

October 29, 2020

VIA EMAIL

Joseph Simons
Chairman, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chairman Simons,

On July 21, the Open Markets Institute, along with 30 public advocacy organizations and five scholars, petitioned the FTC for a rulemaking on exclusive dealing, exclusionary payments, and other similar practices (hereafter “exclusionary contracts”). Our petition asks the Commission to enact a rule prohibiting dominant firms from using exclusionary contracts that substantially foreclose rivals from customers, distributors, or suppliers of critical inputs.

Monopolists and other dominant firms across the economy use exclusive arrangements to marginalize rivals and preserve their power over customers, distributors, suppliers, and workers. Exclusionary contracts have injured parties as disparate as HIV-AIDS patients deprived of essential medicines, children forced to eat unhealthy processed foods at school, and professional athletes robbed of the opportunity to earn a fair wage. Moreover, as our petition details, the justification for exclusionary contracts by dominant firms rests on weak and unpersuasive theories.

In its enforcement efforts over the past decade, the Commission has prioritized rooting out exclusionary contracts. It has achieved significant success through this litigation, including a win on review before the Eleventh Circuit in 2015. Last week, the Commission’s sister federal antitrust enforcer, the U.S. Department of Justice, filed a monopolization suit against Google alleging, among other unfair practices, exclusionary contracting with handset makers and wireless carriers. While these lawsuits are necessary, litigation is not enough because, under present legal standards, antitrust cases typically require years to resolve. To deter exclusionary contracting and put all dominant firms on notice that the practice will not be tolerated, the Commission should build on these enforcement efforts and strengthen fair competition in the marketplace through the requested rule.

Since submitting the petition in July, six organizations and one scholar have joined the call for an FTC rule on exclusionary contracts, bringing the total number of signatories to 43—37 organizations and six scholars. A description of these new signatories is attached as an addendum to this letter.

We write to request a status update on our petition for rulemaking. Since our submission of the petition, we have not received any response, including an acknowledgment of receipt, from your

office or staff at the Commission. We would be pleased to answer any questions you have about our petition or exclusionary contracts.

Respectfully,

Open Markets Institute
American Economic Liberties Project
American Grassfed Association
AMIBA
Bold Alliance
Brian Callaci
Color of Change
Community Coalition for Real Meals
Cornucopia Institute
Demand Progress Education Fund
Fair World Project
Family Farm Action Alliance
Farm Aid
Farmworker Association of Florida
Food & Water Action
Friends of Family Farmers
Friends of the Earth
HEAL
In the Public Interest
Initiative for Medicines, Access & Knowledge (I-MAK), Inc.
Institute for Local Self-Reliance
Johns Hopkins Center for a Livable Future
Marshall Steinbaum
Nikolas Guggenberger
Northern Plains Resource Council
Oklahoma Stewardship Council
Organization for Competitive Markets
People's Parity Project
Public Justice
Rural Advancement Foundation International-USA
San Luis Valley Local Foods Coalition
Sanjukta Paul
Service Employees International Union
Socially Responsible Agricultural Project
Veena Dubal
Warehouse Worker Resource Center

Signatories That Joined Since July 21, 2020:

Electronic Privacy Information Center

iFixit

Jobs With Justice Education Fund

Raúl Carrillo

Repair.org

Towards Justice

U.S. P.I.R.G.

CC: Commissioner Rohit Chopra
 Commissioner Noah Joshua Phillips
 Commissioner Rebecca Kelly Slaughter
 Commissioner Christine Wilson
 April Tabor

Addendum

The **Electronic Privacy Information Center (EPIC)** is a public interest research center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging privacy and civil liberties issues and to protect privacy, freedom of expression, and democratic values in the information age. EPIC has long advocated for consumer privacy and oversight of technology firms through comprehensive complaints to the Federal Trade Commission, amicus briefs in federal and state courts, testimony and statements to Congressional committees, and educational publications. EPIC is one of the leading advocates for the enactment of comprehensive data protection legislation and has frequently called attention to the ways in which the dominance of online platforms undermines consumer privacy.

iFixit is the world's largest repair community. The mission-driven company helps over 100 million people every year fix everything from iPhones to lawnmowers.

Jobs With Justice Education Fund leads the fight for workers' rights and an economy that benefits everyone. We are the only nonprofit of our kind leading strategic campaigns and shaping the public discourse on every front to build power for working people. Jobs With Justice Education Fund is committed to working nationally and locally, on the ground and online. We win real change for workers by combining innovative communications strategies and solid research and policy analysis. Jobs With Justice Education Fund believes that all workers should have collective bargaining rights, employment security, and a decent standard of living within an economy that works for everyone. We bring together labor, community, student, and faith voices at the national and local levels to win improvements in people's lives and shape the public discourse on workers' rights and the economy.

Raúl Carrillo is the Deputy Director of the LPE Project and an Associate Research Scholar at Yale Law School. His research focuses on the monetary design of predation and surveillance on one hand and the political economy of economic rights enforcement on the other. Prior to joining the LPE Project, Raúl was Policy Counsel at the Demand Progress Education Fund and a Fellow at the Americans for Financial Reform Education Fund, advising public interest groups with respect to developments in financial technology. He previously worked as a Staff Attorney at New Economy Project and Special Counsel to the Enforcement Director at the Consumer Financial Protection Bureau. He is the Chair of the Board of Directors of the Modern Money Network, an Executive Committee member of the National Jobs For All Network, an Advisory Council member of Our Money, and an Advisory Council member of the Progressive Talent Pipeline.

Repair.org is a coalition of business organizations and individuals all engaged in the secondary market for equipment made with digital electronic parts. Our mission is to fight for repair-friendly policies in legislation regulations standards and public policy.

Towards Justice is a non-profit legal organization that uses impact litigation, strategic policy advocacy, and collaboration with workers to challenge systemic impediments to worker power. Towards Justice has supported workers in bringing challenges under the antitrust laws to the unfair and illegal exploitation of corporate power, including in a large-scale wage-fixing class action on behalf of a class of around 90,000 childcare workers and in the first recent case to challenge no-hire provisions in fast-food franchise agreements. Towards Justice thinks it is essential that policymakers establish clear, bright-line rules to allow workers, consumers, and small businesses to challenge unfair practices.

U.S. P.I.R.G. is an advocate for the public interest and one of the lead organizations behind the Right to Repair campaign. We speak out for a healthier, safer world in which we're freer to pursue our own individual well-being and the common good.