors in the digital marketplace may disproportionately affect racial minority consumers, such as limiting online platform choices for consumers who may face disproportionate predatory microtargeting or hateful content via those platforms, and how a new set of policy tools might help to address these issues;

(iv) promoting greater coordination and consistency among the agencies and offices that enforce the Federal laws addressing competition issues in the digital marketplace.

(b) Within six months of the date of this memorandum, the Task Force shall provide a report to the President on implementation efforts with respect to this memorandum.

Sec. 4. General Provisions.

(a) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) The heads of agencies and offices shall assist and provide information to the Task Force, consistent with applicable law, as may be necessary to carry out the functions of the Task Force. Each agency and office shall bear its own expenses of participating in the Task Force.

(d) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.
